

Table of Contents

10-6-2025 Regular Meeting Agenda	2
Item 2 - Minutes	8
Item 3 - 10.6.25 List of Demands Packet	15
Item 5 - 2026 Council meeting schedule	51
Item 6 - KMA and DTA Amendments	58
Item 7 - Schmidt Design Group Agreement	91
Item 8 - TSVS Amendments	109



Del Mar City Council Meeting Agenda

City of Del Mar, Town Hall

1050 Camino del Mar, Del Mar, California 92014

And via teleconference

Av. Pdte. Kennedy 4700, 7630454 Vitacura, Región Metropolitana, Chile

Civility Works: The Del Mar Code of Civil Discourse: Together we will promote inclusion; listen to understand; show respect; be clear and fair; and focus on the issue.

Regular Meeting

Monday, October 6, 2025 at 4:30 PM

Terry Gaasterland
Mayor

Tracy Martinez
Deputy Mayor

Dan Quirk
Council Member

John W. Spelich
Council Member

Ashley Jones
City Manager

Leslie E. Devaney
City Attorney

Sarah Krietor
Administrative Services
Manager/City Clerk

Public Participation/Comment: Members of the public can participate in City Council meetings in-person or via written comment (Red Dot). Anyone may address the City Council for up to three minutes, at the Mayor's discretion, on items on the agenda. Members of the public wishing to speak on items not on the agenda may do so under Public Oral Communications. Agenda items may be addressed in any order at the discretion of the Mayor. When addressing the Council, please state your name for the record. Any electronic presentations must be received before 9 a.m. on the date of the Council meeting. No PowerPoint presentations can be loaded during the meeting.

In-Person Participation: Please submit a completed "Speaker Slip", including the item number you wish to speak on, to the City Clerk prior to the Mayor announcing the agenda item. The forms are located near the door at the rear of the Meeting Room. When called to speak, please approach the podium and state your name for the record.

Written Comments: Members of the public can participate in the meeting by submitting a written red dot comment via email to cityclerk@delmar.ca.us. The deadline to submit written comments is 12 p.m. on the day of the meeting and the subject line of your

email should clearly state the agenda item you are commenting on.

Viewing the Meeting and Access to Agenda Materials: Members of the public can watch the meeting live on the City's website at: <http://delmar.12milesout.com/Video/Live> and on Cable TV Spectrum Ch. 24, AT&T Ch. 99 starting at 4:30 PM. Agenda materials and communications from the public on agenda items, "Red Dots", are available on the City's website: <http://www.delmar.ca.us/AgendaCenter> and a hard copy of the agenda materials are available at Del Mar City Hall and the Del Mar Library during their business hours.

Assistance for Persons with Disabilities: In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Administrative Services Department at 1050 Camino del Mar or by calling (858) 755-9313. Notification of at least 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

- I. CALL TO ORDER/ROLL CALL
- II. CITY ATTORNEY CLOSED SESSION REPORT
- III. PLEDGE OF ALLEGIANCE
- IV. PUBLIC ORAL COMMUNICATIONS

Each person wishing to speak before the City Council on any matter not on the agenda shall submit a "Speaker Slip" to the City Clerk when Public Oral Communication is announced. Each speaker will have up to three (3) minutes to speak at the discretion of the Mayor and may be asked clarifying questions. Information received during Public Oral Communication may be received, placed on a future agenda, or referred to the City Manager by the City Council. State law generally precludes the City Council from discussing or acting upon any topic presented during oral communications that is not described on the posted agenda.

Note: there is a time limit of 30 minutes for this section of public communications and each speaker will be heard in the order of the submission of their speaker slip. Speakers who have turned in a speaker slip prior to the time oral communications was called on the agenda, but were not heard during the initial time period shall be called to speak at the end of the agenda.

- V. COMMUNITY ANNOUNCEMENTS
- VI. CITY MANAGER'S REPORT
- VII. PRESENTATIONS
 - 1. **Fairgrounds Master Plan Presentation**

Recommended Action: Receive presentation from Del Mar Fairgrounds Chief Executive Officer Carlene Moore

Reference: Clerk's File No. 307-6

- VIII. CONSENT CALENDAR

All items listed on the Consent Calendar are considered to be routine and will be acted upon with one motion. There will be no separate discussion of these items unless a member of the City Council or the public so requests, in which event, the item will be pulled from the Consent Calendar and considered separately after the motion to approve the Consent Calendar. If you wish to remove an item from the Consent Calendar, please submit a "Speaker Slip" to the City Clerk.

- 2. **Approval of Minutes: September 22, 2025 Regular and Special Meeting**

Recommended Action: Approve Minutes.

Reference: Clerk's Minutes Book

3. Ratification of List of Demands dated October 6, 2025

Recommended Action: Ratify the List of Demands.

Reference: Clerk's File No. 201-3

4. Waiver of Reading of Ordinances on Agenda

Recommended Action: Waive Reading of Ordinances.

Reference: Clerk's File No. 401-4

5. Adoption of the 2026 City Council Meeting Schedule and Proposed 2025 and 2026 City Facility Holiday Closures

Recommended Action: Staff recommends that the City Council: 1) Adopt the Resolution (Attachment A) approving the 2026 City Council Meeting Schedule (Exhibit A to Attachment A) or provide direction to staff regarding changes to the proposed schedule; and 2) Authorize the additional holiday related closures of City Hall and the Public Works Administrative Offices to the public in December 2025 and December 2026.

Reference: Clerk's File No. 401-1

6. Amendments to As-Needed Economic Impact and Fiscal Analysis Services Agreements

Recommended Action: Staff recommends the City Council: 1) Approve First Amendments to Agreements with Keyser Marston Associates, Inc. (KMA) (Attachment A), and David Taussig and Associates, Inc., (DTA Public Finance, Inc.) (DTA) (Attachment B), for As-Needed Economic Impact and Fiscal Analysis Services (Amendments) extending the terms for an additional two-year period ending October 16, 2027, and adjusting fees for KMA due to inflation; and 2) Authorize the City Manager to execute the Amendments.

Reference: Clerk's File No. 406-1

7. Agreement with Schmidt Design Group for Shores Park Master Plan

Recommended Action: Staff recommends the City Council: 1) Approve a Professional Services Agreement with Schmidt Design Group for a one-year term ending October 5, 2026, with the option to extend the Agreement for an additional one- year period, to complete the Shores Park Master Plan in an amount up to \$171,405 (Attachment A); and 2) Authorize the City Manager to execute the Agreement.

Reference: Clerk's File No. 307-8, 406-1

IX. PUBLIC HEARING

8. Re-Introduction of an Ordinance to Amend Municipal Code Chapter 23.50 and Repeal and Replace Chapter 23.51 Related to Trees, Scenic Views, and Sunlight Regulations (A25-001)

Recommended Action: Staff recommends that the City Council introduce an Ordinance (Attachment A) to: 1) Repeal and replace the City's Trees, Scenic Views, and Sunlight (TSVS) regulations within Del Mar Municipal Code (DMMC) Chapter 23.51; and 2) Amend related code sections of the City's Tree regulations within DMMC Chapter 23.50 (A25-001).

Reference: Clerk's File No. 401-4, 401-9

X. COUNCIL MEETING RECESS

XI. REGIONAL ORGANIZATION REPORTS

A Councilmember assigned as a liaison to a regional organization may make a written or oral report. State law precludes the Council from commenting on, discussing, or acting on a report unless the item of business within the report is described in the agenda.

- A. Clean Energy Alliance JPA (CEA) Board of Directors (Spelich/Gaasterland)
- B. CSA-17 Ambulance District Advisory Board (Martinez/Quirk)
- C. Fire Governance Board, Solana Beach/Del Mar/Encinitas (Martinez/Spelich)
- D. League of California Cities – San Diego Chapter (Gaasterland/Martinez)
- E. North County Transit District (NCTD) (Martinez/Spelich)
- F. Regional Solid Waste Association (Spelich/Quirk)
- G. San Diego Association of Governments Board (SANDAG)
(Gaasterland/Martinez/Spelich)
- H. SANDAG Borders Committee
- I. SANDAG Regional Planning Committee
- J. SANDAG Shoreline Preservation Working Group
(Spelich/Gaasterland/Martinez)
- K. SANDAG LOSSAN Executive Task Force (Gaasterland/Martinez)
- L. San Diego Metropolitan Wastewater Commission/JPA (Worden)
- M. San Dieguito River Valley Regional Open Space Park JPA –Executive Committee
(Gaasterland/Martinez)
- N. Other Regional Organization Reports

XII. COUNCIL COMMITTEES/SUBCOMMITTEES/COMMUNITY ORG REPORTS

A Councilmember assigned as a liaison to a City Committee, Council Subcommittee OR Community Organization may make a written or oral report. State law precludes the Council from commenting on, discussing, or acting on a report, unless the item of business within the report is described in this agenda.

- A. Del Mar Community Connections (Martinez/Spelich)
- B. Del Mar Village Association (Gaasterland/Martinez)
- C. Finance Committee (Gaasterland/Spelich)
- D. Housing Subcommittee (Gaasterland/Martinez)
- E. Human Resources Subcommittee (Gaasterland/Martinez)
- F. Legislative Subcommittee (Gaasterland/Martinez)
- G. Measure Q Citizen Oversight Committee (Quirk/Gaasterland)
- H. Parks and Recreation Committee (Martinez/Quirk)
- I. Del Mar Railroad Subcommittee (Gaasterland/Martinez)
- J. Lagoon Committee (Gaasterland/Spelich)
- K. Planning Process Subcommittee (Includes Sea-Level Rise Adaptation Plan Implementation) (Gaasterland/Spelich)
- L. Shores Advisory Committee
- M. Sustainability Advisory Committee (Martinez/Gaasterland)
- N. Traffic and Parking Advisory Committee (Quirk/Spelich)
- O. Undergrounding Program Advisory Committee (Gaasterland/Spelich)
- P. Other Committee-Subcommittee Reports

XIII. UPCOMING AGENDA ITEMS

The following topics/items are tentatively planned for upcoming agendas. The title, wording, and planned date for these items are subject to change. Final agendas are posted at City Hall 72 hours in advance of the meetings and are also posted on our web site with the accompanying staff report. Please watch our web site: www.delmar.ca.us for City Council Agendas.

October 20, 2025
Proclamation for Peter Glaser
SDG&E Presentation - Wildfire Safety & PSPS Preparedness Presentation
Townsend Public Affairs Legislative Update
Encroachment Permit 25-075 (1639 Luneta Dr)
Award of Construction Contract for Jimmy Durante Boulevard Bluff Stabilization Project
Initial Consideration Setback Seawall Permit SSP25-002

XIV. CERTIFICATION

I, Sarah Krietor, Administrative Services Manager/City Clerk for the City of Del Mar, hereby certify that a copy of this agenda was posted at City Hall on the 1st day of October, 2025 at approximately 4:15 p.m.



Sarah Krietor, Administrative Services Manager/
City Clerk

10/1/2025
Date



**CITY OF DEL MAR
CITY COUNCIL REGULAR MEETING MINUTES
SEPTEMBER 22, 2025
City of Del Mar Town Hall
1050 Camino del Mar, Del Mar California 92014
And via teleconference
8967 W Airport Dr, Spokane, WA**

The minutes set forth the actions taken by the City Council on the matters stated. Audio/video recordings of the City Council proceedings are retained for a period of ten years, in accordance with the City's Records Retention Schedule. Audio/video recordings, as well as written materials presented to the City Council, including Red Dots (materials provided to the City Council after the agenda has published), are available on the City's website at www.delmar.ca.us/AgendaCenter or by contacting the Administrative Services Department at (858) 755-9313.

CALL TO ORDER

Mayor Terry Gaasterland called the Regular Meeting to order at 4:30 p.m.

ROLL CALL

Present: Mayor Terry Gaasterland; Deputy Mayor Tracy Martinez; Councilmembers Dan Quirk and John Spelich (remotely)

CITY ATTORNEY CLOSED SESSION REPORT

City Attorney Leslie Devaney reported that there were no reportable actions or recusals for the September 22, 2025, Closed Session. All Councilmembers were present and Councilmember Spelich appeared remotely via Zoom.

PLEDGE OF ALLEGIANCE

Mayor Gaasterland led the Pledge of Allegiance.

PUBLIC ORAL COMMUNICATIONS

Mayor Gaasterland opened public oral communications and Janet Wilson spoke. Mayor Gaasterland closed public oral communications.

CITY COUNCIL COMMUNITY ANNOUNCEMENTS

Mayor Gaasterland reported on her in-laws arriving to visit Del Mar this week.

CITY MANAGER'S REPORT

City Manager Ashley Jones reported on the successful Del Mar Recycles event held on September 13, 2025, which welcomed 100 participants and resulted in 17.42 tons of waste being diverted from the landfill.

CONSENT CALENDAR

Administrative Services Manager/City Clerk Sarah Krietor read the titles of the items included on the Consent Calendar. There were no public speakers for the consent calendar items.

IT WAS MOVED BY DEPUTY MAYOR MARTINEZ, SECONDED BY MAYOR GAASTERLAND TO APPROVE THE CONSENT CALENDAR ITEMS 1 THROUGH 6, 8, AND 11. (VOTE 4-0)

Ayes: Mayor Gaasterland; Deputy Mayor Martinez; Councilmembers Quirk and Spelich; Noes: 0; Recuse: 0; Absent: 0; Abstain: 0.

ITEM 1: APPROVAL OF MINUTES: SEPTEMBER 8, 2025 REGULAR AND SPECIAL MEETING (CLERK’S MINUTES BOOK)

Council approved the minutes, on consent.

ITEM 2: RATIFICATION OF LIST OF DEMANDS, DATED SEPTEMBER 22, 2025 (CLERK’S FILE NO. 201-3)

Council approved the list of demands, on consent.

ITEM 3: WAIVER OF READING OF ORDINANCES ON AGENDA (CLERK’S FILE NO. 401-4)

Council waived the reading of ordinances, on consent.

ITEM 4: SECOND READING AND ADOPTION OF AN ORDINANCE TO ADOPT THE 2025 CALIFORNIA BUILDING STANDARDS CODE AND LOCAL AMENDMENTS WITHIN CHAPTERS 23.12 AND 23.70 OF THE DEL MAR MUNICIPAL CODE (CLERK’S FILE NO. 401-4, 401-9)

Council adopted Ordinance 1022 “AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DEL MAR, CALIFORNIA, AMENDING DEL MAR MUNICIPAL CODE CHAPTER 23.12 (CALIFORNIA CODES FOR CONSTRUCTION) BY AMENDING SECTIONS 23.12.010, 23.12.011, 23.12.012, 23.12.013, 23.12.014, 23.12.020, 23.12.030, 23.12.040, 23.12.050, 23.12.060, 23.12.061, 23.12.062, 23.12.063, 23.12.064, 23.12.065, 23.12.066, 23.12.070, 23.12.080 AND 23.12.090, 23.70.050; BY ADDING NEW SECTIONS 23.12.067 AND 23.12.100; BY ADDING NEW DIVISIONS, DIVISION 8, DIVISION 9 AND DIVISION 10; AND BY DELETING SECTIONS 23.12.018, 23.12.082, 23.12.084 AND ALL RELATING TO APPLICABILITY OF THE 2025 CALIFORNIA BUILDING STANDARDS CODE AND ASSOCIATED NATIONAL AND STATE BUILDING AND CONSTRUCTION CODES WITHIN THE CITY OF DEL MAR”, on consent.

ITEM 5: SECOND READING AND ADOPTION OF AN ORDINANCE TO ADOPT THE 2025 CALIFORNIA FIRE CODE, 2025 CALIFORNIA WILDLAND URBAN INTERFACE CODE, AND LOCAL AMENDMENTS (CLERK’S FILE NO.401-4, 401-9)

Council adopted Ordinance 1023 “AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DEL MAR, CALIFORNIA, AMENDING DEL MAR MUNICIPAL CODE CHAPTER 10.04 (FIRE PREVENTION) BY AMENDING SECTIONS 10.04.010, 10.04.030, 10.04.040, 10.04.100 AND 10.04.110; BY CONFIRMING THAT THE LOCALLY ADOPTED AMENDMENTS IN EXISTING SECTIONS 10.04.050, 10.04.060, 10.04.070, 10.04.080, 10.04.090, 10.04.120 AND 10.04.130 WILL CONTINUE TO APPLY; BY ADDING NEW SECTIONS 10.04.140 AND 10.04.150; ALL RELATING TO THE APPLICABILITY OF THE 2025 CALIFORNIA BUILDING STANDARDS CODES AND ASSOCIATED STATE FIRE CODE WITHIN THE CITY OF DEL MAR”, on consent.

ITEM 6: RESOLUTION TO APPROVE ENCROACHMENT PERMIT 25-068 TO RETAIN EXISTING UNPERMITTED RETAINING WALLS AND TO EXTEND AN EXISTING WALL WITHIN THE PUBLIC RIGHT-OF-WAY AT 610 HOSKA DRIVE (CLERK'S FILE NO. 802-1)

Council adopted Resolution 2025-33 "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DEL MAR, CALIFORNIA, APPROVING ENCROACHMENT PERMIT 25-068 TO PERMIT AN EXISTING RETAINING WALL AND EXTEND THE WALL WITHIN PUBLIC RIGHT-OF-WAY ON THE SOUTH SIDE OF THE PROPERTY AT 610 HOSKA DRIVE (APN: 300-251-25-00) IN DEL MAR, CALIFORNIA", on consent.

COUNCIL MEETING RECESS:

The City Council took a very brief meeting recess from approximately 5:13 to 5:15 p.m.

CITY COUNCIL OTHER BUSINESS

ITEM 7: INITIAL CONSIDERATION OF COURTESY APPEAL PER DMMC 1.12.020 OF PLANNING DIRECTOR'S DETERMINATION- INCOMPLETE APPLICATION STATUS (CDP23-008) SEASIDE RIDGE HOUSING DEVELOPMENT (APPLICANT: CAROL LAZIER) PROPOSED 259 MULTI-UNIT RESIDENTIAL DEVELOPMENT AND DENSITY BONUS REQUEST AT 929 BORDER (APNS: 298-241-06, 298-241-07, AND 299-030-14) (CLERK'S FILE NO. 301-12)

Mayor Gaasterland provided an overview of the initial consideration procedure.

Council disclosures were as follows: Councilmember Quirk reported no disclosures; Deputy Mayor Martinez had no disclosures and confirmed she was present at a Fair Board meeting where the applicant made comments regarding their project; Councilmember Spelich reviewed the agenda materials and red dots and was present at the Fair Board meeting when the applicant commented on their project; and Mayor Gaasterland reviewed the materials and was present at the Fair Board meeting when the applicant commented on their project.

A staff presentation was provided by Principal Planner Matt Bator. Planning and Community Development Director Karen Brindley and Assistant City Attorney Ralph Hicks were available to answer questions.

A presentation on behalf of the applicant was provided by the applicant's representative and legal counsel Brooke Miller Special Counsel with Sheppard Mullin.

Council questions focused on clarification related to the square footage of the proposed development as included in the original and subsequent submittals to the City.

There were no public speakers for this item.

Mayor Gaasterland asked whether any Councilmember would like to hold a de novo hearing. There were none. Therefore, Council upheld the Planning and Community Development Director's determination that the Lazier development application (CDP23-008) status is incomplete.

ITEM 8: UPDATE REGARDING PAVING AND TRAFFIC STRIPING IMPROVEMENTS ON JIMMY DURANTE BOULEVARD AND APPROVAL OF TASK ORDER WITH MICHAEL BAKER INTERNATIONAL FOR ENGINEERING SERVICES FOR THE JIMMY DURANTE BOULEVARD PAVEMENTS IMPROVEMENT PROJECT (CLERK'S FILE NO. 406-1)

Council questions focused on timing for completing the stripping and whether the item would return to Council. Council consensus was for staff to return to the City Council with a project briefing prior to going out to bid for the construction contract.

The Council approved a \$57,300 Task Order with Michael Baker International for Design Services and authorized the City Manager to execute the Task Order, on consent.

ITEM 9: CONSIDERATION OF SAN DIEGO GAS & ELECTRIC COST AGREEMENT FOR THE CREST CANYON (X1A) UTILITY UNDERGROUNDING DISTRICT (CLERK'S FILE NO. 1001-2)

An introduction to the item was provided by City Manager Jones. A presentation was provided by Principal Engineer Martin Boyd. Public Works Director Joe Bride was available to answer questions. Franchise and Project Management Manager Kelli Fitzgerald with SDG&E provided comments on the project and the related SDG&E costs.

Council questions focused on the reporting for the credit reported by SDG&E; whether temporary poles/cable poles can be reused or credited for a future project; and the credit for overhead equivalent included in the estimate and why contingency is applied.

There were no public speakers for the item.

Council discussion focused on SDG&E project costs across different City undergrounding projects; clarification on the linear feet estimate used by SDG&E which is based on linear feet of trench; whether material costs used by SDG&E are considered proprietary; whether SDG&E has a requirement to seek the lowest cost materials and clarification on whether the competitive bid process used by SDG&E considers cost; other factors considered by SDG&E including reliability and safety; current status of work for Utility Underground District (UUD) 1A due to multi-family sites not being prepared; whether the work currently taking place on 9th Street relates to the undergrounding project; purpose of the cable pole/pull; desire to learn more about cable pulls at a future Undergrounding Program Advisory Committee meeting; and clarification on whether an amendment to the cost agreement related to the overhead equivalent credit is needed.

IT WAS MOVED BY MAYOR GAASTERLAND AND SECONDED BY COUNCILMEMBER SPELICH TO APPROVE THE SDG&E COST AGREEMENT FOR THE CREST CANYON (X1A) UTILITY UNDERGROUNDING DISTRICT WITH A COST OF \$2,776,128 AND AUTHORIZE THE CITY MANAGER TO EXECUTE THE AGREEMENT. (VOTE 4-0)

Ayes: Mayor Gaasterland; Deputy Mayor Martinez; Councilmembers Quirk and Spelich; Noes: 0; Recuse: 0; Absent: 0; Abstain: 0.

ITEM 10: UNDERGROUNDING PROGRAM FINANCING UPDATE AND DETERMINATION OF FINAL IBANK LOAN AMOUNT (CLERK'S FILE NO. 203-3, 1001-2)

An introduction to the item was provided by City Manager Jones. A presentation was provided by Finance Manager/Treasurer Marco Camacho. City consultants Craig Hill, Managing Principal and Matt DeFilippis, Senior Analyst with NHA Advisors LLC were available to answer questions.

Council questions focused on the loan amount; process for considering future borrowings; amount of debt service payments; when the Council last considered the Undergrounding Program cash flow options; and timing for receiving an update on future cash flows.

There were no public speakers for the item.

Council discussion focused on appreciation to staff and the Undergrounding Program Advisory Committee for their work on this project; whether the City could further reduce the loan amount; clarification on existing City debt and funding source for the debt service; and interest rate for existing IBank loan.

There was Council discussion about timing for City staff to complete an update to the long-term cash flow model for the Undergrounding Program and discussion of next steps and timing for the upcoming 25th Street and Beach Colony Districts. There was Council majority consensus in support of staff bringing this information to the Undergrounding Program Advisory Committee and City Council in spring 2026.

IT WAS MOVED BY COUNCILMEMBER QUIRK AND SECONDED BY MAYOR GAASTERLAND TO RETURN TO COUNCIL SOONER WITH THE CASHFLOW ANALYSIS DISCUSSION (VOTE 1-3 WITH MAYOR GAASTERLAND, DEPUTY MAYOR MARTINEZ AND COUNCILMEMBER SPELICH OPPOSED)

Ayes: Councilmembers Quirk; Noes: Mayor Gaasterland; Deputy Mayor Martinez; and Councilmember Spelich; Recuse: 0; Absent: 0; Abstain: 0.

IT WAS MOVED BY COUNCILMEMBER SPELICH AND SECONDED BY MAYOR GAASTERLAND TO APPROVE A \$5 MILLION LOAN AMOUNT FOR THE LOAN WITH IBANK TO FUND THE CREST CANYON (UUD X1A) AND STRATFORD COURT NORTH (UUD 1B). (VOTE 4-0)

Ayes: Mayor Gaasterland; Deputy Mayor Martinez; Councilmembers Quirk and Spelich; Noes: 0; Recuse: 0; Absent: 0; Abstain: 0.

ITEM 11: FIRE MANAGEMENT UPDATE AND CONSIDERATION OF NOTICE REGARDING EXIT FROM COOPERATIVE AGREEMENT FOR FIRE MANAGEMENT SERVICES (CLERK'S FILE NO. 1101-8)

Council authorized the City Manager to provide notice to the cities of Encinitas and Solana Beach that the City of Del Mar may exit the Cooperative Agreement for Fire Management Services between January 1, and March 31, 2026, or a date thereafter as may be agreed upon by the parties, on consent.

REGIONAL ORGANIZATION AND COUNCIL COMMITTEES/SUBCOMMITTEES/COMMUNITY ORGANIZATION REPORTS

City Council representatives reported on the San Diego Association of Governments (SANDAG) Sustainable Community Work Group; SANDAG Regional Planning Committee; San Dieguito River Park JPA; SANDAG Board of Directors; and Ad-Hoc Shores Park Advisory Committee application deadline.

ADJOURNMENT

Mayor Gaasterland adjourned the meeting at 6:55 p.m.

Sarah Krietor, Administrative Services Manager/
City Clerk

DRAFT



**DEL MAR CITY COUNCIL
SPECIAL MEETING MINUTES
CLOSED SESSION
SEPTEMBER 22, 2025**

City of Del Mar Town Hall
1050 Camino del Mar, Del Mar, California 92014
And via teleconference
8967 W Airport Dr, Spokane, WA

CALL TO ORDER

Mayor Terry Gaasterland called the meeting to order at 3:37 p.m.

ROLL CALL

Present: Mayor Terry Gaasterland; Deputy Mayor Tracy Martinez; Councilmembers Dan Quirk (arrived at approximately 3:42 p.m.) and John Spelich (remotely)

CLOSED SESSION

- A) Conference with Legal Counsel - Significant Exposure to Litigation
Number of Cases: One
Description: Seaside Ridge Project
Authority: Government Code Section 54956.9(d)(2)
Reportable Action: None.

- B) Conference with Legal Counsel - Initiation of Litigation
Number of Cases: One
Description: Seaside Ridge Project
Authority: Government Code Section 54956.9(d)(4)
Reportable Action: None.

ADJOURNMENT

Mayor Gaasterland adjourned the meeting at 4:24 p.m.

Sarah Krietor, Administrative Services Manager/
City Clerk



LIST OF DEMANDS
CITY OF DEL MAR
for
City Council Meeting
October 6, 2025

Vendor Payment Checks	\$ 132,576.63
Voids	(68,195.11)
Electronic Fund Transfers (EFT)	682,577.36
Electronic Wires	117,553.40
Total	<u><u>\$ 864,512.28</u></u>

Approved by: 

Marco Camacho
Finance Manager/Treasurer

Date: 9/29/25

Approved by:

Terry Gaasterland
Mayor

Date:

Attachments: Check Registers

Bank : eusbnk EFT GENERAL ACCOUNT US BANK

Check #	Date	Vendor	Invoice	Inv Date	Description	Amount Paid	Check Total
7176	9/16/2025	civ02	CIVIC SOLUTIONS INC	106920	9/3/2025	CONSULTING SRVCS AUG	13,920.00
	Voucher:	7176	106921	9/3/2025	CONSULTING SRVCS AUG	984.00	14,904.00
7177	9/16/2025	phi01	CLEAN EARTH	72404381711	9/10/2025	HSHLD HAZ WASTE - AUG	461.40
	Voucher:	7177					461.40
7178	9/16/2025	coa21	COAST NEWS GROUP	00158413	8/29/2025	AD- PUBLIC HEARING	220.88
	Voucher:	7178	00158427	8/29/2025	AD - PUBLIC HEARING	162.75	
			00158414	8/29/2025	AD- PUBLIC HEARING	147.25	
			00158497	9/5/2025	AD - PUBLIC HEARING	143.38	
			00158498	9/5/2025	AD - PUBLIC HEARING	139.50	813.76
7179	9/16/2025	cor07	CORODATA RECORDS MGT	RS7107060	8/31/2025	STORAGE SRVCS AUG	166.98
	Voucher:	7179					166.98
7180	9/16/2025	dev02	DEVANEY PATE MORRIS & C	10823	8/20/2025	LEGAL FEES JUL	13,147.33
	Voucher:	7180	10821	8/20/2025	LEGAL FEES JUL	1,476.65	
			10825	8/20/2025	LEGAL FEES JUL	902.80	
			10822	8/20/2025	LEGAL FEES JUL	898.50	16,425.28
7181	9/16/2025	dix01	DIXIELINE LUMBER CO	06-0612332	8/28/2025	OPERATING SUPP PW	50.62
	Voucher:	7181	06-0612766	9/2/2025	OPERATING SUPP PW	29.87	
			91-0276900	6/18/2025	OPERATING SUPP REFUND	-8.11	
			91-0274650	5/7/2025	OPERATING SUPP REFUND	-15.14	57.24
7182	9/16/2025	man12	MANERI TRAFFIC CONTROL	24214	9/1/2025	MAINT/REPAIR SUPP PW	826.50
	Voucher:	7182					826.50
7183	9/16/2025	mic11	MICHAEL BAKER INTERNATI	1259994	9/5/2025	CITY ENGR SRVCS AUG	4,503.98
	Voucher:	7183					4,503.98
7184	9/16/2025	mik03	MIKHAIL OGAWA ENGINEER	12183	9/8/2025	CLEAN WATER SRVCS AUG	27,796.45
	Voucher:	7184	12184	9/8/2025	SAN DIEGUITO TMDL AUG	2,512.48	30,308.93
7185	9/16/2025	pru01	PRUDENTIAL OVERALL SUP	132332477	8/29/2025	UNIFORMS PW - 8/29	67.22
	Voucher:	7185					67.22
7186	9/16/2025	san56	SAN ELIJO JOINT POWERS,	09032025	9/3/2025	OPERATIONS/MAINT 2Q	311,426.00
	Voucher:	7186					311,426.00
7187	9/16/2025	sca12	SCA OF CA LLC	CA25001779	8/29/2025	SWEEPING SRVCS AUG	2,954.15
	Voucher:	7187					2,954.15
7188	9/16/2025	tru09	TRUE NORTH COMPLIANCE	DM25-08	9/5/2025	BLDG CODE PC INSP AUG	39,228.39
	Voucher:	7188					39,228.39

Sub total for EFT GENERAL ACCOUNT US BANK: 422,143.83

Bank : qusbnk GENERAL ACCOUNT US BANK

Check #	Date	Vendor	Invoice	Inv Date	Description	Amount Paid	Check Total
140145	9/16/2025	ass03	ASSA ABLOY ENTRANCE SY SEI 1898615	8/29/2025	LOCK REPAIRS CH	3,776.55	
	Voucher:	140145	SEI 1898633	8/29/2025	LOCK REPAIRS CH	882.25	4,658.80
140146	9/16/2025	sbc03	AT&T 9391059863	9/1/2025	TELEPHONE AUG	666.54	666.54
	Voucher:	140146					
140147	9/16/2025	coa10	COASTAL LIVESCAN SERVIC 43533	8/31/2025	LIVESCAN SRVCS AUG	124.00	124.00
	Voucher:	140147					
140148	9/16/2025	emc01	EMC CORPORATION 5201674329	9/8/2025	HARDWARE WARRANTY RWL	3,478.81	3,478.81
	Voucher:	140148					
140149	9/16/2025	gol16	GOLDFARB & LIPMAN LLP 485554	7/14/2025	LEGAL FEES JUN	238.00	
	Voucher:	140149	483260	5/25/2025	LEGAL FEES APR	136.00	374.00
140150	9/16/2025	jam08	JAMESON KENT HASLAM, D 1138-3	8/28/2025	PATIO COVER INSTALL CS	1,280.00	1,280.00
	Voucher:	140150					
140151	9/16/2025	con17	OCCUPATIONAL HEALTH CT 87943493	8/24/2025	EMPLOYEE TESTING AUG	211.00	211.00
	Voucher:	140151					
140152	9/16/2025	pro24	PROGRESSIVE TECHNOLOC 59250	9/1/2025	ALARM MONITORING TH OCT/DE	162.00	
	Voucher:	140152	59249	9/1/2025	ALARM MONITORING CH OCT/DI	162.00	324.00
140153	9/16/2025	rec01	RECON ENVIRONMENTAL IN 71822	8/27/2025	CDM SEAWALL	1,481.00	1,481.00
	Voucher:	140153					
140154	9/16/2025	sdq02	SAN DIEGO GAS & ELECTRI 2100 0065 8024 7	9/5/2025	UTILITIES AUG	815.48	
	Voucher:	140154	0067 3735 0888 1	9/5/2025	UTILITIES AUG	333.31	
			0085 7750 3585 7	9/5/2025	UTILITIES AUG	20.60	
			0096 3381 7034 7	9/5/2025	UTILITIES AUG	19.84	
			0053 7739 5442 0	9/5/2025	UTILITIES AUG	19.46	
			0097 5436 8967 5	9/5/2025	UTILITIES AUG	18.90	
			0066 5491 5032 1	9/3/2025	UTILITIES AUG	11.69	
			0081 7377 2988 5	9/5/2025	UTILITIES AUG	9,036.47	
			0066 5491 6833 1	9/5/2025	UTILITIES AUG	5,861.11	16,136.86
140155	9/16/2025	sdq06	SDG&E 09112025	9/11/2025	PERMIT REFUND	501.00	501.00
	Voucher:	140155					
140156	9/16/2025	sig12	SIGNA DIGITAL SOLUTIONS AR-S334520	9/12/2025	COPIER MTC - FINANCE	489.75	489.75
	Voucher:	140156					
140157	9/16/2025	tei02	TEICHERT ENERGY & UTILIT 09032025	9/3/2025	UUD - 1A STRATFORD - JUL	44,830.50	44,830.50
	Voucher:	140157					
140158	9/16/2025	und01	UNDERGROUND SERVICE A 820250237	9/1/2025	CONT SRVCS AUG	148.00	148.00
	Voucher:	140158					

Bank : qusbnk GENERAL ACCOUNT US BANK (Continued)

Check #	Date	Vendor	Invoice	Inv Date	Description	Amount Paid	Check Total
140159	9/16/2025	wax02	WAXIE'S ENTERPRISES, LLC	83481677	9/4/2025	JANITORIAL SUPPLIES	1,489.55
	Voucher:	140159		83467554	8/27/2025	JANITORIAL SUPPLIES	259.43
				83466175	8/27/2025	JANITORIAL SUPPLIES	259.43
				83201346	5/7/2025	JANITORIAL SUPP REFUND	-218.19
140160	9/16/2025	zon02	ZONE TRAFFIC ENGINEERIN	INV 24001-05	8/29/2025	TRAFFIC ENGR SRVCS JUL	578.00
	Voucher:	140160					1,790.22
							578.00
Sub total for GENERAL ACCOUNT US BANK:							77,072.48

29 checks in this report.

Grand Total All Checks: 499,216.31



VoidCKEP
09/16/25 5:05PM

Void Check Posting List
City of Del Mar

Document #: 914016 Void Date: 08/20/2025 Posting #: 36170 Group: eescalante
Check #: 7114 Bank code: eusbnk Check Date: 08/19/25
Vendor: bny01 THE BANK OF NY MELLON TRUST CO
Post into: 02/2026 Check amount: 51,225.00

Doc Source	Account Number	Description	Amount
disb	B 65.2110.0000	A/P GENERAL	51,225.00 CR
disb S*	B 65.1100.0000	CASH AND INVESTMENTS	51,225.00 DB
disb S*	B 72.1160.0000	UNION BANK - GENER	51,225.00 DB
disb S*	B 72.1100.0000	CASH AND INVESTMENTS	51,225.00 CR
Balance Sheet Totals:	102,450.00 DB	102,450.00 CR	Difference: 0.00

		<i>Balance Sheet Fund Totals</i>		
<u>Fund</u>		<u>Debits</u>	<u>Credits</u>	<u>Difference</u>
65	AD 2003-1 OCEAN VIEW/PINES	51,225.00	51,225.00	0.00
72	INVESTMENTS	51,225.00	51,225.00	0.00

Errors / Warnings

Documents with errors : 0
Documents with warnings : 0

VoidCKEP
09/16/25 5:16PM

Void Check Posting List
City of Del Mar

Document #: 914024 Void Date: 07/02/2025 Posting #: 36174 Group: eescalante
Check #: 139811 Bank code: gusbnk Check Date: 07/01/25
Vendor: gcf01 GILBERT CASTRO, DBA GC FENCE CORP
Post into: 01/2026 Check amount: 3,700.00

Doc Source	Account Number	Description	Amount
disb	B 51.2110.0000	A/P-GENERAL	3,700.00 CR
disb S*	B 51.1100.0000	CASH AND INVESTMENTS	3,700.00 DB
disb S*	B 72.1160.0000	UNION BANK - GENER	3,700.00 DB
disb S*	B 72.1100.0000	CASH AND INVESTMENTS	3,700.00 CR
Balance Sheet Totals:		7,400.00 CR	Difference: 0.00

		<i>Balance Sheet Fund Totals</i>		
<u>Fund</u>		<u>Debits</u>	<u>Credits</u>	<u>Difference</u>
51	WATER	3,700.00	3,700.00	0.00
72	INVESTMENTS	3,700.00	3,700.00	0.00

Errors / Warnings

Documents with errors : 0
Documents with warnings : 0

VoidCKEP
09/16/25 5:34PM

Void Check Posting List
City of Del Mar

Document #: 914030 Void Date: 08/20/2025 Posting #: 36176 Group: eescalante
 Check #: 140057 Bank code: gusbnk Check Date: 08/19/25
 Vendor: Inc01 L.N. CURTIS & SONS
 Post into: 02/2026 Check amount: 11,068.03

Doc Source	Account Number	Description	Amount
disb	B 01.2110.0000	A/P GENERAL	11,068.03 CR
disb S*	B 01.1100.0000	CASH AND INVESTMENTS	11,068.03 DB
disb S*	B 72.1160.0000	UNION BANK - GENER	11,068.03 DB
disb S*	B 72.1100.0000	CASH AND INVESTMENTS	11,068.03 CR
Balance Sheet Totals:	22,136.06 DB	22,136.06 CR	Difference: 0.00

		<i>Balance Sheet Fund Totals</i>		
<u>Fund</u>		<u>Debits</u>	<u>Credits</u>	<u>Difference</u>
01	GENERAL	11,068.03	11,068.03	0.00
72	INVESTMENTS	11,068.03	11,068.03	0.00

Errors / Warnings

Documents with errors : 0
Documents with warnings : 0

VoidCKEP
09/16/25 5:44PM

Void Check Posting List
City of Del Mar

Document #: 914035 Void Date: 01/06/2025 Posting #: 36178 Group: eescalante
Check #: 139141 Bank code: gusbnk Check Date: 01/03/25
Vendor: sta36 STANDARD PLUMBING SUPPLY CO, DBA MWI PLUMBER
Post into: 07/2025 Check amount: 2,077.08

Doc Source	Account Number	Description	Amount
disb	B 51.2110.0000	A/P-GENERAL	2,077.08 CR
disb	S* B 51.1100.0000	CASH AND INVESTMENTS	2,077.08 DB
disb	S* B 72.1160.0000	UNION BANK - GENER	2,077.08 DB
disb	S* B 72.1100.0000	CASH AND INVESTMENTS	2,077.08 CR
Balance Sheet Totals:	4,154.16 DB	4,154.16 CR	Difference: 0.00

Summary Documents

Document #: 914036 **Posting #:** 36178 **Date:** 01/06/25
Reference: 51
Description: disb - FUND 51 SUMMARY
Post into: 07/2025

Account Number	Description	Amount
B 51.1100.0000	Automatic Summary	2,077.08 DB

Balance Sheet Totals: 2,077.08 DB CR Difference:

Document #: 914037 **Posting #:** 36178 **Date:** 01/06/25
Reference: 72
Description: disb - FUND 72 SUMMARY
Post into: 07/2025

Account Number	Description	Amount
B 72.1160.0000	Automatic Summary	2,077.08 DB
B 72.1100.0000	Automatic Summary	2,077.08 CR

Balance Sheet Totals: 2,077.08 DB 2,077.08 CR Difference: 0.00

		<i>Balance Sheet Fund Totals</i>		
<u>Fund</u>		<u>Debits</u>	<u>Credits</u>	<u>Difference</u>
51	WATER	2,077.08	2,077.08	0.00
72	INVESTMENTS	2,077.08	2,077.08	0.00

Errors / Warnings

Documents with errors : 0
Documents with warnings : 0

VoidCKEP
09/16/25 4:52PM

Void Check Posting List
City of Del Mar

Document #: 914013 Void Date: 09/16/2025 Posting #: 36169 Group: eescalante
 Check #: 140075 Bank code: gusbnk Check Date: 08/27/25
 Vendor: fir01 FIRE ETC.
 Post into: 03/2026 Check amount: 125.00

Doc Source	Account Number	Description	Amount
disb	B 01.2110.0000	A/P GENERAL	125.00 CR
disb	S* B 01.1100.0000	CASH AND INVESTMENTS	125.00 DB
disb	S* B 72.1160.0000	UNION BANK - GENER	125.00 DB
disb	S* B 72.1100.0000	CASH AND INVESTMENTS	125.00 CR
Balance Sheet Totals:		250.00 DB 250.00 CR	Difference: 0.00

Summary Documents

Document #: 914014 **Posting #:** 36169 **Date:** 09/16/25
Reference: 01
Description: disb - FUND 01 SUMMARY
Post into: 03/2026

Account Number	Description	Amount
B 01.1100.0000	Automatic Summary	125.00 DB

Balance Sheet Totals: 125.00 DB CR Difference:

Document #: 914015 **Posting #:** 36169 **Date:** 09/16/25
Reference: 72
Description: disb - FUND 72 SUMMARY
Post into: 03/2026

Account Number	Description	Amount
B 72.1160.0000	Automatic Summary	125.00 DB
B 72.1100.0000	Automatic Summary	125.00 CR

Balance Sheet Totals: 125.00 DB 125.00 CR Difference: 0.00

		<i>Balance Sheet Fund Totals</i>		
<u>Fund</u>		<u>Debits</u>	<u>Credits</u>	<u>Difference</u>
01	GENERAL	125.00	125.00	0.00
72	INVESTMENTS	125.00	125.00	0.00

Errors / Warnings

Documents with errors : 0
Documents with warnings : 0

Bank : qusbnk GENERAL ACCOUNT US BANK

Check #	Date	Vendor	Invoice	Inv Date	Description	Amount Paid	Check Total	
4162	9/19/2025	per01	PERS	Ben181810	9/19/2025	PERS CONTRIBUTIONS: PAYMEN	58,373.52	58,373.52
		Voucher:	4162					
4163	9/19/2025	irs01	IRS, UNITED STATES TREAS	Ben181812	9/19/2025	FEDERAL TAX: PAYMENT	43,230.48	43,230.48
		Voucher:	4163					
4164	9/19/2025	edd01	EMPLOYMENT DEVELOPME	Ben181814	9/19/2025	STATE TAX: PAYMENT	12,272.91	12,272.91
		Voucher:	4164					
4165	9/19/2025	per02	PERS 457	Ben181816	9/19/2025	CALPERS 457 DEFERRED COMF	2,976.49	2,976.49
		Voucher:	4165					
Sub total for GENERAL ACCOUNT US BANK:							116,853.40	

Bank : eusbnk EFT GENERAL ACCOUNT US BANK

<u>Check #</u>	<u>Date</u>	<u>Vendor</u>	<u>Invoice</u>	<u>Inv Date</u>	<u>Description</u>	<u>Amount Paid</u>	<u>Check Total</u>
7189	9/19/2025	mis07	107413 STATE ST BANK & TF Ben181806	9/19/2025	401A PLAN: PAYMENT	555.16	555.16
		Voucher:	7189				
7190	9/19/2025	mis08	303845 STATE ST BANK & TF Ben181798	9/19/2025	MISSION SQUARE 457B: PAYMEI	10,219.99	10,219.99
		Voucher:	7190				
7191	9/19/2025	mis09	803808 STATE ST BANK & TF Ben181808	9/19/2025	RETIREMENT HEALTH SAVINGS	746.96	746.96
		Voucher:	7191				
7192	9/19/2025	uni21	DEL MAR CITY EMPLOYEES Ben181800	9/19/2025	DMCEA DUES: PAYMENT	286.00	286.00
		Voucher:	7192				
7193	9/19/2025	nat15	NATIONAL BENEFIT SERVICE Ben181804	9/19/2025	SEC. 125 FLEXIBLE SAVINGS AC	1,672.86	1,672.86
		Voucher:	7193				
7194	9/19/2025	par21	U.S. BANK PARS FFC 674602 Ben181802	9/19/2025	PUBLIC AGENCY RETIREMENT S	3,331.30	3,331.30
		Voucher:	7194				
Sub total for EFT GENERAL ACCOUNT US BANK:							16,812.27

Bank : qusbk GENERAL ACCOUNT US BANK

<u>Check #</u>	<u>Date</u>	<u>Vendor</u>	<u>Invoice</u>	<u>Inv Date</u>	<u>Description</u>	<u>Amount Paid</u>	<u>Check Total</u>	
8118	9/19/2025	cal62 Voucher: 8118	CALPERS	18034798	8/25/2025	GASB 68	700.00	700.00
Sub total for GENERAL ACCOUNT US BANK:							700.00	

11 checks in this report.

Grand Total All Checks: 134,365.67



Bank : eusbnk EFT GENERAL ACCOUNT US BANK

Check #	Date	Vendor	Invoice	Inv Date	Description	Amount Paid	Check Total	
7195	9/25/2025	ace02	ACE UNIFORMS LLC	VS0130778	9/11/2025	UNIFORMS FIRE	20.06	20.06
	Voucher:	7195						
7196	9/25/2025	cor23	CORODATA SHREDDING INC DN 1538939		8/31/2025	SHREDDING SRVCS AUG	50.82	50.82
	Voucher:	7196						
7197	9/25/2025	dix01	DIXIELINE LUMBER CO	06-0613889	9/11/2025	OPERATING SUPP CS	409.02	
	Voucher:	7197		06-0614604	9/16/2025	MAINT/REPAIR SUPP PW	186.83	
				06-0614089	9/12/2025	OPERATING SUPP CS	139.25	
				06-0613915	9/10/2025	SMALL TOOL SUPP PW	94.76	
				06-0612906	9/3/2025	OPERATING SUPP PW	73.33	
				06-0612818	9/2/2025	OPERATING SUPP PW	66.19	
				06-0613026	9/4/2025	OPERATING SUPP PW	15.93	
				06-0613426	9/8/2025	OPERATING SUPP PW	14.67	
				06-0614684	9/16/2025	MAINT/REPAIR SUPP PW	13.67	
				06-0613196	9/5/2025	OPERATING SUPP PW	47.92	
				06-0613507	9/8/2025	OPERATING SUPP PW	32.17	
				06-0613730	9/10/2025	OPERATING SUPP PW	27.19	
				06-0613842	9/10/2025	OPERATING SUPP PW	26.42	
				06-0613756	9/10/2025	OPERATING SUPP PW	21.52	
				06-0613608	9/10/2025	OPERATING SUPP PW	18.65	1,187.52
7198	9/25/2025	pac28	PACIFIC MOBILE STRUCTUF INV-00479113		10/1/2025	MOBILE OFFICE PW OCT	246.75	246.75
	Voucher:	7198						
7199	9/25/2025	pit01	PITNEY BOWES GLOBAL FIN 3107384186		9/10/2025	EQUIP RENTAL 7/30-10/29	974.94	974.94
	Voucher:	7199						
7200	9/25/2025	pru01	PRUDENTIAL OVERALL SUP 132333648		9/5/2025	MATS PW - 9/5	15.47	
	Voucher:	7200	132333649		9/5/2025	SHOP TOWELS PW - 9/5	4.41	19.88
7201	9/25/2025	san03	SAN DIEGO COUNTY WATEF 0825-2		9/9/2025	RAW WATER AUG	233,809.20	233,809.20
	Voucher:	7201						
7202	9/25/2025	tow05	TOWNSEND PUBLIC AFFAIR 23970		9/1/2025	LEGISLATIVE SRVCS SEP	4,500.00	4,500.00
	Voucher:	7202						
7203	9/25/2025	wex01	WEX BANK 0498-00-496530-7		9/6/2025	GAS & OIL PW	2,612.09	2,612.09
	Voucher:	7203						
7204	9/25/2025	gan04	WILLIAM GANDER, DBA RES DM-RT20250905		9/5/2025	SOLAR MONITORING AUG	200.00	200.00
	Voucher:	7204						

Sub total for EFT GENERAL ACCOUNT US BANK: 243,621.26

Bank : qusbnk GENERAL ACCOUNT US BANK

Check #	Date	Vendor	Invoice	Inv Date	Description	Amount Paid	Check Total	
140161	9/25/2025	adt02	ADT SECURITY SERVICES	1164563521	9/13/2025	ALARM 1700 COAST OCT/DEC	143.82	143.82
		Voucher: 140161						
140162	9/25/2025	ame50	AMERICAN MEDICAL RESPC	DMF09082025-03	9/8/2025	AMBULANCE SUPP FIRE	290.93	290.93
		Voucher: 140162						
140163	9/25/2025	att10	AT&T, ATTN: CWO	CWO-45106	9/18/2025	UG - COST ESTIMATES	500.00	500.00
		Voucher: 140163						
140164	9/25/2025	aut06	AUTHORS ON WHEELS, ATT	09222025	9/22/2025	PHCC EVENT REFUND	800.00	800.00
		Voucher: 140164						
140165	9/25/2025	azt02	AZTEC LANDSCAPING INC, I	J2148	8/31/2025	JANITORIAL SRVCS CH AUG	2,564.00	
		Voucher: 140165		J2149	8/31/2025	JANITORIAL SRVCS PW AUG	501.00	3,065.00
140166	9/25/2025	bab03	BABCOCK LABORATORIES,	CI50931-10666	9/16/2025	WATER TESTING	635.00	
		Voucher: 140166		CI50946-10666	9/16/2025	WATER TESTING	198.20	
				CI50548-10666	9/10/2025	WATER TESTING	60.00	893.20
140167	9/25/2025	bak01	BAKER IRON WORKS INC.	98748	6/20/2025	TRAILER MAINT CS	165.00	165.00
		Voucher: 140167						
140168	9/25/2025	cal02	CALIFORNIA MUNICIPAL, ST,	25090803	9/8/2025	DEBT STATEMENT FY25	600.00	600.00
		Voucher: 140168						
140169	9/25/2025	emb02	CHRISTOPHER J GIAQUINTA	872394	9/8/2025	EMBROIDERY SRVCS PW	117.07	117.07
		Voucher: 140169						
140170	9/25/2025	cin02	CINTAS	5292496601	9/17/2025	FIRST AID KIT SUPP PW	227.07	227.07
		Voucher: 140170						
140171	9/25/2025	cou03	COUNTY OF SAN DIEGO-A/F	09222025	9/22/2025	2025 BLDG & FIRE CODE UPDAT	50.00	50.00
		Voucher: 140171						
140172	9/25/2025	del06	DEL MAR AUTOMOTIVE SER	50854	9/19/2025	VEHICLE MAINT CS	282.15	282.15
		Voucher: 140172						
140173	9/25/2025	dun02	DUNN-EDWARDS PAINTS	2082A32587	9/10/2025	PAINT SUPPLIES CS	488.97	488.97
		Voucher: 140173						
140174	9/25/2025	eri03	ERICSON, DARLA	09102025	9/10/2025	PHCC EVENT REFUND	1,420.00	1,420.00
		Voucher: 140174						
140175	9/25/2025	fis12	FISHER INTEGRATED INC	2278	9/1/2025	VIDEO STREAMING AUG	550.00	550.00
		Voucher: 140175						
140176	9/25/2025	glo06	GLOBAL POWER GROUP INC	106459	9/8/2025	PM GENERATOR MAINT CH	986.25	986.25
		Voucher: 140176						
140177	9/25/2025	int09	GREGORY CONLEY, DBA IN1	484	9/7/2025	SCADA MAINT AUG	143.11	143.11
		Voucher: 140177						

Bank : qusbnk GENERAL ACCOUNT US BANK (Continued)

Check #	Date	Vendor	Invoice	Inv Date	Description	Amount Paid	Check Total
140178	9/25/2025	hom01	HOME DEPOT CREDIT SRVC 6035 3225 0103 7	8/28/2025	OPER/MAINT SUPP PW	1,524.72	1,524.72
		Voucher: 140178					
140179	9/25/2025	hcu01	MG TRUCK & FLEET/ALEX M 012506	9/9/2025	VEH MAINT/REPAIR PW	1,205.00	1,205.00
		Voucher: 140179					
140180	9/25/2025	mis12	MISSION ELECTRIC SUPPLY 538360-00	9/10/2025	ELECTRICAL SUPP PW	157.69	
		Voucher: 140180	538360-01	9/10/2025	ELECTRICAL SUPP PW	126.15	283.84
140181	9/25/2025	mun12	MUNICIPAL RESOURCE GRF 250960	9/17/2025	COACHING CLASS	5,875.00	
		Voucher: 140181	250961	9/17/2025	ASSESSMENT SRVCS	1,750.00	7,625.00
140182	9/25/2025	boh02	NANCY K. BOHL INC. DBA.; T INV106132	9/8/2025	EAP SERVICES SEP	390.00	390.00
		Voucher: 140182					
140183	9/25/2025	par35	PARADIGM MECHANICAL CC 113249	9/16/2025	HVAC SRVCS CH	2,062.00	2,062.00
		Voucher: 140183					
140184	9/25/2025	fir12	PAUL ROTTENBERG, DBA FI 2025-254	8/21/2025	FIRE STATS PROG JUL	125.00	
		Voucher: 140184	2025-279	9/14/2025	FIRE STATS PROG AUG	125.00	250.00
140185	9/25/2025	rcp01	RCP BLOCK & BRICK INC. 33455108	9/10/2025	FLAGSTONE PW	105.93	
		Voucher: 140185	33456614	9/11/2025	FLAGSTONE PW	34.60	140.53
140186	9/25/2025	san107	SAN DIEGO DIVERS 6178	8/30/2025	DIVE EQUIP MAINT	270.45	
		Voucher: 140186	2992	9/14/2024	DIVE EQUIP MAINT CS	15.00	285.45
140187	9/25/2025	sdg02	SAN DIEGO GAS & ELECTRI 0066 5392 2766 7	9/5/2025	UTILITIES AUG	1,468.31	
		Voucher: 140187	0069 0908 1676 1	9/5/2025	UTILITIES AUG	425.84	
			0092 4576 5583 8	9/12/2025	UTILITIES AUG	167.00	
			0099 5222 5392 9	9/3/2025	UTILITIES AUG	16.76	2,077.91
140188	9/25/2025	sig12	SIGNA DIGITAL SOLUTIONS 41781501	9/23/2025	COPIER CH SEP	812.64	812.64
		Voucher: 140188					
140189	9/25/2025	sou08	SOUTHWEST SIGNAL SERVI 84492	8/31/2025	SIGNAL MAINT - AUG	490.42	
		Voucher: 140189	84495	8/31/2025	TRAFFIC SIGNAL MAINT/REP AU	111.58	
			84493	8/31/2025	TRAFFIC SIGNAL MAINT/REP AU	55.79	
			84494	8/31/2025	TRAFFIC SIGNAL MAINT REP AU	15.57	673.36
140190	9/25/2025	con10	STATE CONTROLLER'S OFFI FTB-00007989	5/7/2025	FTB OFFSETS 2024	537.30	537.30
		Voucher: 140190					
140191	9/25/2025	ste29	STEED, CHLOE 09102025	9/10/2025	PHCC EVENT REFUND	800.00	800.00
		Voucher: 140191					

Bank : qusbnk GENERAL ACCOUNT US BANK (Continued)

Check #	Date	Vendor	Invoice	Inv Date	Description	Amount Paid	Check Total
140192	9/25/2025	ter11	TERMINIX COMMERCIAL	463550555	9/5/2025	PEST CONTROL CH - SEP	159.00
	Voucher:	140192	461261302	7/1/2025	PEST CONTROL CH - JUL	159.00	
			460821719	6/18/2025	PEST CONTROL PW - JUN	140.98	
			461260020	7/1/2025	PEST CONTROL PHCC - JUL	128.26	
			463550678	9/5/2025	PEST CONTROL LIBRARY - SEP	113.26	
			461263907	7/1/2025	PEST CONTROL LIBRARY - JUL	113.26	
			463550456	9/5/2025	PEST CONTROL PHCC - SEP	109.18	
			461260075	7/1/2025	PEST CONTROL CS - JUL	109.18	1,032.12
140193	9/25/2025	ter01	TERMINIX INT CO LTD, PART	463942448	9/16/2025	PEST CONTROL PW - SEP	140.98
	Voucher:	140193	463550402	9/5/2025	PEST CONTROL CS - SEP	128.26	269.24
140194	9/25/2025	hum06	THE HUMAN TRAFFICKING L	09102025	9/10/2025	PHCC EVENT REFUND	800.00
	Voucher:	140194					800.00
140195	9/25/2025	usb03	US BANK CORP PYMT SYST	4246 0445 5565 0	8/22/2025	US BANK CHARGES AUG	19,233.37
	Voucher:	140195					19,233.37
140196	9/25/2025	wax02	WAXIE'S ENTERPRISES, LLC	83513112	9/17/2025	JANITORIAL SUPPLIES	342.71
	Voucher:	140196	83511428	9/16/2025	JANITORIAL SUPPLIES	194.58	
			83515155	9/18/2025	JANITORIAL SUPPLIES	47.89	
			83514663	9/17/2025	JANITORIAL SUPPLIES	43.50	
			83509953	9/16/2025	JANITORIAL SUPPLIES	1,521.95	
			83513106	9/17/2025	JANITORIAL SUPPLIES	965.06	
			83496922	9/10/2025	JANITORIAL SUPPLIES	854.00	
			83496904	9/10/2025	JANITORIAL SUPPLIES	381.41	4,351.10
140197	9/25/2025	act03	WILLIAMS SCOTSMAN INC	9024570017	9/12/2025	MOB OFFICE HVAC SRVCS	271.88
	Voucher:	140197	9024581601	9/15/2025	MOBILE OFFICE PW OCT	156.12	428.00
Sub total for GENERAL ACCOUNT US BANK:							55,504.15

47 checks in this report.

Grand Total All Checks: 299,125.41





City of Del Mar Agenda Report

TO: Honorable Mayor and City Councilmembers

FROM: Kseniia IZGARSKAIA, Senior Management Analyst
Sarah Krietor, Administrative Services Manager/City Clerk
Via Ashley Jones, City Manager

DATE: October 6, 2025

SUBJECT: Adoption of the 2026 City Council Meeting Schedule and Proposed 2025 and 2026 City Facility Holiday Closures

REQUESTED ACTION/RECOMMENDATION:

Staff recommends that the City Council: 1) Adopt the Resolution (Attachment A) approving the 2026 City Council Meeting Schedule (Exhibit A to Attachment A) or provide direction to staff regarding changes to the proposed schedule; and 2) Authorize the additional holiday related closures of City Hall and the Public Works Administrative Offices to the public in December 2025 and December 2026.

BACKGROUND:

Del Mar Municipal Code (DMMC) Section 2.20.040(A) states that, "Regular meetings of the City Council shall be held on the first and third Monday of each month," and further states that, "The City Council may, by resolution, designate another date, time, and location for a regular meeting." The DMMC, and the procedures adopted by the City Council through Resolution 2009-40, require the City Council to annually adopt a meeting schedule for the upcoming calendar year, identify any regular meeting dates to be cancelled, and designate any new dates as regular meetings.

Additionally, City facilities are closed each year in December and January for the following designated City holidays: Christmas Eve, Christmas Day, New Year's Eve and New Year's Day. In past years, the City Council authorized staff to close City facilities for additional days around holidays when it is practical to do so.

For several years, City Hall and the Public Works Administrative Office have been closed to the public between the Christmas and New Year's holidays. This closure takes into account normal paid City holidays and includes additional non-paid days between Christmas and New Years, which is historically a very slow time of year for the City.

DISCUSSION/ANALYSIS:

The proposed 2026 City Council Meeting Schedule is included as Exhibit A to Attachment A. The 2026 City Council Meeting Calendar is included as Attachment B and visually displays the

City Council Action:

meeting schedule in a calendar format. If the City Council finds that additional meetings are needed during the calendar year, the Council can add meetings by scheduling a special meeting or adjourning a regular meeting to a new date.

Proposed Changes to the 2026 Regular Meeting Schedule

Typically, the City Council meets twice per month in accordance with the schedule described in the DMMC as referenced above. However, it is not uncommon for the Council to modify the meeting schedule, when necessary, which is usually related to holidays. As such, staff proposes the following changes to the 2026 City Council Meeting Schedule:

- 1) Based on the City Council's regular meeting schedule, the second meeting of January would fall on January 19, 2026. However, this is an observed City Holiday (Martin Luther King Day) when City offices are closed. Therefore, staff recommends that the City Council hold the second meeting of the month on Tuesday, January 20, 2026.
- 2) The second meeting of February would fall on February 16, 2026, which is also an observed City Holiday (President's Day). Staff recommends that the City Council hold the second meeting of the month on Tuesday, February 17, 2026.
- 3) Traditionally, the City Council takes a month-long summer recess, which historically took place between July and August. For the past two years, the City Council shifted the recess period earlier and took a recess from the second half of July through the first half of August. This was because several other cities and regional organizations, including the Del Mar Fairgrounds, typically take recesses in July and August, which coincides with the traditional school year summer break when many staff like to take scheduled time off.

This change worked well in 2024 and 2025; therefore, staff recommends continuing the practice in 2026 by forgoing the second regularly scheduled meeting in July (July 20) and first regularly scheduled meeting in August (August 3), resuming the meetings on August 17, 2026.

If the City Council finds that a meeting is needed during the Council summer recess, the Council can call a special meeting, which has been the case on occasion in prior years as urgent City matters may arise.

- 4) The first meeting of September would fall on September 7, 2026, which is an observed City Holiday (Labor Day). Staff recommends that the City Council hold the first meeting of the month on Tuesday, September 8, 2026.
- 5) In accordance with City Council Policy 107, no City Council meeting shall be scheduled the day prior to the Municipal Election, which will be held on November 3, 2026. Additionally, the City will observe the Thanksgiving holidays on November 26 and 27, 2026. In accordance with Policy 107 and to avoid holding Council meetings on the Thanksgiving week, staff recommends that the City Council hold only one meeting in November on Monday, November 16, 2025. This is consistent with past City practices.

Special Meetings

The City Council typically holds a Goals and Priorities Workshop in the first part of the calendar year. Once the Mayor and Deputy Mayor are seated for 2026, staff will schedule a meeting to discuss possible dates and a format for the 2026 Council Goals and Priorities Workshop, which will be presented Council for discussion and feedback prior to scheduling.

In past election years, the City Council has called a special meeting to certify election results in December if the certified election results were not received from the County of San Diego Registrar of Voters in time to be certified at a regularly scheduled Council meeting. Staff anticipates that the certified election results will be available prior to the proposed December 21, 2026, City Council meeting. However, if they are not available for that meeting, a special meeting will be required.

Proposed 2025 and 2026 City Facility Holiday Closures

In 2025, the designated paid City holidays fall on December 24 (Wednesday), 25 (Thursday), 31 (Wednesday), and January 1 (Thursday). Based on the closures of City Hall and the Public Works Administrative Office in past years between Christmas and New Years with minimal impact to the public, staff proposes additional non-paid closure days on December 26 (Friday), 29 (Monday), 30 (Tuesday), 2025, and reopen for remote services on January 2 (Friday), 2026. City Hall would reopen for full in-person services on Monday, January 5, 2026.

In 2026, the designated paid City holidays fall on December 24 (Thursday), 25 (Friday), 31 (Thursday), and January 1 (Friday). Staff proposes additional non-paid closure days on December 28 (Monday), 29 (Tuesday), and 30 (Wednesday), 2026. City Hall would reopen to the public on Monday, January 4, 2027.

If the recommendation is approved by the City Council, staff that choose to work on the additional non-paid closure days can do so or they would be able to use accrued leave and take additional time off. Although the City Hall and Public Works Offices would be closed to the public, City field operations would continue as normal and beach maintenance, public safety, parking enforcement, and public works field staff would still provide a standard level of service to the public during that time.

As in past years, if approved, staff will notify the public of the closure dates via several channels, such as sending out eblasts and including in the Del Mar Weekly, posting the dates on the City website calendar, posting signs on the City Hall front doors, making announcements at the December Council meetings, noting the close on Google, and providing notifications through the City's social media.

FISCAL IMPACT:

There is no fiscal impact or action to be taken related to this agenda item.

ATTACHMENTS:

Attachment A – Resolution Adopting the 2026 City Council Meeting Schedule
Exhibit A to Attachment A - 2026 City Council Meeting Schedule
Attachment B – Proposed 2026 City Council Meeting Calendar

RESOLUTION NO. 2025-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DEL MAR, CALIFORNIA, DESIGNATING REGULAR MEETINGS OF THE CITY COUNCIL FOR THE 2026 CALENDAR YEAR

WHEREAS, Del Mar Municipal Code Section 2.20.040 Regular Meetings, Subsection A, states that “Regular” meetings of the City Council shall be held on the first and third Monday of each month in the City Council Chambers; and

WHEREAS, Del Mar Municipal Code Section 2.20.040 Regular Meetings, Subsection B, states that “The City Council may, by resolution, designate another date, time, and location for a regular meeting;” and

WHEREAS, Council adopted Resolution No. 2009-40 establishing procedures for setting the Council meeting schedule on an annual basis; and

WHEREAS, it is important that the public know and understand when the City Council will conduct its regular meetings; and

WHEREAS, it is also important that there be flexibility in the schedule of regular meetings in order to complete the City’s business.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Del Mar, California, that the City Council hereby designates the dates and times and location for the regular City Council meetings for the 2026 calendar year pursuant to the Del Mar Municipal Code as described in Exhibit A to this Resolution, and directs the City Clerk to post the adopted schedule at City Hall and on the City’s website.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Del Mar, California, at a Regular Meeting held this 6th day of October 2025.

Terry Gaasterland, Mayor
City of Del Mar

APPROVED AS TO FORM:

Leslie E. Devaney, City Attorney
City of Del Mar

ATTEST AND CERTIFICATION:
STATE OF CALIFORNIA
COUNTY OF SAN DIEGO
CITY OF DEL MAR

I, SARAH KRIETOR, Administrative Services Manager/City Clerk of the City of Del Mar, California, DO HEREBY CERTIFY, that the foregoing is a true and correct copy of Resolution No. 2025-XX, adopted by the City Council of the City of Del Mar, California, at a Regular Meeting held the 6th day of October 2025, by the following vote:

AYES:

NOES:

RECUSE:

ABSENT:

ABSTAIN:

Sarah Krietor, Administrative Services
Manager/City Clerk
City of Del Mar



City of Del Mar

2026 City Council Meeting Schedule

Regular Meetings are held at the Del Mar Town Hall, 1050 Camino del Mar, Del Mar, or remotely if there is a declared emergency, at 4:30 p.m. on the date shown, unless otherwise noted on the published agenda. Special Meetings and/or City Council Workshops may be held in an alternate location or remotely during if there is a declared emergency.

DATE	MEETING TYPE
Monday, January 5, 2026	Regular
Tuesday, January 20, 2026	Regular
Monday, February 2, 2026	Regular
Tuesday, February 17, 2026	Regular
Monday, March 2, 2026	Regular
Monday, March 16, 2026	Regular
Monday, April 6, 2026	Regular
Monday, April 20, 2026	Regular
Monday, May 4, 2026	Regular
Monday, May 18, 2026	Regular
Monday, June 1, 2026	Regular
Monday, June 15, 2026	Regular
Monday, July 6, 2026	Regular
Monday, August 17, 2026	Regular
Tuesday, September 8, 2026	Regular
Monday, September 21, 2026	Regular
Monday, October 5, 2026	Regular
Monday, October 19, 2026	Regular
Monday, November 16, 2026	Regular
Monday, December 7, 2026	Regular
Monday, December 21, 2026	Regular

Adopted by Resolution 2025-XX



2026 Del Mar City Council Meeting Calendar

January						
S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	30	31	

February						
S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28

March						
S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

April						
S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

May						
S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

June						
S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

July						
S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

August						
S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

September						
S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

October						
S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

November						
S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

December						
S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

Key:

- City Council Meeting
- City Holiday
- Special Meetings:

City Council Goals and Priorities Setting Workshop - TBD

Approved 10/6/2025



City of Del Mar Agenda Report

TO: Honorable Mayor and City Councilmembers

FROM: Nestor Machado, Management Analyst
Karen Brindley, Planning & Community Development Director
Via Ashley Jones, City Manager

DATE: October 6, 2025

SUBJECT: Amendments to As-Needed Economic Impact and Fiscal Analysis Services Agreements

REQUESTED ACTION/RECOMMENDATION:

Staff recommends the City Council: 1) Approve First Amendments to Agreements with Keyser Marston Associates, Inc. (KMA) (Attachment A), and David Taussig and Associates, Inc., (DTA Public Finance, Inc.) (DTA) (Attachment B), for As-Needed Economic Impact and Fiscal Analysis Services (Amendments) extending the terms for an additional two-year period ending October 16, 2027, and adjusting fees for KMA due to inflation; and 2) Authorize the City Manager to execute the Amendments.

BACKGROUND:

On October 17, 2022, the City of Del Mar entered into three-year agreements with KMA and DTA (Attachment C) to provide as-needed economic impact and fiscal analysis services related to public and private development projects, policy and code development, and technical assistance. Since the approval of those agreements, both firms have assisted City staff with economic studies, data collection, feasibility analysis, and economic analysis on various City projects.

More notably, KMA assisted City staff with an assessment of the economic viability of programs within the 6th Cycle Housing Element implementation. DTA assisted City staff with collecting data to identify the number of short-term rentals operating in Del Mar in 2023, which included the preparation of a report of all STRs in the City of Del Mar at the time. The work performed by both firms to date met or exceeded the City's expectations.

DISCUSSION/ANALYSIS:

The initial three-year term of the current agreements is set to expire on October 17, 2025. Section 2.1 of the agreements allows for a two-year extension to the term based on satisfactory performance and mutual agreement between the parties. While neither firm is currently working on tasks for the City, it is recommended to continue having both firms available on an as-needed basis should projects arise that require their specific services.

City Council Action:

The current Agreement with KMA does not provide for adjustments to fees during the term of the contract. Due to escalating labor costs resulting from inflation and a competitive labor market, KMA requested a 5% Consumer Price Index (CPI) increase for the fourth year of the extended term, and a 3% CPI increase for the fifth year of the extended term, as indicated in Exhibit A to Attachment A. The proposed fee schedule submitted by KMA was evaluated to ensure the revised fees remain in line with current market rates for the services to be provided.

The Amendments to the Agreements include a two-year term adjustment for both firms, and the Amendment with KMA additionally adjusts fees as described above. DTA's fees for service will remain the same through the end of the two-year amendment period.

FISCAL IMPACT:

There is no fiscal action to be taken by the City Council related to this agenda item. Sufficient funds for economic impact and fiscal analysis consultant services are available in the adopted Fiscal Year 2025-2026 and 2026-2027 Operating and Capital Budget for various Tier 1 and Tier 2 planning projects.

ENVIRONMENTAL IMPACT:

The proposed City Council action does not constitute a "project" under the definition set forth in California Environmental Quality Act (CEQA) Guidelines Section 15378 because it will not have a potential to result in a direct or indirect physical change in the environment and is, therefore, not subject to CEQA.

ATTACHMENTS:

- Attachment A – First Amendment to Agreement with KMA
 - Exhibit A to Attachment A – Updated Fee Schedule from KMA
- Attachment B – First Amendment to Agreement with DTA
- Attachment C – Original Agreements with the Firms

**FIRST AMENDMENT TO AGREEMENT BETWEEN
THE CITY OF DEL MAR AND KEYSER MARSTON ASSOCIATES INC.
FOR AS-NEEDED ECONOMIC IMPACT AND FISCAL ANALYSIS SERVICES**

THIS FIRST AMENDMENT to the Agreement (First Amendment) is made and entered into effective the 17th day of October, 2025, by and between the City of Del Mar, a Charter City and municipal corporation (“City”), and Keyser Marston Associates, Inc. (“Consultant”) (collectively “Parties”).

RECITALS

WHEREAS, on October 17, 2022, the City and Consultant entered into an Agreement establishing the terms and conditions for Consultant to provide economic impact and fiscal analysis services to the City for a three-year period terminating October 17, 2025; and

WHEREAS, the Parties now desire to extend the term of the Agreement for an additional two-year period; and

WHEREAS, the Parties now desire to amend the compensation rates for services included in Exhibit B of the Agreement to provide for a 5% Consumer Price Index (CPI) increase for the fourth year of the extended term, and a 3% CPI increase for the fifth year of the extended term, as indicated in Exhibit A to this First Amendment; and

WHEREAS, the First Amendment is necessary in order to extend the term of the Agreement and to amend the fee schedule for services.

NOW, THEREFORE, the Parties hereby agree to amend the Agreement as follows:

Section 1. Section 2.1 of the Agreement is amended as follows:

2. DURATION OF AGREEMENT

2.1 Term, Time for Performance. The term of the Agreement is for a period commencing on October 17, 2022, and terminating October 16, 2027, (“Termination Date”) unless terminated earlier as set forth herein.

Section 2. The fee schedule in Exhibit B to the Agreement (“Fee Schedule”) is hereby removed and replaced by the new fee schedule included with this First Amendment as Exhibit A.

Section 3. Except as otherwise provided in this First Amendment, all terms and conditions, and attachments and exhibits thereto, of the Agreement shall remain in full force and effect.

City of Del Mar
First Amendment to Keyser Marston Agreement – Economic Impact and Fiscal Analysis Services
Page 2 of 2

IN WITNESS WHEREOF, the parties have caused this First Amendment to be effective as of the date first written above.

CITY OF DEL MAR,
a municipal corporation

KEYSER MARSTON ASSOCIATES, INC.

By: _____
Ashley Jones, City Manager

By: _____
Linnie A. Gavino, Senior Principal

ATTEST:

By: _____
Sarah Krietor, Administrative Services
Manager/City Clerk

APPROVED AS TO FORM:

By: _____
Leslie E. Devaney, City Attorney



KEYSER MARSTON

ASSOCIATES

PUBLIC SECTOR HOURLY RATES

	<u>YEAR 4</u>	<u>YEAR 5</u>
CHAIRMAN, PRESIDENT, MANAGING PRINCIPALS*	\$305.00	\$314.00
SENIOR PRINCIPALS*	\$295.00	\$304.00
PRINCIPALS*	\$275.00	\$283.00
MANAGERS*	\$245.00	\$252.00
SENIOR ASSOCIATES	\$205.00	\$211.00
ASSOCIATES	\$185.00	\$191.00
SENIOR ANALYSTS	\$170.00	\$175.00
ANALYSTS	\$145.00	\$149.00
TECHNICAL STAFF	\$105.00	\$108.00
ADMINISTRATIVE STAFF	\$90.00	\$93.00

Directly related job expenses not included in the above rates include auto mileage, parking, taxis/ride shares, air fares, car rentals, lodging, meals, delivery, electronic data processing, graphics and printing. Directly related job expenses will be billed at 110% of cost.

Monthly billings for staff time and expenses incurred during the period will be payable within thirty (30) days of invoice date.

* Rates for individuals in these categories will be increased by 50% for time spent in court testimony.

**FIRST AMENDMENT TO AGREEMENT BETWEEN
THE CITY OF DEL MAR AND DTA PUBLIC FINANCE, INC.
FOR AS-NEEDED ECONOMIC IMPACT AND FISCAL ANALYSIS SERVICES**

THIS FIRST AMENDMENT to the Agreement (First Amendment) is made and entered into effective the 17th day of October, 2025, by and between the City of Del Mar, a Charter City and municipal corporation (“City”), and DTA Public Finance, Inc. (“Consultant”) (collectively “Parties”).

RECITALS

WHEREAS, on October 17, 2022, the City and Consultant entered into an Agreement establishing the terms and conditions for Consultant to provide economic impact and fiscal analysis services to the City for a three-year period terminating October 17, 2025; and

WHEREAS, the Parties now desire to extend the term of the Agreement for an additional two-year period; and

WHEREAS, the First Amendment is necessary in order to extend the term of the Agreement.

NOW, THEREFORE, the Parties hereby agree to amend the Agreement as follows:

Section 1. Section 2.1 of the Agreement is amended as follows:

2. DURATION OF AGREEMENT

2.1 Term, Time for Performance. The term of the Agreement is for a period commencing on October 17, 2022, and terminating October 16, 2027, (“Termination Date”) unless terminated earlier as set forth herein.

Section 2. Except as otherwise provided in this First Amendment, all terms and conditions, and attachments and exhibits thereto, of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this First Amendment to be effective as of the date first written above.

City of Del Mar
First Amendment to DTA Public Finance Agreement – Economic Impact and Fiscal Analysis Services
Page 2 of 2

CITY OF DEL MAR,
a municipal corporation

DTA PUBLIC FINANCE, INC.
a California Corporation

By: _____
Ashley Jones, City Manager

By: _____
Kelly Wright, Chief Executive Officer

ATTEST:

By: _____
Sarah Krietor, Administrative Services
Manager/City Clerk

APPROVED AS TO FORM:

By: _____
Leslie E. Devaney, City Attorney

**PROFESSIONAL SERVICES AGREEMENT BETWEEN
THE CITY OF DEL MAR AND KEYSER MARSTON ASSOCIATES INC.
FOR AS-NEEDED ECONOMIC IMPACT AND FISCAL ANALYSIS SERVICES**

This Professional Services Agreement ("Agreement") is made and entered into this 17th day of October, 2022 by and between the City of Del Mar, a Charter City and a municipal corporation ("City"), and Keyser Marston Associates, Inc. ("Consultant") (collectively "Parties").

WHEREAS, the City desires to employ a consultant to provide as-needed economic impact and fiscal analysis services ("Consulting Services"). Said work is to be performed in accordance with the terms and conditions set forth below and as described in the scope of services, attached hereto as Exhibit "A" and incorporated herein; and

WHEREAS, the City has initially determined that Consultant is qualified by experience and ability to perform the services desired by City, and Consultant is willing to perform such services; and

WHEREAS, Consultant will conduct all the work as described and detailed in this Agreement to be provided to the City.

NOW, THEREFORE, the Parties hereto mutually covenant and agree with each other as follows:

1. CONSULTING SERVICES.

1.1 Scope of Services. The Consultant shall perform the Consulting Services as set forth in the written Scope of Services, attached hereto as **Exhibit "A"** and incorporated herein. Such services shall be provided at the direction of the City.

1.2. Project Coordinator. The Planning & Community Development Director is hereby designated as the Project Coordinator for City and will monitor the progress and execution of this Agreement. Consultant shall assign a single Project Director to provide supervision and have overall responsibility for the progress and execution of this Agreement for Consultant. Paul Marra is hereby designated as the Project Director for Consultant. City shall provide Consultant access to appropriate staff and resources for the coordination and provision of services.

1.3. City Modification of Scope of Services. City may order changes to the Scope of Services within the general scope of this Agreement consisting of additions, deletions, or other revisions. If such changes cause a change in the Consultant's cost of, or time required for, completion of the Scope of Services, an equitable adjustment to Consultant's compensation and/or contract time shall be made, subject to the City's approval. All such changes shall be authorized in writing, executed by Consultant and City. If such a change results in an extension of the term of this Agreement or increases the maximum amount to be paid under this Agreement, no such change shall have any force or effect unless an amendment to this Agreement is approved by the City Council.

Keyser Marston Associates Inc.
For As-needed Economic Impact and Fiscal Analysis Services
Page 2 of 12

2. DURATION OF AGREEMENT.

2.1 Term, Time for Performance. This Agreement shall be effective for a period of three (3) years beginning on October 17, 2022, and ending on October 17, 2025. The agreement may be extended for an additional two (2) year period, upon written approval of both parties.

Time is of the essence for this Agreement and each provision of this Agreement, unless otherwise specified in this Agreement.

2.2 Delay. Any delay occasioned by causes beyond the control of Consultant may merit an extension of time for the completion of the Scope of Services. When such delay occurs, Consultant shall immediately notify the Project Coordinator in writing of the cause and the extent of the delay, whereupon the Project Coordinator shall ascertain the facts and the extent of the delay and grant an extension of time for the completion of the Consulting Services when justified by the circumstances provided that no extension of time shall be granted which would extend the time for performance beyond the date specified in section 2.1 above.

2.3 City's Right to Terminate for Default. Should Consultant be in default of any covenant or condition hereof, City may immediately terminate this Agreement for cause if Consultant fails to cure the default within ten (10) calendar days of receiving written notice of the default.

2.4 City's Right to Terminate without Cause. Without limiting its rights in the event of Consultant's default, City may terminate this Agreement, without cause, by giving written notice to Consultant. Such termination shall be effective upon receipt of the written notice. Consultant shall be compensated for all effort and material expended on behalf of City under the terms of this Agreement, up to the effective date of termination. All personal property remaining in City facilities or on City property thirty (30) days after the expiration or termination of this Agreement shall be, at City's election, considered the property of City.

3. PERFORMANCE AFTER TERMINATION. Upon termination of this Agreement as provided herein, Consultant shall, within such reasonable time period as may be directed by City Manager, complete those items of work which are in various stages of completion and which City Manager determines are necessary to be completed by Consultant to allow the project to be completed in a timely, logical, and orderly manner. Upon termination, all finished or unfinished documents, data, studies, surveys, drawings, models, photographs, reports, and other materials prepared by Consultant shall be delivered to the City Manager, upon his request, as property of City.

4. COMPENSATION.

4.1 Total Amount. Compensation to Consultant shall be provided in accordance with the rates described in the Fee Schedule in Exhibit "B". Consultant shall bill the City for work provided and shall present a written request for such payment monthly. City shall pay all invoices in arrears and shall in no event be required to pay for any services provided by Consultant in advance. Consultant acknowledges that it is not guaranteed any particular amount of work.

Keyser Marston Associates Inc.
For As-needed Economic Impact and Fiscal Analysis Services
Page 3 of 12

4.2 Additional Services. City may, as the need arises or in the event of an emergency, request additional services of Consultant. Should such additional services be required, Compensation therefore shall be paid to the Consultant in accordance with Scope of Services contained in Exhibit "A." City and Consultant shall agree to the costs prior to commencement of such work.

5. INDEPENDENT CONTRACTOR. Consultant is, for all purposes arising out of this Agreement, an independent contractor. The Consultant has and shall retain the right to exercise full control and supervision of all persons assisting the Consultant in the performance of said services hereunder, the City only being concerned with the finished results of the work being performed. Neither Consultant nor Consultant's employees shall in any event be entitled to any benefits to which City employees are entitled, including, but not limited to, overtime, any retirement benefits, workers' compensation benefits, any injury leave or other leave benefits, Consultant being solely responsible for all such matters, as well as, compliance with social security and income tax withholding and all other regulations and laws governing such matters.

6. STATEMENT OF EXPERIENCE. Consultant agrees that it has the financial resources, service experience, completion ability, personnel, and experience in dealing with public agencies necessary for performing the Scope of Services and that such performance shall be in accordance with the standards customarily adhered to by an experienced and competent Consultant using the degree of care and skill ordinarily exercised by reputable Consultants practicing in the same field of service in the State of California. By executing this Agreement, Consultant represents that it has demonstrated trustworthiness and possesses the quality, fitness, and capacity to perform the Agreement in a manner satisfactory to City. Additionally, Consultant and all of Consultant's employees or agents shall secure and maintain in force such permits and licenses as are required by law in connection with the furnishing of services pursuant to this Agreement.

7. AUDIT OF RECORDS.

7.1 At any time during normal business hours and as often as may be deemed necessary, the Consultant shall make available to a representative of City for examination all of its records with respect to all matters covered by this Agreement and shall permit City to audit, examine, and/or reproduce such records. Consultant shall retain such financial and program service records for at least four (4) years after termination or final payment under this Agreement.

7.2 The Consultant shall include the City's right to audit under this section in any and all of their subcontracts, and shall ensure that these sections are binding upon all subcontractors.

8. CONFIDENTIALITY. All Consulting services performed by Consultant, including, but not limited to, all drafts, data, correspondence, proposals, reports, research and estimates compiled or composed by Consultant, pursuant to this Agreement, are for the sole use of the City, its agents and employees. Neither the documents nor their contents shall be released to any third party without the prior written consent of the City. This provision does not apply to information that (a) was publicly known, or otherwise known to Consultant, at the time that it was disclosed to Consultant by the City, (b) subsequently becomes publicly known through no act or omission of Consultant or (c) otherwise becomes known to Consultant other than through disclosure by the City. Except for any subcontractors that may be allowed upon prior

Keyser Marston Associates Inc.
For As-needed Economic Impact and Fiscal Analysis Services
Page 4 of 12

agreement, neither the documents nor their contents shall be released to any third party without the prior written consent of the City. The sole purpose of this section is to prevent disclosure of City's confidential and proprietary information by Consultant or subcontractors.

9. CONFLICTS OF INTEREST.

9.1 Consultant shall at all times comply with all federal, state and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices, including, but not limited to, California Government Code §§ 81000 et seq. (Political Reform Act) and §§ 1090 et seq. Consultant shall immediately disqualify itself and shall not use its official position to influence in any way any matter coming before the City in which the Consultant has a financial interest as defined in Government Code § 87103. Consultant represents that it has no knowledge of any financial interests, which would require it to disqualify itself from any matter on which it might perform services for the City.

9.2 Consultant shall comply with all of the reporting requirements of the Political Reform Act. The Consultant shall file a Fair Political Practices Commission Form 700 (Assuming Office Statement) within thirty (30) calendar days of the City's determination that the Consultant is subject to a conflict of interest code, if applicable. The Consultant shall also file a Form 700 (Annual Statement) on or before April 1, disclosing any financial interests held during the previous calendar year for which the Consultant was subject to a conflict of interest code.

9.3 If, in performing the Consulting Services set forth in this Agreement, the Consultant makes, or participates in, a "governmental decision" as described in Title 2, section 18701(a)(2) of the California Code of Regulations, or performs the same or substantially all the same duties for the City that would otherwise be performed by a City employee holding a position specified in the department's conflict of interest code, the Consultant shall be subject to a conflict of interest code requiring the completion of one or more statements of economic interests disclosing the Consultant's relevant financial interests.

10. OWNERSHIP OF DOCUMENTS. All documents, data, studies, drawings, maps, models, photographs and reports prepared by Consultant under this Agreement, with the exception of Consultant's proprietary computer models, shall be considered the property of City. Consultant shall be permitted to reference and use said materials for use in future studies, work, and marketing so long as said materials are considered "public documents" and are not subject to attorney-client privilege, or the subject of pending closed or executive session discussions.

11. INSURANCE

11.1 Consultant shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Consultant, their agents, representatives, employees or subcontractors. Insurance shall be placed with insurers with a current A.M. Best's rating of no less than "A" and "VII" and are admitted to do business in the State of California, unless otherwise approved in writing by the City's Risk Manager.

11.2 Consultant's liabilities, including but not limited to Consultant's indemnity obligations, under this Agreement, shall not be deemed limited in any way to the insurance coverage required herein. All policies of insurance required hereunder must provide that the City

Keyser Marston Associates Inc.
 For As-needed Economic Impact and Fiscal Analysis Services
 Page 5 of 12

is entitled to thirty (30) days prior written notice (ten (10) days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. Maintenance of specified insurance coverage is a material element of this Agreement.

11.3 Types and Amounts Required. Consultant shall maintain, at minimum, the following insurance coverage for the duration of this Agreement:

11.3.1 Commercial General Liability (CGL). Insurance written on an ISO Occurrence form CG 00 01 07 98 or equivalent providing coverage at least as broad which shall cover liability arising from any and all personal injury or property damage in the amount of **\$1,000,000** per occurrence and subject to an annual aggregate of **\$2,000,000**. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.

11.3.2 Commercial Automobile Liability. For all of the Consultant's automobiles including owned, hired and non-owned automobiles, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of **\$300,000** per occurrence. Insurance certificate shall reflect coverage for any automobile (any auto).

11.3.3 Workers' Compensation. For all of the Consultant's employees who are subject to this Agreement and to the extent required by applicable state or federal law, a Workers' Compensation policy providing at minimum **\$1,000,000** employers' liability coverage. The Consultant shall provide an endorsement that the insurer waives the right of subrogation against the City and its respective elected officials, officers, employees, agents and representatives.

11.3.4 Consulting Liability. Consulting liability (errors and omissions) coverage with a limit of **\$1,000,000** per claim and **\$2,000,000** annual aggregate. The Consultant shall ensure both that (1) the policy retroactive date is on or before the date of commencement of the Scope of Services; and (2) the policy will be maintained in force for a period of three years after substantial completion of the Scope of Services or termination of this Agreement whichever occurs last. The Consultant agrees that for the time period defined above, there will be no changes or endorsements to the policy that increase the City's exposure to loss.

11.4 Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions are the responsibility of the Consultant and must be declared to and approved by the City. At the option of the City, either (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees, and volunteers, or (2) the Consultant shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

11.5 Additional Required Provisions. The commercial general liability and automobile liability policies shall contain, or be endorsed to contain, the following provisions:

11.5.1 The City, its officers, officials, employees, and representatives shall be named as additional insureds. The City's Additional Insured status must be reflected on additional insured endorsement form which shall be submitted to the City.

Keyser Marston Associates Inc.
For As-needed Economic Impact and Fiscal Analysis Services
Page 6 of 12

11.5.2 The policies are primary and non-contributory to any insurance that may be carried by the City, as reflected in an endorsement which shall be submitted to the City.

11.6 Verification of Coverage. Consultant shall furnish the City with original certificates and amendatory endorsements effecting coverage required by this Section 11. The endorsement should be on forms provided by the City or on other than the City's forms provided those endorsements conform to City requirements. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

12. DEFENSE AND INDEMNIFICATION.

12.1 Consultant agrees to indemnify, defend (with attorneys approved by City), and hold harmless the City, and its officers, officials, agents and employees (the "Indemnified Parties") from any and all claims, demands, costs or liability that arise out of, or pertain to, or relate to the Consultant, its employees, agents, and subcontractors negligence or willful misconduct in the performance of services under this Agreement. Consultant's duty to indemnify under this section shall not include liability for damages for death or bodily injury to persons, injury to property, or other loss, damage or expense arising from the sole negligence or willful misconduct by the City or its elected officials, officers, agents, and employees. Consultant's indemnification obligations shall not be limited by the insurance provisions of this Agreement. The Parties expressly agree that any payment, attorney's fees, costs or expense City incurs or makes to or on behalf of an injured employee under the City's self-administered workers' compensation is included as a loss, expense, or cost for the purposes of this section, and that this section will survive the expiration or early termination of this Agreement.

12.2 This indemnity is in addition to any other rights or remedies which City may have under the law or this Agreement. In the event of any claim or demand made against any party which is entitled to be indemnified hereunder, City may, at its sole discretion, reserve, retain or apply any monies due to Consultant under this Agreement for the purpose of resolving such claims; provided however, that City may release such funds if Consultant provides City with reasonable assurances of protection of the City's interest. The City shall, in its sole discretion determine whether such assurances are reasonable.

12.3 Consultant agrees that its duty to defend arises upon an allegation of liability based upon the performance of services under this Agreement by Consultant, its officers, agents, representatives, employees, sub-consultants, or anyone for whom Consultant is liable and that an adjudication of Consultant's liability is not a condition precedent to Consultant's duty to defend.

13. SUBCONTRACTORS.

13.1 The Consultant's hiring or retaining of third parties (i.e. subcontractors) to perform services related to the Project is subject to prior approval by the City.

13.2 All contracts entered into between the Consultant and its subcontractor shall also provide that each subcontractor shall obtain insurance policies, which shall be kept in

Keyser Marston Associates Inc.
 For As-needed Economic Impact and Fiscal Analysis Services
 Page 7 of 12

full force and effect during any and all work on this Project and for the duration of this Agreement. The Consultant shall require the subcontractor to obtain all policies described in section 11 of this Agreement in the amounts required by the City, which shall not be greater than the amounts required of the Consultant.

13.3 In any dispute between the Consultant and its subconsultants, the City shall not be made a party to any judicial or administrative proceeding to resolve the dispute. The Consultant agrees to defend and indemnify the City as described in section 12 of this Agreement should the City be made a party to any judicial or administrative proceeding to resolve any such dispute or should the City incur any costs in responding to third-party discovery requests.

14. NON-DISCRIMINATION. Consultant shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, ancestry, physical or mental disability, medical condition, genetic information, marital status, military or veteran status, gender, gender identity, gender expression, sexual orientation, or any other class protected under state, federal, or local law. Consultant shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to any class or category protected under state, federal, or local law and shall make reasonable accommodation to qualified individuals with disabilities. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Consultant agrees to post in conspicuous places available to employees and applicants for employment any notices provided by City setting forth the provisions of this non-discrimination clause.

15. NOTICES. All communications to either party by the other party shall be delivered to the persons listed below. Any such written communications by mail shall be conclusively deemed to have been received by the addressee five (5) calendar days after the deposit thereof in the United States Mail, postage prepaid and properly addressed as noted below.

If to City:
 City of Del Mar
 City Clerk
 1050 Camino del Mar
 Del Mar, CA 92014

If to Consultant
 Keyser Marston Associates
 Attn: Paul Marra
 555 West Beech Street, Suite 460
 San Diego, CA 92101

16 ASSIGNABILITY. This Agreement and any portion thereof shall not be assigned or transferred, nor shall any of the Consultant's duties be delegated or sub-contracted, without the express written consent of the City.

17. RESPONSIBILITY FOR EQUIPMENT. City shall not be responsible nor held liable for any damage to persons or property consequent upon the use, misuse, or failure of any equipment used by Consultant or any of Consultant's employees or subcontractors, even if such equipment has been furnished, rented, or loaned to Consultant by City. The acceptance or use of any such equipment by Consultant, Consultant's employees, or subcontractors shall be construed to mean that Consultant accepts full responsibility for and agrees to exonerate, indemnify and hold harmless City from and against any and all claims for any damage whatsoever resulting from the use, misuse, or failure of such equipment.

Keyser Marston Associates Inc.
For As-needed Economic Impact and Fiscal Analysis Services
Page 8 of 12

18. CALIFORNIA LAW; VENUE/MISC. This Agreement shall be construed and interpreted according to the laws of the State of California. Any action brought to enforce or interpret any portion of this Agreement shall be brought in the county of San Diego, California. Consultant hereby waives any and all rights it might have pursuant to California Code of Civil Procedure section 394.

19. COMPLIANCE WITH LAWS. The Consultant shall comply with all laws, ordinances, regulations, and policies of the federal, state, and local governments applicable to this Agreement, including California Labor Code section 1720, et seq., relating to payment of prevailing wages for public works projects, if applicable. Consultant shall indemnify and defend the Indemnified Parties from and against any liability incurred due to any failure on the part of Consultant to comply with any applicable Laws.

To the extent Consultant is required to comply with prevailing wage requirements, Consultant does hereby acknowledge that they are aware of, have read, and understand the terms and implications of SB 854 and Consultant and any subconsultants ensure that they are familiar with and comply with its requirements. Such requirements include, but are not limited to, the registration requirement with the Department of Industrial Relations, State of California (DIR), pursuant to Labor Code section 1725.5. As of March 1, 2015, in compliance with SB 854, the City requires all affected contractors and consultants to be registered with the DIR prior to submitting a bid or proposal on any eligible District project. As of April 1, 2015, failure to comply with the requirements of SB 854 by any contractor or consultant, including registration with the DIR pursuant to Labor Code section 1725.5, shall be a material breach of this Agreement which may be terminated by the City in its sole and absolute discretion. Where applicable, this project is subject to compliance monitoring and enforcement by the DIR.

20. CONSULTANT'S CERTIFICATION OF AWARENESS OF IMMIGRATION REFORM AND CONTROL ACT OF 1986. Consultant certifies that Consultant is aware of the requirements of the Immigration Reform and Control Act of 1986 (8 USC §§ 1101-1525) and has complied and will comply with these requirements, including, but not limited to, verifying the eligibility for employment of all agents, employees, subcontractors, and consultants that are included in this Agreement.

21. ENTIRE AGREEMENT. This Agreement sets forth the entire understanding of the Parties with respect to the subject matters herein. There are no other understandings, terms or other agreements expressed or implied, oral or written, except as set forth herein.

22. AMENDMENTS. This Agreement may be modified or amended only by a written document executed by both Consultant and City and approved as to form by the City Attorney. No change, alteration, or modification of the terms or conditions of this Agreement, and no verbal understanding of the Parties, their officers, agents, or employees shall be valid unless agreed to in writing by both Parties.

23. NO WAIVER. No failure of either the City or the Consultant to insist upon the strict performance by the other of any covenant, term or condition of this Agreement, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Agreement shall constitute a waiver of any such breach of such covenant, term or condition.

Keyser Marston Associates Inc.
For As-needed Economic Impact and Fiscal Analysis Services
Page 9 of 12

24. SEVERABILITY. The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render any other provision unenforceable, invalid, or illegal.

25. DRAFTING AMBIGUITIES. The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and the decision of whether or not to seek advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each Party. This Agreement shall not be construed in favor of or against either Party by reason of the extent to which each Party participated in the drafting of the Agreement.

26. LEGAL FEES. In the event of the bringing of any action or suit by either party hereto against the other party hereunder to enforce or interpret any of the provisions, covenants or conditions of this Agreement, or arising out of any tortious conduct by either party incident to this Agreement, the prevailing party in such action or suit shall be entitled to recover all costs and expenses of suit, including reasonable attorneys' fees. In any action or suit brought to enforce this Agreement, the damages available shall be limited to specific performance or other such equitable relief that the court may order.

27. CONFLICTS BETWEEN TERMS. If an apparent conflict or inconsistency exists between the main body of this Agreement and the Exhibits, the main body of this Agreement shall control. If a conflict exists between an applicable federal, state, or local law, rule, regulation, order, or code and this Agreement, the law, rule, regulation, order, or code shall control. Varying degrees of stringency among the main body of this Agreement, the Exhibits, and laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent requirement shall control. Each Party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Agreement.

28. EXHIBITS INCORPORATED. All Exhibits referenced in this Agreement are incorporated into the Agreement by this reference.

29. SIGNING AUTHORITY. The representative for each Party signing on behalf of a corporation, partnership, joint venture, or governmental entity hereby declares that authority has been obtained to sign on behalf of the corporation, partnership, joint venture, or entity and agrees to hold the other Party or Parties hereto harmless if it is later determined that such authority does not exist.

[SIGNATURES ON THE FOLLOWING PAGE]

Keyser Marston Associates Inc.
For As-needed Economic Impact and Fiscal Analysis Services
Page 10 of 12

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement the day and year first written above.

CITY OF DEL MAR,
a municipal corporation

KEYSER MARSTON ASSOCIATES INC.

By: 
Ashley Jones, City Manager

By: 
Paul Marra, Managing Principal

ATTEST:


Sarah Krietor, Administrative Services
Manager/City Clerk

APPROVED AS TO FORM:

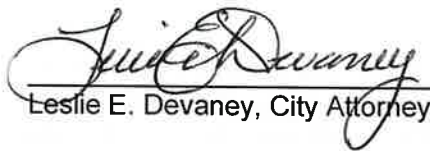

Leslie E. Devaney, City Attorney

EXHIBIT "A"

SCOPE OF SERVICES

The Consultant shall, as directed from time to time during the Contract Term, provide on-going, on-call consulting services for various development projects, initiatives and studies including economic, project feasibility, real estate, and other analyses (collectively, the "Services"), as specified in and in accordance with any task order awarded to the Consultant in connection with some or all of the services mentioned in this section, or services similar in nature. Below are the topic areas covering the services the City seeks to retain.

Economic and Fiscal Impact Analysis

Scope may include the use of industry approved-models such as REMI, IMPLAN or RIMS II, or a model approved by the City, to quantify the direct and indirect economic impacts of a project including, but not limited to, number jobs created, earnings, wages and salaries, consumer spending, impacts on local stakeholders and municipal taxes, such as transient occupancy tax and property taxes. The consultant may also be asked to create a base fiscal impact model for multiple revenue inputs and application to varying land uses/building types including, but not limited to office, hotels, condos, industrial, manufacturing, multifamily, mixed use/retail, destination recreation/retail, parking facilities, and other as determined by the City.

Market Analysis & Project Feasibility

Scope may include the use of available data to evaluate current and potential demand for a specific project, or ancillary services a specific project may provide, and determining project viability based on the potential demand. This analysis may also include a review of competitive facilities in the immediate region, forecasting of occupancy levels, financing needs and expected revenue returns as well as the additional affordable housing opportunities needed as a direct result of a new project.

Real Estate Analysis

Scope may include verification of investment returns using industry approved financial metrics, recommendations of financial structures which optimize any potential public investment, and evaluation of public sector risk, and the identification of potential development sites most suitable for a specific project and/or development.

Nexus Studies

Scope may require work with City Departments to collect necessary data and develop additional data to fully support a comprehensive report and recommendation using industry backed methodology for conducting a nexus study. Additionally, the Consultant may be required to identify actors to be considered in evaluating the relationship between a proposed fee and the identified impact and its cost, provide background on similar fees from other jurisdictions and any legal challenges brought against nexus studies, and ultimately provide a final recommendation of a fee based on a legally defensible nexus.

Additional Services

The City reserves the right to request additional economic and fiscal services from the selected On-call Consultant(s) which are similar in nature to the services listed above.

5 – Compensation

5-A – Hourly Billing Rates

KMA proposes to undertake the as-needed services discussed in Section 1 of this proposal on a time-and-materials basis, subject to the hourly billing rate schedule below. For multi-year contracts, KMA projects an annual escalation rate of 3.0% at each contract renewal date.

**KEYSER MARSTON ASSOCIATES, INC.
PUBLIC SECTOR HOURLY RATES**

	<u>2022/2023</u>
CHAIRMAN, PRESIDENT, MANAGING PRINCIPALS*	\$290.00
SENIOR PRINCIPALS*	\$280.00
PRINCIPALS*	\$260.00
MANAGERS*	\$235.00
SENIOR ASSOCIATES	\$195.00
ASSOCIATES	\$175.00
SENIOR ANALYSTS	\$160.00
ANALYSTS	\$140.00
TECHNICAL STAFF	\$100.00
ADMINISTRATIVE STAFF	\$85.00

Directly related job expenses not included in the above rates are: auto mileage, parking, air fares, hotels and motels, meals, car rentals, taxis, telephone calls, delivery, electronic data processing, graphics and printing. Directly related job expenses will be billed at 110% of cost.

Monthly billings for staff time and expenses incurred during the period will be payable within thirty (30) days of invoice date.

* Rates for individuals in these categories will be increased by 50% for time spent in court testimony.

5-B – Estimated Project Budgets

As part of our cost proposal, the City has also requested budget estimates for the scope areas listed below. The RFQ does not identify the timeframe, specific project or assignment examples, level of detail required, number of deliverables, or extent of public/stakeholder involvement. Therefore, it is challenging to provide meaningful projections of potential budgets for future assignments. The figures presented below are provided as order-of-magnitude ranges only, based on KMA prior experience in other jurisdictions. Actual budgets will be determined on a case-by-case basis, as specific assignments are identified and KMA has a full understanding of the City’s needs, the scope of the proposed project(s) or policy initiative(s), the number of alternatives/scenarios, and the range of services required.

Task	Description	Approximate Budget Range
<i>Economic and Fiscal Impact Analysis</i>	KMA will prepare assessments of fiscal and economic benefits for proposed developments, including residential, commercial, and visitor-serving uses.	\$25,000 to \$45,000 per project
<i>Market Analysis and Project Feasibility</i>	KMA will assist the City in reviewing the financial feasibility of proposed developments. Tasks may include comparison of competing proposals, estimate of land value, and/or estimate of warranted investment.	\$20,000 to \$35,000 per project/site/land use type
<i>Real Estate Analysis</i>	KMA will assist the City with market demand analyses, identification of appropriate development programs, and projection of absorption potential and achievable rents and prices.	\$25,000 to \$40,000 per project/site/land use type
<i>Nexus Studies</i>	KMA will prepare nexus analyses used to quantify the impacts of market-rate development on the need for affordable housing.	\$45,000 to \$65,000 per project/assignment
<i>Additional Services</i>	Additional services may include assignments such as: <ul style="list-style-type: none"> ❖ <i>Transaction structuring/negotiations</i> ❖ <i>Affordable housing transaction structuring</i> ❖ <i>Developer selection</i> ❖ <i>Specific Plan feasibility</i> ❖ <i>Policy planning</i> ❖ <i>Participation in public meetings</i> 	Varies widely To be determined on a project/assignment basis

**PROFESSIONAL SERVICES AGREEMENT BETWEEN
THE CITY OF DEL MAR AND DAVID TAUSSIG AND ASSOCIATES, INC. dba DTA
FOR AS-NEEDED ECONOMIC IMPACT AND FISCAL ANALYSIS CONSULTING SERVICES**

This Professional Services Agreement (“Agreement”) is made and entered into this 17th day of October, 2022 by and between the City of Del Mar, a Charter City and a municipal corporation (“City”), and David Taussig and Associates, Inc. dba DTA (“Consultant”) (collectively “Parties”).

WHEREAS, the City desires to employ a consultant to provide as-needed economic impact and fiscal analysis consulting services (“Consulting Services”). Said work is to be performed in accordance with the terms and conditions set forth below and as described in the scope of services, attached hereto as Exhibit “A” and incorporated herein; and

WHEREAS, the City has initially determined that Consultant is qualified by experience and ability to perform the services desired by City, and Consultant is willing to perform such services; and

WHEREAS, Consultant will conduct all the work as described and detailed in this Agreement to be provided to the City.

NOW, THEREFORE, the Parties hereto mutually covenant and agree with each other as follows:

1. CONSULTING SERVICES.

1.1 Scope of Services. The Consultant shall perform the Consulting Services as set forth in the written Scope of Services, attached hereto as **Exhibit “A”** and incorporated herein. Such services shall be provided at the direction of the City.

1.2. Project Coordinator. The Planning and Community Development Director and Principal Planner are hereby designated as the Project Coordinator for City and will monitor the progress and execution of this Agreement. Consultant shall assign a single Project Director to provide supervision and have overall responsibility for the progress and execution of this Agreement for Consultant. Kuda Wekwete is hereby designated as the Project Director for Consultant. City shall provide Consultant access to appropriate staff and resources for the coordination and provision of services.

1.3. City Modification of Scope of Services. City may order changes to the Scope of Services within the general scope of this Agreement consisting of additions, deletions, or other revisions. If such changes cause a change in the Consultant’s cost of, or time required for, completion of the Scope of Services, an equitable adjustment to Consultant’s compensation and/or contract time shall be made, subject to the City’s approval. All such changes shall be authorized in writing, executed by Consultant and City. If such a change results in an extension of the term of this Agreement or increases the maximum amount to be paid under this Agreement, no such change shall have any force or effect unless an amendment to this Agreement is approved by the City Council.

2. DURATION OF AGREEMENT.

2.1 Term, Time for Performance. This Agreement shall be effective for a period of three (3) years beginning on October 17, 2022, and ending on October 17, 2025. The agreement may be extended for an additional two (2) year period, upon written approval of both parties.

Time is of the essence for this Agreement and each provision of this Agreement, unless otherwise specified in this Agreement.

2.2 Delay. Any delay occasioned by causes beyond the control of Consultant may merit an extension of time for the completion of the Scope of Services. When such delay occurs, Consultant shall immediately notify the Project Coordinator in writing of the cause and the extent of the delay, whereupon the Project Coordinator shall ascertain the facts and the extent of the delay and grant an extension of time for the completion of the Consulting Services when justified by the circumstances provided that no extension of time shall be granted which would extend the time for performance beyond the date specified in section 2.1 above.

2.3 City's Right to Terminate for Default. Should Consultant be in default of any covenant or condition hereof, City may immediately terminate this Agreement for cause if Consultant fails to cure the default within ten (10) calendar days of receiving written notice of the default.

2.4 City's Right to Terminate without Cause. Without limiting its rights in the event of Consultant's default, City may terminate this Agreement, without cause, by giving written notice to Consultant. Such termination shall be effective upon receipt of the written notice. Consultant shall be compensated for all effort and material expended on behalf of City under the terms of this Agreement, up to the effective date of termination. All personal property remaining in City facilities or on City property thirty (30) days after the expiration or termination of this Agreement shall be, at City's election, considered the property of City.

3. PERFORMANCE AFTER TERMINATION. Upon termination of this Agreement as provided herein, Consultant shall, within such reasonable time period as may be directed by City Manager, complete those items of work which are in various stages of completion and which City Manager determines are necessary to be completed by Consultant to allow the project to be completed in a timely, logical, and orderly manner. Upon termination, all finished or unfinished documents, data, studies, surveys, drawings, models, photographs, reports, and other materials prepared by Consultant shall be delivered to the City Manager, upon his request, as property of City.

4. COMPENSATION.

4.1 Total Amount. Compensation to Consultant shall be provided in accordance with the rates described in the Fee Schedule contained in **Exhibit "B."** Consultant shall bill the City for work provided and shall present a written request for such payment monthly in accordance with the Fee Schedule contained in Exhibit "B". City shall pay all invoices in arrears and shall in no event be required to pay for any services provided by Consultant in advance. Consultant acknowledges that it is not guaranteed any particular amount of work.

4.2 Additional Services. City may, as the need arises or in the event of an emergency, request additional services of Consultant. Should such additional services be required, Compensation therefore shall be paid to the Consultant in accordance with Scope of Services contained in Exhibit "A." City and Consultant shall agree to the costs prior to commencement of such work.

5. INDEPENDENT CONTRACTOR. Consultant is, for all purposes arising out of this Agreement, an independent contractor. The Consultant has and shall retain the right to exercise full control and supervision of all persons assisting the Consultant in the performance of said services hereunder, the City only being concerned with the finished results of the work being performed. Neither Consultant nor Consultant's employees shall in any event be entitled to any benefits to which City employees are entitled, including, but not limited to, overtime, any retirement benefits, workers' compensation benefits, any injury leave or other leave benefits, Consultant being solely responsible for all such matters, as well as, compliance with social security and income tax withholding and all other regulations and laws governing such matters.

6. STATEMENT OF EXPERIENCE. Consultant agrees that it has the financial resources, service experience, completion ability, personnel, and experience in dealing with public agencies necessary for performing the Scope of Services and that such performance shall be in accordance with the standards customarily adhered to by an experienced and competent Consultant using the degree of care and skill ordinarily exercised by reputable Consultants practicing in the same field of service in the State of California. By executing this Agreement, Consultant represents that it has demonstrated trustworthiness and possesses the quality, fitness, and capacity to perform the Agreement in a manner satisfactory to City. Additionally, Consultant and all of Consultant's employees or agents shall secure and maintain in force such permits and licenses as are required by law in connection with the furnishing of services pursuant to this Agreement.

7. AUDIT OF RECORDS.

7.1 At any time during normal business hours and as often as may be deemed necessary, the Consultant shall make available to a representative of City for examination all of its records with respect to all matters covered by this Agreement and shall permit City to audit, examine, and/or reproduce such records. Consultant shall retain such financial and program service records for at least four (4) years after termination or final payment under this Agreement.

7.2 The Consultant shall include the City's right to audit under this section in any and all of their subcontracts, and shall ensure that these sections are binding upon all subcontractors.

8. CONFIDENTIALITY. All Consulting services performed by Consultant, including, but not limited to, all drafts, data, correspondence, proposals, reports, research and estimates compiled or composed by Consultant, pursuant to this Agreement, are for the sole use of the City, its agents and employees. Neither the documents nor their contents shall be released to any third party without the prior written consent of the City. This provision does not apply to information that (a) was publicly known, or otherwise known to Consultant, at the time that it was disclosed to Consultant by the City, (b) subsequently becomes publicly known through no act or omission of Consultant or (c) otherwise becomes known to Consultant other than through disclosure by the City. Except for any subcontractors that may be allowed upon prior agreement, neither the documents nor their contents shall be released to any third party without the prior written consent

of the City. The sole purpose of this section is to prevent disclosure of City's confidential and proprietary information by Consultant or subcontractors.

9. CONFLICTS OF INTEREST.

9.1 Consultant shall at all times comply with all federal, state and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices, including, but not limited to, California Government Code §§ 81000 et seq. (Political Reform Act) and §§ 1090 et seq. Consultant shall immediately disqualify itself and shall not use its official position to influence in any way any matter coming before the City in which the Consultant has a financial interest as defined in Government Code § 87103. Consultant represents that it has no knowledge of any financial interests, which would require it to disqualify itself from any matter on which it might perform services for the City.

9.2 Consultant shall comply with all of the reporting requirements of the Political Reform Act. The Consultant shall file a Fair Political Practices Commission Form 700 (Assuming Office Statement) within thirty (30) calendar days of the City's determination that the Consultant is subject to a conflict of interest code, if applicable. The Consultant shall also file a Form 700 (Annual Statement) on or before April 1, disclosing any financial interests held during the previous calendar year for which the Consultant was subject to a conflict of interest code.

9.3 If, in performing the Consulting Services set forth in this Agreement, the Consultant makes, or participates in, a "governmental decision" as described in Title 2, section 18701(a)(2) of the California Code of Regulations, or performs the same or substantially all the same duties for the City that would otherwise be performed by a City employee holding a position specified in the department's conflict of interest code, the Consultant shall be subject to a conflict of interest code requiring the completion of one or more statements of economic interests disclosing the Consultant's relevant financial interests.

10. OWNERSHIP OF DOCUMENTS. All documents, data, studies, drawings, maps, models, photographs and reports prepared by Consultant under this Agreement shall be considered the property of City. Consultant shall be permitted to reference and use said materials for use in future studies, work, and marketing so long as said materials are considered "public documents" and are not subject to attorney-client privilege, or the subject of pending closed or executive session discussions. Notwithstanding the above, computer software (including without limitation, financial models, compilations for formulas and spreadsheet models), prepared by the Consultant are Instrument of Service of Consultant and shall remain the property of Consultant. Consultant shall likewise retain all common law, statutory and other reserved rights, including the copyright thereto.

11. INSURANCE

11.1 Consultant shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Consultant, their agents, representatives, employees or subcontractors. Insurance shall be placed with insurers with a current A.M. Best's rating of no less than "A" and "VII" and are admitted to do business in the State of California, unless otherwise approved in writing by the City's Risk Manager.

11.2 Consultant's liabilities, including but not limited to Consultant's indemnity obligations, under this Agreement, shall not be deemed limited in any way to the insurance coverage required herein. All policies of insurance required hereunder must provide that the City is entitled to thirty (30) days prior written notice (ten (10) days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. Maintenance of specified insurance coverage is a material element of this Agreement.

11.3 Types and Amounts Required. Consultant shall maintain, at minimum, the following insurance coverage for the duration of this Agreement:

11.3.1 Commercial General Liability (CGL). Insurance written on an ISO Occurrence form CG 00 01 07 98 or equivalent providing coverage at least as broad which shall cover liability arising from any and all personal injury or property damage in the amount of **\$1,000,000** per occurrence and subject to an annual aggregate of **\$2,000,000**. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.

11.3.2 Commercial Automobile Liability. For all of the Consultant's automobiles including owned, hired and non-owned automobiles, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of **\$300,000** per occurrence. Insurance certificate shall reflect coverage for any automobile (any auto).

11.3.3 Workers' Compensation. For all of the Consultant's employees who are subject to this Agreement and to the extent required by applicable state or federal law, a Workers' Compensation policy providing at minimum **\$1,000,000** employers' liability coverage. The Consultant shall provide an endorsement that the insurer waives the right of subrogation against the City and its respective elected officials, officers, employees, agents and representatives.

11.3.4 Consulting Liability. Consulting liability (errors and omissions) coverage with a limit of **\$1,000,000** per claim and **\$2,000,000** annual aggregate. The Consultant shall ensure both that (1) the policy retroactive date is on or before the date of commencement of the Scope of Services; and (2) the policy will be maintained in force for a period of three years after substantial completion of the Scope of Services or termination of this Agreement whichever occurs last. The Consultant agrees that for the time period defined above, there will be no changes or endorsements to the policy that increase the City's exposure to loss. All defense costs shall be outside the limits of the policy.

11.4 Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions are the responsibility of the Consultant and must be declared to and approved by the City. At the option of the City, either (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees, and volunteers, or (2) the Consultant shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

11.5 Additional Required Provisions. The commercial general liability and automobile liability policies shall contain, or be endorsed to contain, the following provisions:

11.5.1 The City, its officers, officials, employees, and representatives shall be named as additional insureds. The City's Additional Insured status must be reflected on additional insured endorsement form which shall be submitted to the City.

11.5.2 The policies are primary and non-contributory to any insurance that may be carried by the City, as reflected in an endorsement which shall be submitted to the City.

11.6 Verification of Coverage. Consultant shall furnish the City with original certificates and amendatory endorsements effecting coverage required by this Section 11. The endorsement should be on forms provided by the City or on other than the City's forms provided those endorsements conform to City requirements. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

12. DEFENSE AND INDEMNIFICATION.

12.1 Consultant agrees to indemnify, defend (with attorneys approved by City), and hold harmless the City, and its officers, officials, agents and employees (the "Indemnified Parties") from any and all claims, demands, costs or liability that arise out of, or pertain to, or relate to the Consultant, its employees, agents, and subcontractors performance of services under this Agreement. Consultant's duty to indemnify under this section shall not include liability for damages for death or bodily injury to persons, injury to property, or other loss, damage or expense arising from the sole negligence or willful misconduct by the City or its elected officials, officers, agents, and employees. Consultant's indemnification obligations shall not be limited by the insurance provisions of this Agreement. The Parties expressly agree that any payment, attorney's fees, costs or expense City incurs or makes to or on behalf of an injured employee under the City's self-administered workers' compensation is included as a loss, expense, or cost for the purposes of this section, and that this section will survive the expiration or early termination of this Agreement.

12.2 This indemnity is in addition to any other rights or remedies which City may have under the law or this Agreement. In the event of any claim or demand made against any party which is entitled to be indemnified hereunder, City may, at its sole discretion, reserve, retain or apply any monies due to Consultant under this Agreement for the purpose of resolving such claims; provided however, that City may release such funds if Consultant provides City with reasonable assurances of protection of the City's interest. The City shall, in its sole discretion determine whether such assurances are reasonable.

12.3 Consultant agrees that its duty to defend arises upon an allegation of liability based upon the performance of services under this Agreement by Consultant, its officers, agents, representatives, employees, sub-consultants, or anyone for whom Consultant is liable and that an adjudication of Consultant's liability is not a condition precedent to Consultant's duty to defend.

13. SUBCONTRACTORS.

13.1 The Consultant's hiring or retaining of third parties (i.e. subcontractors) to perform services related to the Project is subject to prior approval by the City.

13.2 All contracts entered into between the Consultant and its subcontractor shall also provide that each subcontractor shall obtain insurance policies, which shall be kept in full force and effect during any and all work on this Project and for the duration of this Agreement. The Consultant shall require the subcontractor to obtain all policies described in section 11 of this Agreement in the amounts required by the City, which shall not be greater than the amounts required of the Consultant.

13.3 In any dispute between the Consultant and its subconsultants, the City shall not be made a party to any judicial or administrative proceeding to resolve the dispute. The Consultant agrees to defend and indemnify the City as described in section 12 of this Agreement should the City be made a party to any judicial or administrative proceeding to resolve any such dispute or should the City incur any costs in responding to third-party discovery requests.

14. NON-DISCRIMINATION. Consultant shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, ancestry, physical or mental disability, medical condition, genetic information, marital status, military or veteran status, gender, gender identity, gender expression, sexual orientation, or any other class protected under state, federal, or local law. Consultant shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to any class or category protected under state, federal, or local law and shall make reasonable accommodation to qualified individuals with disabilities. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Consultant agrees to post in conspicuous places available to employees and applicants for employment any notices provided by City setting forth the provisions of this non-discrimination clause.

15. NOTICES. All communications to either party by the other party shall be delivered to the persons listed below. Any such written communications by mail shall be conclusively deemed to have been received by the addressee five (5) calendar days after the deposit thereof in the United States Mail, postage prepaid and properly addressed as noted below.

If to City:
 City of Del Mar
 City Clerk
 1050 Camino del Mar
 Del Mar, CA 92014

If to Consultant:
 DTA
 David Taussig, President
 100 Bayview Circle, Suite 100
 Newport Beach, CA 92660

16 ASSIGNABILITY. This Agreement and any portion thereof shall not be assigned or transferred, nor shall any of the Consultant's duties be delegated or sub-contracted, without the express written consent of the City.

17. RESPONSIBILITY FOR EQUIPMENT. City shall not be responsible nor held liable for any damage to persons or property consequent upon the use, misuse, or failure of any equipment used by Consultant or any of Consultant's employees or subcontractors, even if such equipment has been furnished, rented, or loaned to Consultant by City. The acceptance or use of any such equipment by Consultant, Consultant's employees, or subcontractors shall be construed to mean that Consultant accepts full responsibility for and agrees to exonerate, indemnify and

hold harmless City from and against any and all claims for any damage whatsoever resulting from the use, misuse, or failure of such equipment.

18. CALIFORNIA LAW; VENUE/MISC. This Agreement shall be construed and interpreted according to the laws of the State of California. Any action brought to enforce or interpret any portion of this Agreement shall be brought in the county of San Diego, California. Consultant hereby waives any and all rights it might have pursuant to California Code of Civil Procedure section 394.

19. COMPLIANCE WITH LAWS. The Consultant shall comply with all laws, ordinances, regulations, and policies of the federal, state, and local governments applicable to this Agreement, including California Labor Code section 1720, et seq., relating to payment of prevailing wages for public works projects, if applicable. Consultant shall indemnify and defend the Indemnified Parties from and against any liability incurred due to any failure on the part of Consultant to comply with any applicable Laws.

To the extent Consultant is required to comply with prevailing wage requirements, Consultant does hereby acknowledge that they are aware of, have read, and understand the terms and implications of SB 854 and Consultant and any subconsultants ensure that they are familiar with and comply with its requirements. Such requirements include, but are not limited to, the registration requirement with the Department of Industrial Relations, State of California (DIR), pursuant to Labor Code section 1725.5. As of March 1, 2015, in compliance with SB 854, the City requires all affected contractors and consultants to be registered with the DIR prior to submitting a bid or proposal on any eligible District project. As of April 1, 2015, failure to comply with the requirements of SB 854 by any contractor or consultant, including registration with the DIR pursuant to Labor Code section 1725.5, shall be a material breach of this Agreement which may be terminated by the City in its sole and absolute discretion. Where applicable, this project is subject to compliance monitoring and enforcement by the DIR.

20. CONSULTANT'S CERTIFICATION OF AWARENESS OF IMMIGRATION REFORM AND CONTROL ACT OF 1986. Consultant certifies that Consultant is aware of the requirements of the Immigration Reform and Control Act of 1986 (8 USC §§ 1101-1525) and has complied and will comply with these requirements, including, but not limited to, verifying the eligibility for employment of all agents, employees, subcontractors, and consultants that are included in this Agreement.

21. ENTIRE AGREEMENT. This Agreement sets forth the entire understanding of the Parties with respect to the subject matters herein. There are no other understandings, terms or other agreements expressed or implied, oral or written, except as set forth herein.

22. AMENDMENTS. This Agreement may be modified or amended only by a written document executed by both Consultant and City and approved as to form by the City Attorney. No change, alteration, or modification of the terms or conditions of this Agreement, and no verbal understanding of the Parties, their officers, agents, or employees shall be valid unless agreed to in writing by both Parties.

23. NO WAIVER. No failure of either the City or the Consultant to insist upon the strict performance by the other of any covenant, term or condition of this Agreement, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Agreement shall constitute a waiver of any such breach of such covenant, term or condition.

24. SEVERABILITY. The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render any other provision unenforceable, invalid, or illegal.

25. DRAFTING AMBIGUITIES. The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and the decision of whether or not to seek advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each Party. This Agreement shall not be construed in favor of or against either Party by reason of the extent to which each Party participated in the drafting of the Agreement.

26. LEGAL FEES. In the event of the bringing of any action or suit by either party hereto against the other party hereunder to enforce or interpret any of the provisions, covenants or conditions of this Agreement, or arising out of any tortious conduct by either party incident to this Agreement, the prevailing party in such action or suit shall be entitled to recover all costs and expenses of suit, including reasonable attorneys' fees. In any action or suit brought to enforce this Agreement, the damages available shall be limited to specific performance or other such equitable relief that the court may order.

27. CONFLICTS BETWEEN TERMS. If an apparent conflict or inconsistency exists between the main body of this Agreement and the Exhibits, the main body of this Agreement shall control. If a conflict exists between an applicable federal, state, or local law, rule, regulation, order, or code and this Agreement, the law, rule, regulation, order, or code shall control. Varying degrees of stringency among the main body of this Agreement, the Exhibits, and laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent requirement shall control. Each Party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Agreement.

28. EXHIBITS INCORPORATED. All Exhibits referenced in this Agreement are incorporated into the Agreement by this reference.

29. SIGNING AUTHORITY. The representative for each Party signing on behalf of a corporation, partnership, joint venture, or governmental entity hereby declares that authority has been obtained to sign on behalf of the corporation, partnership, joint venture, or entity and agrees to hold the other Party or Parties hereto harmless if it is later determined that such authority does not exist.

[SIGNATURES ON THE FOLLOWING PAGE]

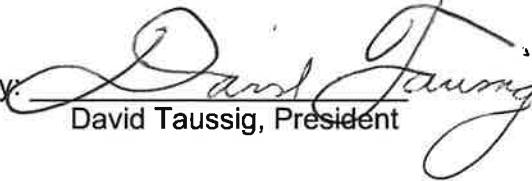
Consulting Services Agreement
For As-needed Economic Impact and Fiscal Analysis Consulting Services
Page 10 of 11

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement the day and year first written above.

CITY OF DEL MAR,
a municipal corporation

DAVID TAUSSIG AND ASSOCIATES, INC.
a California Corporation

By: 
Ashley Jones, City Manager

By: 
David Taussig, President

ATTEST:


Sarah Krjetor, City Clerk

APPROVED AS TO FORM:

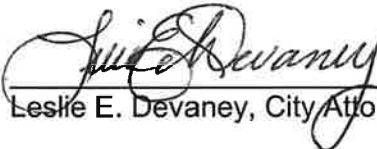

Leslie E. Devaney, City Attorney

EXHIBIT "A"

SCOPE OF SERVICES

The Consultant shall, as directed from time to time during the Contract Term, provide on-going, on-call consulting services for various development projects, initiatives and studies including economic, project feasibility, real estate, and other analyses (collectively, the "Services"), as specified in and in accordance with any task order awarded to the Consultant in connection with some or all of the services mentioned in this section, or services similar in nature. Below are the topic areas covering the services the City seeks to retain.

Economic and Fiscal Impact Analysis

Scope may include the use of industry approved-models such as REMI, IMPLAN or RIMS II, or a model approved by the City, to quantify the direct and indirect economic impacts of a project including, but not limited to, number jobs created, earnings, wages and salaries, consumer spending, impacts on local stakeholders and municipal taxes, such as transient occupancy tax and property taxes. The consultant may also be asked to create a base fiscal impact model for multiple revenue inputs and application to varying land uses/building types including, but not limited to office, hotels, condos, industrial, manufacturing, multifamily, mixed use/retail, destination recreation/retail, parking facilities, and other as determined by the City.

Market Analysis & Project Feasibility

Scope may include the use of available data to evaluate current and potential demand for a specific project, or ancillary services a specific project may provide, and determining project viability based on the potential demand. This analysis may also include a review of competitive facilities in the immediate region, forecasting of occupancy levels, financing needs and expected revenue returns as well as the additional affordable housing opportunities needed as a direct result of a new project.

Real Estate Analysis

Scope may include verification of investment returns using industry approved financial metrics, recommendations of financial structures which optimize any potential public investment, and evaluation of public sector risk, and the identification of potential development sites most suitable for a specific project and/or development.

Nexus Studies

Scope may require work with City Departments to collect necessary data and develop additional data to fully support a comprehensive report and recommendation using industry backed methodology for conducting a nexus study. Additionally, the Consultant may be required to identify actors to be considered in evaluating the relationship between a proposed fee and the identified impact and its cost, provide background on similar fees from other jurisdictions and any legal challenges brought against nexus studies, and ultimately provide a final recommendation of a fee based on a legally defensible nexus.

Additional Services

The City reserves the right to request additional economic and fiscal services from the selected On-call Consultant(s) which are similar in nature to the services listed above.

SECTION V COMPENSATION

Table 8: Proposed Budget ¹

Phase	Tasks	Description	Objective	Frequency	Maximum Charge ²	
1	1.1-1.4	Updating Fiscal and Economic Impact Model	Each Fiscal Year, DTA Has a Model With Updated Assumptions to Analyze Each Project, As Needed	Annual Update	Time and Materials, Not to Exceed \$5,000	
Subtotal (Phase 1)				Annual Cost	Time and Materials, Not to Exceed \$5,000	
2	-	Market Analysis	Project Consideration by Planning Commission/City Council	Per Project, As Needed	Time and Materials, Not to Exceed \$12,500	
2	2.1-2.9	Fiscal and Economic Impact Analysis by Project	For Each Project, DTA Will Utilize the Fiscal and Economic Impact Model and Prepare a Report With Findings	Per Project, As Needed	Time and Materials, Not to Exceed \$7,500	
Subtotal (Phase 2)				Per Project, As Needed	Time and Materials, Not to Exceed \$20,000	
-	-	Real Estate Analysis ³			Per Project, As Needed	
		SWOT/Evaluation of Public Sector Risk		\$1,000		
		Future Supply		\$1,500		
		Buyer/Renter Profile		\$2,000		
		Density Analysis		\$3,000		
		Identification of Potential Development Site		\$4,000		
		Affordable Housing Analysis		\$4,000		
		Land Residual Analysis		\$1,500		
School Boundary Assessment		\$5,000				
Subtotal				Per Project, As Needed	Time and Materials, Not to Exceed \$22,000	
-	1-8	Nexus Studies	For Each Project, DTA Shall Conduct a Comprehensive DIF Study	Per Project, As Needed	Time and Materials, Not to Exceed \$30,000 per Project, Plus \$7,500 per Fee Category	
-	-	Additional Services	Additional Economic and Fiscal Services, Upon Request by the City	Per Project, As Needed	Time and Materials	

Notes:

- The proposed budget outlined in this table assumes the analysis of one land use alternative per project. If the evaluation of more than one land use alternative is required, additional effort will be needed and an amended budget can be provided upon request.
- The costs listed do not include out-of-pocket expenses.
- The tasks listed under this section represent standard tasks that may be performed as part of the requested analysis.



SECTION V COMPENSATION

For your reference, DTA's and Zonda's hourly rate schedules are provided in the table below. As stated earlier, DTA will be the lead firm on this engagement and Zonda will be a subconsultant to DTA. The budget amounts indicated above include the total budgeted amounts for the entire consultant team. DTA will have a separate billing agreement with Zonda.

Table 9: Hourly Fee Schedules

Labor Category		Labor Rate	
DTA		Zonda	
President/Managing Director	\$300/Hour	Senior Managing Principal	\$350/Hour
Senior Vice President	\$275/Hour	Principal	\$325/Hour
Vice President	\$250/Hour	Senior Vice President	\$300/Hour
Senior Manager	\$210/Hour	Vice President	\$250/Hour
Manager	\$200/Hour	Senior Manager, Director	\$225/Hour
Senior Associate	\$190/Hour	Manager	\$200/Hour
Associate III	\$175/Hour	Senior Consultant	\$150/Hour
Associate II	\$165/Hour	Consultant	\$115/Hour
Associate I	\$150/Hour		
Research Associate II	\$140/Hour		
Research Associate I	\$125/Hour		

The proposed budget includes attendance at up to five (5) meetings. Additional meetings will be incorporated to the extent allowable by budget and will be billed on time and materials basis, not to exceed \$1,500 per in-person meeting. DTA staff shall also schedule standing conference calls (i.e., weekly or bi-weekly) with City staff to stay on track with tasks and deliverables.

Out-of-pocket and administrative expenses shall be equal to 3% of DTA's billings for labor, plus travel costs and any outside vendor payments (including those for Zonda and IMPLAN). If it is necessary for any data to be pulled from CoStar (property analytics and land "comps") to complete the project, there shall be an additional charge of \$500. On or about the first two weeks of each month during which consulting services are rendered hereunder, DTA shall present to the City an invoice covering the current consulting services performed and reimbursable expenses incurred pursuant to the agreement and exhibits thereto. Such invoices shall be paid by the City within 30 days of the date of each invoice. A 1.2% monthly charge may be imposed against accounts that are not paid within 30 days of the date of each invoice. DTA shall stop all work on the project if payment is not received within 45 days of submittal of an invoice.

All hourly rates for services apply through December 31, 2023, and are subject to a cost-of-living increase at that time.



City of Del Mar Agenda Report

TO: Honorable Mayor and City Councilmembers

FROM: Clem Brown, Assistant City Manager
Ashlea Houston, Management Analyst
Via Ashley Jones, City Manager

DATE: October 6, 2025

SUBJECT: Agreement with Schmidt Design Group for Shores Park Master Plan

REQUESTED ACTION/RECOMMENDATION:

Staff recommends the City Council: 1) Approve a Professional Services Agreement with Schmidt Design Group for a one-year term ending October 5, 2026, with the option to extend the Agreement for an additional one-year period, to complete the Shores Park Master Plan in an amount up to \$171,405 (Attachment A); and 2) Authorize the City Manager to execute the Agreement.

BACKGROUND:

On June 16, 2025, the City Council reinitiated the Shores Park master planning process after being on hold since 2019. At the meeting, staff reviewed the project's history and provided recommendations for next steps, which included the need to execute a new contract with the Schmidt Design Group (Schmidt) to complete the Master Plan (<https://www.delmar.ca.us/DocumentCenter/View/10053/06162025-Item-12---Resume-Shores-Park-Master-Planning>).

On September 8, 2025, the City Council reaffirmed the guiding principles and preferred park amenities for the Shores Park Master Plan, established the Shores Park Master Plan Ad-hoc Advisory Committee (Shores Committee) to advise on the completion of the Master Plan, and appointed Council Liaisons (Mayor Gaasterland and Councilmember Spelich) to the committee. The Council also directed staff to work with the consultant to evaluate options for a shared or separate off-leash dog area and potential relocation of the Alvarado House from its current location at the Fairgrounds into the updated design concepts for the Master Plan.

Staff explained that they would return to Council at an upcoming meeting with a revised scope of work and agreement with Schmidt to complete the Master Plan that incorporates this direction (<https://www.delmar.ca.us/DocumentCenter/View/10109/08082025-Item-9-Guiding-Principles-and-Preferred-Park-Amenities>).

City Council Action:

DISCUSSION/ANALYSIS:

Schmidt Design Group has prepared a scope of work (Exhibit A to Attachment A) to complete Phase III - "Create" of the master planning process. Schmidt will utilize the original design team that completed the project's prior work between 2014 and 2019 before the project was deferred. This team will review all previous studies, community feedback, and Council direction to build on the goals established during the initial outreach and design phases.

Due to their prior work on the project and satisfactory performance, there is sufficient justification to exempt the agreement from public bidding requirements under Del Mar Municipal Code Section 7.04.090.V, Exemption from Bidding. Re-bidding completion of the Master Plan and potentially awarding an agreement to another firm puts the City at risk of duplicating prior work, inefficiencies, and incurring higher overall costs.

Master Plan Alternatives

Task 1 of the scope of work includes the development of master plan alternatives. As directed by Council on September 8, Schmidt will develop a total of three master plan alternatives that reflect the guiding principles, current site conditions, and preferred park amenities. Schmidt will develop concepts that include both shared and separate off-leash dog areas, and an alternative that incorporates the Alvarado House into the Shores Park site. Sub-consultant OBR Architecture (OBR) will also develop two options for the Del Mar Community Building located on the Shores property. The first option will show a modernized and expanded remodel of the existing building, whereas the second option will involve demolition and replacement with a new building.

The proposed master plan alternatives will be evaluated by a team of sub-consultants to estimate anticipated construction costs for the Master Plan. Leppert Engineering will prepare conceptual grading, utility plans, and preliminary earthwork calculations for the site. MPE Consulting will provide electrical engineering review to coordinate proposed electrical locations and infrastructure in the park alternatives and new building designs. OBR will review the site and building designs to provide architectural input. A rough order of magnitude construction cost estimate will be prepared for each of the three initial design alternatives, with park and building costs identified separately, to inform decisions for the final Master Plan design.

The three initial alternatives will be shared with staff and the Shores Committee to confirm the designs meet the project goals. Revisions will be made based on feedback provided by staff and the Shores Committee, and the three alternatives will then be developed into computer-rendered designs for City Council consideration.

Final Master Plan

In Task 2, Schmidt will create a preferred park Master Plan based on the direction provided by the City Council in Task 1. The final Master Plan will include an illustrative model of park amenities, site furnishings, lighting, a conceptual plant palette, and a design

statement. An image board and three 3D visual simulations will be prepared to clearly illustrate the proposed Shores Park space. A refined construction cost estimate will also be provided for the park and selected building alternative.

OBR Architecture will create a detailed floor plan, exterior 3D renderings, and colored elevations for the selected Del Mar Community Building design option. These renderings will be used in future fundraising efforts for the construction of the Community Building, which will be organized by the Del Mar Foundation and other local nonprofit organizations.

Meetings

The proposed scope of work includes meetings with the Shores Committee, community building users, two City Council presentations, and multiple meetings with staff throughout the project. Schmidt and OBR will meet with the community building users at the initial design stage to gather information on their current and future needs for the building space. The meetings with the Shores Committee will be an important step to gather feedback from key stakeholder, including representatives from the Del Mar Community Building and Winston School, prior to Council consideration of the refined alternatives and final Master Plan design.

Optional Tasks

Optional scope of work items include developing additional 3D illustrations, preparing a construction phasing strategy and Final Master Plan Report, and additional meetings if needed. The optional items and associated fees are included in the attached fee schedule (Exhibit A to Attachment A). The proposed agreement incorporates the base scope of work and optional task fees; however, staff will make recommendations to City Council on whether to complete the optional tasks during the master planning process.

Schmidt's proposed cost for the base scope of work described above is \$149,605, with optional tasks totaling \$21,800, for a total cost up to \$171,405 (Exhibit A to Attachment A).

FISCAL IMPACT:

There is no fiscal action to be taken by the City Council associated with this item. Sufficient funds have been included in the approved Fiscal Year 2025-2026 Operating and Capital Budget to cover the up to \$171,405 in costs to complete the Shores Park Master Plan.

ATTACHMENTS:

Attachment A – Agreement with Schmidt Design Group
Exhibit A to Attachment A – Scope of Work and Fee Schedule

**PROFESSIONAL SERVICES AGREEMENT BETWEEN
THE CITY OF DEL MAR AND SCHMIDT DESIGN GROUP
FOR PREPARATION OF THE SHORES PARK MASTER PLAN**

This Professional Services Agreement (“Agreement”) is made and entered into this 6th day of October, 2025 by and between the City of Del Mar, a Charter City and a municipal corporation (“City”), and Schmidt Design Group, Inc. (“Consultant”) (collectively “Parties”).

WHEREAS, the City desires to employ a consultant to provide landscape architectural services for preparation of the Shores Park Master Plan (“Consulting Services”). Said work is to be performed in accordance with the terms and conditions set forth below and as described in the scope of services, attached hereto as Exhibit “A” and incorporated herein; and

WHEREAS, the City has initially determined that Consultant is qualified by experience and ability to perform the services desired by City, and Consultant is willing to perform such services; and

WHEREAS, Consultant will conduct all the work as described and detailed in this Agreement to be provided to the City.

NOW, THEREFORE, the Parties hereto mutually covenant and agree with each other as follows:

1. CONSULTING SERVICES.

1.1 Scope of Services. The Consultant shall perform the Consulting Services as set forth in the written Scope of Services, attached hereto as **Exhibit “A”** and incorporated herein. Such services shall be provided at the direction of the City.

1.2. Designated Point of Contact. City shall provide Consultant access to appropriate staff and resources for the coordination and provision of services. Prior to the start of services, each Party shall identify for the other a designated point of contact for administration and oversight of the services to be provided under this Agreement, with notification of any change to the point of contact within thirty (30) days.

1.3. City Modification of Scope of Services. City may order changes to the Scope of Services within the general scope of this Agreement consisting of additions, deletions, or other revisions. If such changes cause a change in the Consultant’s cost of, or time required for, completion of the Scope of Services, an equitable adjustment to Consultant’s compensation and/or contract time shall be made, subject to the City’s approval. All such changes shall be authorized in writing, executed by Consultant and City. If such a change results in an extension of the term of this Agreement or increases the maximum amount to be paid under this Agreement, no such change shall have any force or effect unless an amendment to this Agreement is approved by the City Council.

2. DURATION OF AGREEMENT.

2.1 Term, Time for Performance. This Agreement shall be effective for a period of one (1) year beginning on October 6, 2025 and ending on October 5, 2026. The Agreement may be extended for an additional one-year period upon agreement by both Parties. Such extension, if any, will be evidenced by a written amendment to this Agreement.

Time is of the essence for this Agreement and each provision of this Agreement, unless otherwise specified in this Agreement.

2.2 Delay. Any delay occasioned by causes beyond the control of Consultant may merit an extension of time for the completion of the Scope of Services. When such delay occurs, Consultant shall immediately notify the Project Coordinator in writing of the cause and the extent of the delay, whereupon the Project Coordinator shall ascertain the facts and the extent of the delay and grant an extension of time for the completion of the Consulting Services when justified by the circumstances provided that no extension of time shall be granted which would extend the time for performance beyond the date specified in section 2.1 above.

2.3 City's Right to Terminate for Default. Should Consultant be in default of any covenant or condition hereof, City may immediately terminate this Agreement for cause if Consultant fails to cure the default within ten (10) calendar days of receiving written notice of the default.

2.4 City's Right to Terminate without Cause. Without limiting its rights in the event of Consultant's default, City may terminate this Agreement, without cause, by giving written notice to Consultant. Such termination shall be effective upon receipt of the written notice. Consultant shall be compensated for all effort and material expended on behalf of City under the terms of this Agreement, up to the effective date of termination. All personal property remaining in City facilities or on City property thirty (30) days after the expiration or termination of this Agreement shall be, at City's election, considered the property of City.

3. PERFORMANCE AFTER TERMINATION. Upon termination of this Agreement as provided herein, Consultant shall, within such reasonable time period as may be directed by City Manager, complete those items of work which are in various stages of completion and which City Manager determines are necessary to be completed by Consultant to allow the project to be completed in a timely, logical, and orderly manner. Upon termination, all finished or unfinished documents, data, studies, surveys, drawings, models, photographs, reports, and other materials prepared by Consultant shall be delivered to the City Manager, upon his request, as property of City.

4. COMPENSATION.

4.1 Total Amount. Compensation to Consultant shall be provided at the rates described in the Cost Summary contained in **Exhibit "A."** Consultant shall bill the City for work provided and shall present a written request for such payment monthly. City shall pay all invoices in arrears and shall in no event be required to pay for any services provided by Consultant in advance. Consultant acknowledges that it is not guaranteed any particular amount of work.

4.2 Additional Services. City may, as the need arises or in the event of an emergency, request additional services of Consultant. Should such additional services be required, Compensation therefore shall be paid to the Consultant in accordance with the Fee Schedule contained in Exhibit "A." City and Consultant shall agree to the costs prior to commencement of such work.

5. INDEPENDENT CONTRACTOR. Consultant is, for all purposes arising out of this Agreement, an independent contractor. The Consultant has and shall retain the right to exercise full control and supervision of all persons assisting the Consultant in the performance of said services hereunder, the City only being concerned with the finished results of the work being performed. Neither Consultant nor Consultant's employees shall in any event be entitled

to any benefits to which City employees are entitled, including, but not limited to, overtime, any retirement benefits, workers' compensation benefits, any injury leave or other leave benefits, Consultant being solely responsible for all such matters, as well as, compliance with social security and income tax withholding and all other regulations and laws governing such matters.

6. STATEMENT OF EXPERIENCE. Consultant agrees that it has the financial resources, service experience, completion ability, personnel, and experience in dealing with public agencies necessary for performing the Scope of Services and that such performance shall be in accordance with the standards customarily adhered to by an experienced and competent Consultant using the degree of care and skill ordinarily exercised by reputable Consultants practicing in the same field of service in the State of California. By executing this Agreement, Consultant represents that it has demonstrated trustworthiness and possesses the quality, fitness, and capacity to perform the Agreement in a manner satisfactory to City. Additionally, Consultant and all of Consultant's employees or agents shall secure and maintain in force such permits and licenses as are required by law in connection with the furnishing of services pursuant to this Agreement.

7. AUDIT OF RECORDS.

7.1 At any time during normal business hours and as often as may be deemed necessary, the Consultant shall make available to a representative of City for examination all of its records with respect to all matters covered by this Agreement and shall permit City to audit, examine, and/or reproduce such records. Consultant shall retain such financial and program service records for at least four (4) years after termination or final payment under this Agreement.

7.2 The Consultant shall include the City's right to audit under this section in any and all of their subcontracts, and shall ensure that these sections are binding upon all subcontractors.

8. CONFIDENTIALITY. All Consulting services performed by Consultant, including, but not limited to, all drafts, data, correspondence, proposals, reports, research and estimates compiled or composed by Consultant, pursuant to this Agreement, are for the sole use of the City, its agents and employees. Neither the documents nor their contents shall be released to any third party without the prior written consent of the City. This provision does not apply to information that (a) was publicly known, or otherwise known to Consultant, at the time that it was disclosed to Consultant by the City, (b) subsequently becomes publicly known through no act or omission of Consultant or (c) otherwise becomes known to Consultant other than through disclosure by the City. Except for any subcontractors that may be allowed upon prior agreement, neither the documents nor their contents shall be released to any third party without the prior written consent of the City. The sole purpose of this section is to prevent disclosure of City's confidential and proprietary information by Consultant or subcontractors.

9. CONFLICTS OF INTEREST.

9.1 Consultant shall at all times comply with all federal, state and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices, including, but not limited to, California Government Code §§ 81000 et seq. (Political Reform Act) and §§ 1090 et seq. Consultant shall immediately disqualify itself and shall not use its official position to influence in any way any matter coming before the City in which the Consultant has a financial interest as defined in Government Code § 87103. Consultant represents that it has no knowledge of any financial interests, which would require it to disqualify itself from any matter on which it might perform services for the City.

9.2 Consultant shall comply with all of the reporting requirements of the Political Reform Act. The Consultant shall file a Fair Political Practices Commission Form 700 (Assuming Office Statement) within thirty (30) calendar days of the City's determination that the Consultant is subject to a conflict of interest code, if applicable. The Consultant shall also file a Form 700 (Annual Statement) on or before April 1, disclosing any financial interests held during the previous calendar year for which the Consultant was subject to a conflict of interest code.

9.3 If, in performing the Consulting Services set forth in this Agreement, the Consultant makes, or participates in, a "governmental decision" as described in Title 2, section 18701(a)(2) of the California Code of Regulations, or performs the same or substantially all the same duties for the City that would otherwise be performed by a City employee holding a position specified in the department's conflict of interest code, the Consultant shall be subject to a conflict of interest code requiring the completion of one or more statements of economic interests disclosing the Consultant's relevant financial interests.

10. OWNERSHIP OF DOCUMENTS. All documents, data, studies, drawings, maps, models, photographs and reports prepared by Consultant under this Agreement shall be considered the property of City. Consultant shall be permitted to reference and use said materials for use in future studies, work, and marketing so long as said materials are considered "public documents" and are not subject to attorney-client privilege, or the subject of pending closed or executive session discussions.

11. INSURANCE

11.1 Consultant shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Consultant, their agents, representatives, employees or subcontractors. Insurance shall be placed with insurers with a current A.M. Best's rating of no less than "A" and "VII" and are admitted to do business in the State of California, unless otherwise approved in writing by the City's Risk Manager.

11.2 Consultant's liabilities, including but not limited to Consultant's indemnity obligations, under this Agreement, shall not be deemed limited in any way to the insurance coverage required herein. All policies of insurance required hereunder must provide that the City is entitled to thirty (30) days prior written notice (ten (10) days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. Maintenance of specified insurance coverage is a material element of this Agreement.

11.3 Types and Amounts Required. Consultant shall maintain, at minimum, the following insurance coverage for the duration of this Agreement:

11.3.1 Commercial General Liability (CGL). Insurance written on an ISO Occurrence form CG 00 01 07 98 or equivalent providing coverage at least as broad which shall cover liability arising from any and all personal injury or property damage in the amount of **\$1,000,000** per occurrence and subject to an annual aggregate of **\$2,000,000**. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.

11.3.2 Commercial Automobile Liability. For all of the Consultant's automobiles including owned, hired and non-owned automobiles, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing

coverage at least as broad for bodily injury and property damage for a combined single limit of **\$300,000** per occurrence. Insurance certificate shall reflect coverage for any automobile (any auto).

11.3.3 Workers' Compensation. For all of the Consultant's employees who are subject to this Agreement and to the extent required by applicable state or federal law, a Workers' Compensation policy providing at minimum **\$1,000,000** employers' liability coverage. The Consultant shall provide an endorsement that the insurer waives the right of subrogation against the City and its respective elected officials, officers, employees, agents and representatives.

11.3.4 Consulting Liability. Consulting liability (errors and omissions) coverage with a limit of **\$1,000,000** per claim and **\$2,000,000** annual aggregate. The Consultant shall ensure both that (1) the policy retroactive date is on or before the date of commencement of the Scope of Services; and (2) the policy will be maintained in force for a period of three years after substantial completion of the Scope of Services or termination of this Agreement whichever occurs last. The Consultant agrees that for the time period defined above, there will be no changes or endorsements to the policy that increase the City's exposure to loss. All defense costs shall be outside the limits of the policy.

11.4 Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions are the responsibility of the Consultant and must be declared to and approved by the City. At the option of the City, either (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees, and volunteers, or (2) the Consultant shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

11.5 Additional Required Provisions. The commercial general liability and automobile liability policies shall contain, or be endorsed to contain, the following provisions:

11.5.1 The City, its officers, officials, employees, and representatives shall be named as additional insureds. The City's Additional Insured status must be reflected on additional insured endorsement form which shall be submitted to the City.

11.5.2 The policies are primary and non-contributory to any insurance that may be carried by the City, as reflected in an endorsement which shall be submitted to the City.

11.6 Verification of Coverage. Consultant shall furnish the City with original certificates and amendatory endorsements effecting coverage required by this Section 11. The endorsement should be on forms provided by the City or on other than the City's forms provided those endorsements conform to City requirements. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

12. DEFENSE AND INDEMNIFICATION.

12.1 Indemnity for Professional Liability. Except for the sole negligence or willful misconduct of City, Consultant shall, to the fullest extent permitted by law, hold harmless, protect, defend (with attorneys approved by City) and indemnify the City, its council and each member thereof, its officers, employees, representatives and their successors and assigns from

and against all losses, liabilities, claims, suit, damage, expenses, cost, including reasonable attorney's fees and costs, and expert costs and investigation expenses, caused in whole or in part by the negligent, reckless or wrongful acts, errors or omissions of Consultant in the performance of the professional services under this Agreement and those of Consultant's sub-consultants or anyone for whom Consultant is liable regardless of whether or not such claim, loss or liability is caused in part by a party indemnified hereunder. Notwithstanding the foregoing, Consultant's defense obligations shall not exceed its proportionate percentage of fault, except as set forth in section 2782.8 of the Civil Code, as amended by Senate Bill 496.

12.2 Indemnity for Other than Professional Liability. With respect to operations other than the performance of the professional services under this Agreement, Consultant agrees to indemnify, defend (with attorneys approved by City), and hold harmless the City, and its officers, officials, agents and employees (the "Indemnified Parties") from any and all claims, demands, costs or liability that arise out of, or pertain to, or relate to the Consultant, its employees, agents, and subcontractors performance of services under this Agreement. Consultant's duty to indemnify under this section shall not include liability for damages for death or bodily injury to persons, injury to property, or other loss, damage or expense arising from the sole negligence or willful misconduct by the City or its elected officials, officers, agents, and employees. Consultant's indemnification obligations shall not be limited by the insurance provisions of this Agreement. The Parties expressly agree that any payment, attorney's fees, costs or expense City incurs or makes to or on behalf of an injured employee under the City's self-administered workers' compensation is included as a loss, expense, or cost for the purposes of this section, and that this section will survive the expiration or early termination of this Agreement.

12.3 This indemnity is in addition to any other rights or remedies which City may have under the law or this Agreement. In the event of any claim or demand made against any party which is entitled to be indemnified hereunder, City may, at its sole discretion, reserve, retain or apply any monies due to Consultant under this Agreement for the purpose of resolving such claims; provided however, that City may release such funds if Consultant provides City with reasonable assurances of protection of the City's interest. The City shall, in its sole discretion determine whether such assurances are reasonable.

12.4 Consultant agrees that its duty to defend arises upon an allegation of liability based upon the performance of services under this Agreement by Consultant, its officers, agents, representatives, employees, sub-consultants, or anyone for whom Consultant is liable and that an adjudication of Consultant's liability is not a condition precedent to Consultant's duty to defend.

13. SUBCONTRACTORS.

13.1 The Consultant's hiring or retaining of third parties (i.e. subcontractors) to perform services related to the Project is subject to prior approval by the City.

13.2 All contracts entered into between the Consultant and its subcontractor shall also provide that each subcontractor shall obtain insurance policies, which shall be kept in full force and effect during any and all work on this Project and for the duration of this Agreement. The Consultant shall require the subcontractor to obtain all policies described in section 11 of this Agreement in the amounts required by the City, which shall not be greater than the amounts required of the Consultant.

13.3 In any dispute between the Consultant and its subconsultants, the City shall not be made a party to any judicial or administrative proceeding to resolve the dispute. The

Consultant agrees to defend and indemnify the City as described in section 12 of this Agreement should the City be made a party to any judicial or administrative proceeding to resolve any such dispute or should the City incur any costs in responding to third-party discovery requests.

14. NON-DISCRIMINATION. Consultant shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, ancestry, physical or mental disability, medical condition, genetic information, marital status, military or veteran status, gender, gender identity, gender expression, sexual orientation, or any other class protected under state, federal, or local law. Consultant shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to any class or category protected under state, federal, or local law and shall make reasonable accommodation to qualified individuals with disabilities. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Consultant agrees to post in conspicuous places available to employees and applicants for employment any notices provided by City setting forth the provisions of this non-discrimination clause.

15. NOTICES. All communications to either party by the other party shall be delivered to the persons listed below. Any such written communications by mail shall be conclusively deemed to have been received by the addressee five (5) calendar days after the deposit thereof in the United States Mail, postage prepaid and properly addressed as noted below.

If to City:
City of Del Mar
City Clerk
1050 Camino del Mar
Del Mar, CA 92014
cityclerk@delmar.ca.us

If to Consultant:
Schmidt Design Group, Inc.
Glen Schmidt
1310 Rosecrans Street, Suite G
San Diego, CA 92106
GSchmidt@schmidt-design.com

16 ASSIGNABILITY. This Agreement and any portion thereof shall not be assigned or transferred, nor shall any of the Consultant's duties be delegated or sub-contracted, without the express written consent of the City.

17. RESPONSIBILITY FOR EQUIPMENT. City shall not be responsible nor held liable for any damage to persons or property consequent upon the use, misuse, or failure of any equipment used by Consultant or any of Consultant's employees or subcontractors, even if such equipment has been furnished, rented, or loaned to Consultant by City. The acceptance or use of any such equipment by Consultant, Consultant's employees, or subcontractors shall be construed to mean that Consultant accepts full responsibility for and agrees to exonerate, indemnify and hold harmless City from and against any and all claims for any damage whatsoever resulting from the use, misuse, or failure of such equipment.

18. CALIFORNIA LAW; VENUE/MISC. This Agreement shall be construed and interpreted according to the laws of the State of California. Any action brought to enforce or interpret any portion of this Agreement shall be brought in the county of San Diego, California. Consultant hereby waives any and all rights it might have pursuant to California Code of Civil Procedure section 394.

19. COMPLIANCE WITH LAWS. The Consultant shall comply with all laws, ordinances, regulations, and policies of the federal, state, and local governments applicable to this Agreement, including California Labor Code section 1720, et seq., relating to payment of prevailing wages for public works projects, if applicable. Consultant shall indemnify and defend the Indemnified Parties from and against any liability incurred due to any failure on the part of Consultant to comply with any applicable Laws.

To the extent Consultant is required to comply with prevailing wage requirements, Consultant does hereby acknowledge that they are aware of, have read, and understand the terms and implications of SB 854 and Consultant and any subconsultants ensure that they are familiar with and comply with its requirements. Such requirements include, but are not limited to, the registration requirement with the Department of Industrial Relations, State of California (DIR), pursuant to Labor Code section 1725.5. As of March 1, 2015, in compliance with SB 854, the City requires all affected contractors and consultants to be registered with the DIR prior to submitting a bid or proposal on any eligible District project. As of April 1, 2015, failure to comply with the requirements of SB 854 by any contractor or consultant, including registration with the DIR pursuant to Labor Code section 1725.5, shall be a material breach of this Agreement which may be terminated by the City in its sole and absolute discretion. Where applicable, this project is subject to compliance monitoring and enforcement by the DIR.

20. CONSULTANT'S CERTIFICATION OF AWARENESS OF IMMIGRATION REFORM AND CONTROL ACT OF 1986. Consultant certifies that Consultant is aware of the requirements of the Immigration Reform and Control Act of 1986 (8 USC §§ 1101-1525) and has complied and will comply with these requirements, including, but not limited to, verifying the eligibility for employment of all agents, employees, subcontractors, and consultants that are included in this Agreement.

21. ENTIRE AGREEMENT. This Agreement sets forth the entire understanding of the Parties with respect to the subject matters herein. There are no other understandings, terms or other agreements expressed or implied, oral or written, except as set forth herein.

22. AMENDMENTS. This Agreement may be modified or amended only by a written document executed by both Consultant and City and approved as to form by the City Attorney. No change, alteration, or modification of the terms or conditions of this Agreement, and no verbal understanding of the Parties, their officers, agents, or employees shall be valid unless agreed to in writing by both Parties.

23. NO WAIVER. No failure of either the City or the Consultant to insist upon the strict performance by the other of any covenant, term or condition of this Agreement, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Agreement shall constitute a waiver of any such breach of such covenant, term or condition.

24. SEVERABILITY. The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render any other provision unenforceable, invalid, or illegal.

25. DRAFTING AMBIGUITIES. The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and the decision of whether or not to seek advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each Party. This Agreement shall not be construed in favor of or against either Party by reason of the extent to which each Party participated in the drafting of the Agreement.

26. LEGAL FEES. In the event of the bringing of any action or suit by either party hereto against the other party hereunder to enforce or interpret any of the provisions, covenants or conditions of this Agreement, or arising out of any tortious conduct by either party incident to this Agreement, the prevailing party in such action or suit shall be entitled to recover all costs and expenses of suit, including reasonable attorneys' fees. In any action or suit brought to enforce this Agreement, the damages available shall be limited to specific performance or other such equitable relief that the court may order.

27. CONFLICTS BETWEEN TERMS. If an apparent conflict or inconsistency exists between the main body of this Agreement and the Exhibits, the main body of this Agreement shall control. If a conflict exists between an applicable federal, state, or local law, rule, regulation, order, or code and this Agreement, the law, rule, regulation, order, or code shall control. Varying degrees of stringency among the main body of this Agreement, the Exhibits, and laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent requirement shall control. Each Party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Agreement.

28. EXHIBITS INCORPORATED. All Exhibits referenced in this Agreement are incorporated into the Agreement by this reference.

29. SIGNING AUTHORITY. The representative for each Party signing on behalf of a corporation, partnership, joint venture, or governmental entity hereby declares that authority has been obtained to sign on behalf of the corporation, partnership, joint venture, or entity and agrees to hold the other Party or Parties hereto harmless if it is later determined that such authority does not exist.

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement the day and year first hereinabove written.

CITY OF DEL MAR,
a municipal corporation

SCHMIDT DESIGN GROUP,
a California corporation

By: _____
Ashley Jones, City Manager

By: _____
Glen Schmidt, Principal

ATTEST:

Sarah Krietor, Administrative Services
Manager/City Clerk

APPROVED AS TO FORM:

Leslie E. Devaney, City Attorney



SCHMIDT DESIGN GROUP

September 24, 2025

Clem Brown | Assistant City Manager
City of Del Mar
1050 Camino del Mar, Del Mar, CA 92014

RE: Landscape Architectural Services for Shores Park Master Planning

Dear Clem,

Thank you for the opportunity to provide the following proposal for restarting the design process for Shores Park in Del Mar. The scope of work includes design services for the concept design phase, as defined below.

We have assigned the same talented staff from our previous work prior to suspension of the project back in 2018. The original community outreach and design effort included several phases: Discover, Explore, Envision, and Create. We will re-engage in the "Create" Phase moving directly to alternatives and a final master plan document.

TEAM

- Architecture, OBR
- Civil Engineering, Leppert Engineering
- Electrical Engineering, MPE

SCOPE OF SERVICES - 'CREATE' PHASE

Task 1 – Master Plan Alternatives

1. Due Diligence: The design team will review our previous studies, notes, presentations, and community feedback to build on the ideas and goals established during the initial outreach and design phase.
2. Kick-off Meeting: Schmidt Design Group (SDG) and OBR Architecture (OBR) will attend a kick-off meeting with City staff to refine the project goals and objectives. See Meetings, Task 3 below.
3. Park Program: SDG will share an anticipated program list for three (3) alternatives. We anticipate that the 3 alternatives will include the following:
 - Alt 1 - Joint-use athletic field and dog park
 - Alt 2 - Separate athletic field and dog park
 - Alt 3 - Scheme that includes the Alvarado House, likely with a joint use field and dog park.
 OBR will provide the anticipated program list for the community building (see OBR scope of work below). We anticipate that park and building program elements will be defined by City staff based on previous studies and Council direction, and will include feasibility evaluation of relocating the Alvarado House to the park site.
4. Loose Draft Master Plan Alternatives: The team will develop a series of three (3) loosely sketched master plan alternatives that reflect the community's vision and the modified program elements. Each alternative will explore potential program arrangement and



- preliminary grading strategies. The alternatives will be illustrative in nature, and color rendered. OBR architects will share alternatives for the community building direction in a similarly loose style (see OBR scope of work below). We will share these first alternatives for City staff to confirm the designs meet the project goals.
5. Draft Master Plan Alternatives: Based on review and feedback on the loose alternatives, SDG will prepare three (3) alternatives for the park. The plans will be computer rendered for sharing with the public at large, the Ad Hoc Committee, and City Council.
 6. Consultant Reviews: Each alternative will be studied by our consultant team:
 - Architect, OBR will review the site design and provide input.
 - Civil Engineer, Leppert Engineering will prepare conceptual grading, on-site utility plans, and preliminary earthwork calculations.
 - Electrical Engineer, MPE will review the existing electrical system and electrical utilities and lighting, assess if they can be salvaged or need to be replaced.Team feedback and consulting will assist in estimating anticipated construction costs.
 7. Precedent Image Boards: Precedent image boards will be prepared. The boards will contain design, program, and material imagery to further reinforce the vision of each master plan alternative.
 8. **OPTIONAL** Simulations of Alternatives: If requested, SDG will provide graphic simulations of each of the three (3) park design alternatives, once it is determined that the plans meet the needs of staff and stakeholders, simulations will be prepared. One (1) 3D visual simulation would be provided for each of the three (3) plan alternatives.
 9. Architectural Design: OBR will provide the following alternatives for the community building. Scheme 1 will include addition to, or modernization of, the existing structure. Scheme 2 will include demolition and replacement with a new structure.
 - Initial space plans, program spreadsheets, inspiration imagery and preliminary floor plans and preliminary elevations to assist the Ad hoc Committee and Council select one scheme to move forward.
 - As deemed appropriate by City staff, OBR will meet with the building user group to understand their current and future needs.
 10. Estimate of Probable Cost: A rough order of magnitude construction cost estimate will be provided for each park and building alternative.

Task 2 – Final Master Plan

1. Final Master Plan: We anticipate that the City will provide direction for the preferred park master plan that may include a recommendation to move forward with one alternative, or with a final alternative that uses a combination of features. The plan will be illustrative in nature, computer rendered, and will include park amenities, site furnishings, lighting, a conceptual plant palette, and a design statement.
2. Consultant Reviews: The final Master Plan will be studied by our consultant team:
 - Architect, OBR will review the site design and provide input.
 - Civil Engineer, Leppert Engineering will prepare conceptual grading, on-site utility plans, and preliminary earthwork calculations.



- Electrical Engineer, MPE will coordinate locations of new proposed electrical with new building layout, estimate service size and location of new gear, provide park lighting locations, with specifications that meet the City lighting ordinance and meet the required footcandles to the IES standard light levels.
Team feedback and consulting will assist in estimating anticipated construction costs.
- 3. Precedent Image Boards: Precedent image boards will be prepared for the final master plan. The boards will contain design, program, and material imagery which further reinforce the vision of the master plan.
- 4. Simulations: A 3D visual simulation will be prepared for the Final Master Plan. This graphic will be an invaluable tool to depict the alternatives from a variety of angles and clearly illustrate the composition and character of the spaces being proposed. The simulation will be in a high-resolution format and suitable for use by the City in press releases and promotional materials.
- 5. Architectural Design: We anticipate that the City will select one scheme to move forward. Based on the feedback received, OBR will further progress the selected scheme to include more detailed floor plans, exterior 3D renderings, and colored elevations.
- 6. Estimate of Probable Cost: The rough order of magnitude construction cost estimate will be provided for the park and building improvements.
- 7. Final Master Plan Submittal: Based on City feedback, the design team will provide one round of minor revisions to the final illustrative site plan.
- 8. **OPTIONAL** Phasing Strategy: If requested, the design team will develop a phasing strategy for the park improvements and building based on the City and Community's prioritization of the park program.
- 9. **OPTIONAL** Final Master Plan Report: If requested, we will prepare an illustrative report will be prepared. This document will articulate the robust community engagement process, document the master plan alternatives, and the final master plan and supporting exhibits.

Task 3 – Meetings

Meetings are anticipated as follows, and as noted above.

1. Stakeholder Meeting (total of 1): As deemed appropriate by City staff, SDG & OBR will meet with the community building user group to understand their current and future needs.
2. Ad Hoc Committee Presentations (total of 2): The design team will meet with the Ad Hoc Committee at key points during the design process. A PowerPoint presentation will be prepared to illustrate the design process and final solutions.
3. City Council Presentations (total of 2): The design team will meet with City Council to present the draft alternatives and final master plan. A PowerPoint presentation will be prepared to illustrate the design process and final solutions.



4. City Staff Meetings (total of 12): We will meet with City staff for 12 in person and remote meetings during the course of the anticipated work.
5. **OPTIONAL Meetings:** If requested, we will be available to prepare & participate in additional meetings/presentations. We included an hourly time & materials allowance not to exceed \$5,000 for additional meetings.

COST SUMMARY

Task 1 - Master Plan Alternatives (Lump Sum)	
SDG	\$23,000.00
Architect (OBR)	\$17,050.00
Civil (Leppert)	\$18,590.00
Electrical (MPE)	\$6,270.00
Total	\$64,910.00
Task 2 - Final Master Plan (Lump Sum)	
SDG	\$29,000.00
Architect (OBR)	\$26,950.00
Civil (Leppert)	\$4,565.00
Electrical (MPE)	\$4,180.00
Total	\$64,695.00
Task 3 - Meetings (Hourly T&M)	
SDG	\$13,500.00
Architect (OBR)	\$5,500.00
Total	\$19,000.00
Reimbursable Expenses (Allowance)	\$1,000.00
TOTAL	\$149,605.00

OPTIONAL TASK COST SUMMARY

Optional 3D Illustrations During Task 1 (3 Alternatives) (LS)	\$7,000.00
Optional Phasing Strategy (Lump Sum)	\$4,200.00
Optional Final Master Plan Report (Lump Sum)	\$5,600.00
Optional Additional Meetings (Hourly T&M)	\$5,000.00

PROJECT ASSUMPTIONS AND EXCLUSIONS

This proposal has been prepared with the following assumptions and exclusions:

- A. Construction documents, precise grading, drainage, electrical, and structural plans are not included.
- B. Designing to LEED or SITES standards and/or associated documentation are excluded.
- C. Permit processing and entitlement approvals (i.e. site development permit, planned development permit, etc.), not included.
- D. Additional submittals not specifically outlined in this scope of work will be considered additional services.
- E. Structural engineering and waterproofing services for site structures, walls, etc. are excluded.
- F. Environmental documentation is excluded.
- G. The creation of existing condition/irrigation as-built plans is excluded.
- H. Preparation of operations & maintenance budget is not included.



- I. Scope related to the Alvarado House is anticipated to be high-level feasibility. This scope does not include cost construction cost estimates for restoring and moving the Alvarado House or detailed architectural design.

FEE AND PAYMENT SCHEDULE

Fees will be charged for technical work, consultation, and additional services. Charges will be made for typing, as in the preparation of reports, and for time and costs of printing. No direct charges will be made for normal secretarial service, office management, or general accounting; these items are included in overhead.

ADDITIONAL AND HOURLY SERVICES

Hourly Rates

Principal Landscape Architect/President	\$300/hour
Principal Landscape Architect/Partner	\$250/hour
Principal/Studio Director	\$225/hour
Associate Landscape Architect	\$175/hour
Senior Project Manager/Licensed Landscape Architect/Certified Arborist.....	\$155/hour
Project Manager.....	\$140/hour
Senior Landscape Designer.....	\$125/hour
Landscape Designer.....	\$110/hour
Clerical/Typist.....	\$85/hour

Reimbursable Expenses

Reimbursable expenses such as reproduction printing, delivery service, soils testing, permits, parking, project specific supplies, etc., will be marked up by 10%. In-house plotting will be charged per square-foot at the following rates: bond \$2.00 per square-foot, vellum \$3.00 per square-foot, mylar \$4.00 per square-foot, and color \$5.00 per square-foot. In-house color laser prints will be charged at \$.50 for letter size, \$.75 for legal size, and \$1.00 for ledger size.

Sub-consultants

Expenses for consultants employed by Schmidt Design Group, Inc. will be marked up by 10%.

Mileage

Mileage in the interest of the client will be charged at the current U.S. General Services Administration Privately Owned Vehicle Mileage Reimbursement Rates.

Travel

Time spent in travel in the interest of the client will be charged at hourly rates. A minimum of one hour will be charged for any site visit. No more than eight (8) hours of travel time will be charged in any one day. Subsistence will be charged when it is necessary for personnel to be away from the office overnight.

Thank you for your consideration. We look forward to working with you on this exciting project. I

Very truly yours,

Glen Schmidt, FASLA
Principal
Schmidt Design Group, Inc.

September 24, 2025



City of Del Mar Agenda Report

TO: Honorable Mayor and City Councilmembers

FROM: Matt Bator, AICP, Principal Planner
Karen Brindley, Planning and Community Development Director
Via Ashley Jones, City Manager

DATE: October 6, 2025

SUBJECT: Re-Introduction of an Ordinance to Amend Municipal Code Chapter 23.50 and Repeal and Replace Chapter 23.51 Related to Trees, Scenic Views, and Sunlight Regulations (A25-001)

REQUESTED ACTION/RECOMMENDATION:

Staff recommends that the City Council introduce an Ordinance (Attachment A) to: 1) Repeal and replace the City's Trees, Scenic Views, and Sunlight (TSVS) regulations within Del Mar Municipal Code (DMMC) Chapter 23.51 and 2) Amend related code sections of the City's Tree regulations within DMMC Chapter 23.50 (A25-001).

PREVIOUS CITY COUNCIL REVIEW:

On July 7, 2025, the City Council held a noticed public hearing to review and introduce an Ordinance to repeal and replace DMMC Chapter 23.51 (Trees, Scenic Views, and Sunlight), amend related subsections of DMMC Chapter 23.50, and amend DMMC Chapters 30.04 (Definitions) and 30.86 (Supplemental Regulations) to limit the maximum allowed height of hedges. After receiving a staff presentation, asking clarifying questions, receiving public testimony, and discussing the proposed DMMC amendments, the City Council directed staff to return to a future Council meeting for a re-introduction of the Ordinance with the following revisions:

1. Separate the proposed "Hedge Height" Zone Code Amendment (ZA25-001) from the proposed TSVS amendments;
2. Remove the proposed Indemnification subsection of the TSVS regulations;
3. Include "potted" or container plants as eligible "Trees" for TSVS review;
4. Expand Sunlight Obstruction eligibility from being just the Primary Living Area (PLA) to any affected areas within a residence; and
5. Reassess the proposed eligibility time period (look-back) of starting on a fixed date.

City Council Action:

BACKGROUND:

The City Council Work Plan for Fiscal Year 2024-2025 included updating Del Mar Municipal Code (DMMC) Chapter 23.51, also known as the Trees, Scenic Views and Sunlight (TSVS) Ordinance. A detailed background and additional information pertaining to this update, including section by section summarizations of the proposed amendment to the TSVS regulations, is contained within an agenda report presented to the City Council on July 7, 2025, which can be accessed at [Regular Meeting Agenda Packet 7-7-2025 \(Item #17\)](#).

Following is a summary of the steps staff performed to accomplish the update:

- On October 7, 2024, staff presented to the City Council nine “Guiding Principles” to inform and influence the TSVS update process. The City Council-approved Guiding Principles are attached as Attachment B.
- Staff evaluated reoccurring issues that have arisen while processing TSVS applications since the original adoption of the TSVS Ordinance (No. 747) in July 2002.
- Staff reviewed information and reports pertaining to view regulations in twenty-seven (27) other jurisdictions, identifying common implementation issues and how the respective regulations have been modified and improved over time.
- On December 2, 2024, staff received City Council input and direction regarding significant policy and procedural issues to be addressed through the update. The City Council discussed the information presented and directed staff to proceed forward with proposed amendments to DMMC Chapter 23.51 (TSVS) and to further explore the possibility of regulating the heights of hedges through maximum height allowances. A copy of the December 2, 2024, City Council agenda report is included as Attachment C.
- Staff prepared draft amendments throughout DMMC Chapter 23.51 (TSVS). In order to thoroughly address all issues raised and discussed with the City Council, it is also necessary to amend specific sections of DMMC Chapter 23.50 (Trees).
- In addition to amending DMMC Chapter 23.51 and related sections of DMMC 23.50 (Trees), proposed amendments to Zone Code Chapters 30.04 (Zoning Definitions) and 30.86 (Supplemental Regulations) were prepared that would limit the height of new or replacement hedges in required side and rear yards (setbacks) to a maximum of six feet.
- The Planning Commission reviewed, discussed, and suggested revisions to staff’s proposed TSVS code amendments over the course of three separate, regularly

scheduled Planning Commission meetings. Many of the Commission's recommended edits or revisions to the draft amendments, which addressed issues such as refining definitions, application material requirements, acceptable scenic view documentation, cost apportionment and others, have been incorporated into the draft replacement of Chapter 23.51 included in Attachment A.

- As mentioned previously, a draft Ordinance to repeal and replace DMMC Chapter 23.51 (Trees, Scenic Views, and Sunlight), amend related subsections of DMMC Chapter 23.50, and amend DMMC Chapters 30.04 (Definitions) and 30.86 (Supplemental Regulations) in relation to hedge heights was presented to the City Council on July 7, 2025, in a noticed public hearing and staff was directed to make revisions and return to City Council. The approved minutes of the July 7 City Council meeting are included as Attachment D.

DISCUSSION/ANALYSIS:

Staff is returning to the City Council with an Ordinance that would repeal and replace the City's Trees, Scenic Views, and Sunlight (TSVS) regulations within Del Mar Municipal Code (DMMC) Chapter 23.51 and amend related code regulations of the City's Tree regulations within DMMC Chapter 23.50 (A25-001). With the exception of five (5) issue area revisions directed by the City Council on July 7, 2025, the proposed text changes of DMMC Chapter 23.51 remain as presented on that date. Below is an overview of the revisions made since July 7, 2025:

- 1. Separate the proposed Hedge Height Zone Code Amendment (ZA25-001) from the proposed TSVS amendments (DMMC Chapters 30.04 (Definitions) and 30.86 (Supplemental Regulations)):**
 - This revision does not directly affect the proposed language and provisions of the TSVS regulations.
 - Staff will return to the City Council after adoption of the Ordinance to gain additional Council direction regarding addressing heights of existing and new hedges in Del Mar. Therefore, amendments to DMMC 30.04 and 30.86 are not included in the proposed Ordinance.
- 2. Remove Proposed Indemnification subsection (DMMC Section 23.51.130)**
 - Eliminated per City Council direction.
- 3. Include "potted" or container plants as eligible "Trees" for TSVS review**
 - Revised definition of "Tree" to clarify that the subject trees and plants could be growing in the ground or in an "above-ground container."
- 4. Expand Sunlight Obstruction eligibility from just the Primary Living Area (PLA) to any affected areas within a residence**

- Removed all references to “Primary Living Area” or “PLA” in relation to (only) Sunlight Obstruction. As revised, an Applicant can seek relief/restoration of sunlight obstructed from reaching any room or rooms of a residence instead of just the PLA.
5. **Eligibility time frame proposed to remain ten (10) years prior to the submittal of a complete TSVS application, not the date of 2002 TSVS Ordinance effectiveness**
- Based on City Council comments and direction, and after revisiting concerns about the potential impacts a fixed eligibility date could have on mature trees and vegetation, it is staff’s determination that the 10-year look back/date of ownership criteria has generally worked well to strike a balance between the benefits of “trees” and “views” and encourages residents to address view and sunlight obstruction issues before vegetation matures and becomes part of a neighborhood’s, and the City’s, natural character.
 - Therefore, staff is removing its proposal to modify that specific criteria for application submittal, thus proposing leave the 10-year eligibility/date of ownership rule in place.

While not specifically directed by the City Council on July 7, 2025, two additional revisions to the TSVS regulations have been included in the draft Ordinance: added language to require a certified arborist to be on-site during all TSVS trimming/restoration activities (DMMC Section (23.51.080)); and requiring the decision maker to consider the feasibility of replacement plantings when Trees are removed for restorative action (DMMC Section 23.51.080(B)(6)).

Given the large number of proposed changes to DMMC Chapter 23.51 (TSVS), it is recommended the City Council repeal and replace Chapter 23.51 in its entirety, and therefore, has not provided a redlined version of all proposed amendments. The proposed replacement of Chapter 23.51 is included with the draft Ordinance included as Attachment A and a copy of the current TSVS Chapter is included as Attachment E for reference and comparison. However, to easily identify text revisions directed by the City Council at the July 7, 2025 meeting, refer to Attachment F for a redlined version.

CORRESPONDENCE:

Following City Council hearing on July 7, 2025, resident Janet Wilson sent several letters regarding the proposed TSVS amendments to City staff and City Council members (Attachment G). In brief, the correspondence provided comment and suggestions regarding TSVS issues such as City Trees, sunlight obstruction, cost appropriation, and transferability of TSVS determinations to future property owners, which was taken into consideration by City staff.

FISCAL IMPACT:

There is no fiscal action to be taken by the City Council related to this agenda item.

ENVIRONMENTAL IMPACT:

The requested action is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) (General Rule) of the CEQA Guidelines because CEQA only applies to projects with the potential for causing a significant effect on the environment. With the proposed Ordinance, there is no change in baseline environmental conditions or potential to cause a significant effect on the environment. An Initial Study evaluation concluded that no environmental factors would be potentially affected by the TSVS amendments contemplated by the City Council. A Notice of Exemption will be prepared identifying that the activity is covered by the common-sense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment.

NEXUS TO CITY COUNCIL GOALS AND PRIORITIES:

Updating the Trees, Scenic Views, and Sunlight Ordinance is an identified Tier 2 Council priority for Fiscal Years 2024-25 and 2025-26.

ATTACHMENTS:

- Attachment A – Draft Ordinance
- Attachment B – Council Adopted Guiding Principles
- Attachment C – December 2, 2024, City Council Agenda Report
- Attachment D – July 7, 2025, City Council Meeting Minutes
- Attachment E – Existing DMMC Chapter 23.51 (Trees, Scenic Views, and Sunlight)
- Attachment F – TSVS Redlines of City Council-Directed Revisions
- Attachment G - Public Correspondence

ATTACHMENT A

ORDINANCE No. XXXX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DEL MAR, CALIFORNIA REPEALING AND REPLACING DEL MAR MUNICIPAL CODE CHAPTER 23.51 REGULATING TREES, SCENIC VIEWS AND SUNLIGHT AND AMENDING CHAPTER 23.50 RELATED TO TREE REMOVAL

WHEREAS, the City of Del Mar (City) submitted applications: A25-001, a request to repeal and replace Del Mar Municipal Code (DMMC) Chapter 23.51 (Trees, Scenic Views and Sunlight), and amend DMMC Chapter 23.50 (Trees); and ZA25-001, a request to amend DMMC Chapters 30.04 (Definitions) and 30.86 (Supplemental Regulations) under the Zoning Code (DMMC Title 30) regulating the maximum permitted height of hedges in the City; and

WHEREAS, the City recognizes that trees, scenic views and plentiful sunlight contribute to the special character of Del Mar and to the overall quality of life enjoyed by residents, property owners and visitors. Trees, scenic views and sunlight produce a wide variety of significant psychological and tangible benefits, and contribute to the economic value and comfortable enjoyment of the community, neighborhoods and individual properties; and

WHEREAS, trees, vegetation and other landscaping provide aesthetic value as part of an urban forest, visual and auditory privacy, carbon sequestration, climate control, wind screening, soil stability, and wildlife habitat; and

WHEREAS, scenic views, whether of the Pacific Ocean, nearby lagoons, canyons, the community and its landscapes and urban forest character, or other scenic vistas, encourage distinctive architecture, artistic expression, and provide creative inspiration; and

WHEREAS, plentiful sunlight provides an opportunity to utilize solar energy both actively and passively for home heating and climate control, reducing dependence on fossil fuels, and

WHEREAS, on February 13, 2023, the Del Mar City Council discussed the importance of updating DMMC Chapter 23.51, also known as the Trees, Scenic Views, and Sunlight (TSVS) Ordinance, and directed staff to process applicable Municipal Code amendments; and

WHEREAS, on October 7, 2024, the Del Mar City Council discussed and adopted Guiding Principles for amending the City's TSVS regulations and process; and

WHEREAS, on December 2, 2024, the Del Mar City Council received an informational update from City staff regarding specific areas of DMMC Chapter 23.51 that

need updating, and the City Council provided direction to staff regarding proposed issue areas within the Chapter to be amended; and

WHEREAS, at duly noticed public hearings on April 8, and May 13, 2025, the Del Mar Planning Commission accepted written and oral public testimony and discussed the proposed amendments to DMMC Chapters 23.50, 23.51, 30.04, and 30.86; and

WHEREAS, at a duly noticed public hearing on June 10, 2025, the Del Mar Planning Commission was not able to reach consensus for recommended amendments that would: add DMMC Section 23.51.150, a process for alleging obstruction of Scenic Views and/or Sunlight by City Trees; pause the removal of trees on the City's "Discouraged Tree List," and require tree replacement should be mandatory when restorative action involves tree removal in proposed DMMC Section 23.51.080, and

WHEREAS, at a duly noticed public hearing on June 10, 2025, the Del Mar Planning Commission accepted additional written and oral public testimony, considered proposed amendments to the DMMC, and recommended that the City Council 1) adopt amendments to DMMC Chapters 23.50 and 23.51 related to Trees, Scenic Views and Sunlight regulations (A 25-001) as recommended by staff with specific revisions to DMMC Sections 23.51.010.A.2.b; 23.51.010.B.2; 23.51.040.A.1.e; 23.51.050.B; 23.51.060.A.6; 23.51.060.A.7; 23.51.050.C; 23.51.090.B.1; and 23.51.090.B.2; 2) not adopt Zoning Code amendments to DMMC Chapters 30.04 and 30.86 related to the regulation of hedge height (ZA 25-001); and 3) approve a determination that adoption of the Ordinance is exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3) (General Rule); and

WHEREAS, on July 7, 2025, the City Council held a duly noticed public hearing and voted to continue the item to a future City Council meeting and provided direction to staff that the Ordinance be revised to: 1) Separate the proposed Hedge Height Zone Code Amendment (ZA25-001) from the proposed TSVS amendments; 2) Remove proposed Indemnification subsection of the TSVS regulations; 3) Include "potted" or container plants as eligible Trees for TSVS review; 4) Expand Sunlight Obstruction eligibility from being limited to the Primary Living Area (PLA) to any affected areas within a residence; and 5) Reassess the proposed eligibility time period (look-back) of starting on a fixed date; and

WHEREAS, on October 6, 2025, the City Council held a duly noticed public hearing accepted additional written and oral public testimony, considered the proposed amendments to the DMMC, as revised.

NOW, THEREFORE, the City Council of the City of Del Mar hereby ordains as follows:

SECTION ONE: That DMMC Chapter 23.51 (Trees, Scenic Views, and Sunlight) be repealed and replaced with "Exhibit A" to this Ordinance.

SECTION TWO: That DMMC Section 23.50.050 be amended as follows:

23.50.050 Exemptions.

- A. No permit is required by this Chapter for pruning or trimming of any tree on private property.
- B. No permit is required by this Chapter to cut down, remove, destroy, or move a Protected Tree under any of the following circumstances. This exemption does not apply to trees within the public right-of-way.
 - 1. When measured two feet above ground level, (a) the Protected Tree has a single trunk circumference of 20 inches or less and is not a replacement tree pursuant to Section 23.50.090, or (b) the Protected Tree has multi-trunks having a total circumference of 30 inches or less and is not a replacement tree pursuant to Section 23.50.090.
 - 2. When measured two feet above ground level, the trunk of the Protected Tree is located no more than 12 feet from the exterior wall of any Primary Structure or Accessory Structure.
 - 3. When both trees are measured two feet above ground level, the Protected Tree is located no more than 12 feet from another Protected Tree. Only one of the Protected Trees may be removed.
- C. No permit is required by this Chapter for the emergency removal of a Protected Tree for reasons of public health, safety and welfare. The Planning and Community Development Department shall be promptly notified of emergency removal.
- D. No permit is required by this Chapter to remove a Protected Tree when the Planning Commission, or City Council on appeal has determined by resolution that removal of the Tree is necessary to restore a scenic view and/or sunlight to a property pursuant to the provisions of DMMC Chapter 23.51.

SECTION THREE: That DMMC Section 23.50.080 be amended as follows:

23.50.080 Processing of Permits; Standards for Permits.

- A. *Application.* A person who desires to cut down, remove, destroy, or move a Protected Tree shall make application for a Tree Removal Permit to the Planning and Community Development Department on a form provided by the City. A processing fee, established by resolution of the City Council, shall be required. The application shall contain the number, species, and size of the trees involved, a statement on the reason for the requested action, a site plan depicting the location of tree(s) proposed for removal and other trees located in the vicinity, and any other pertinent information determined necessary by the Planning and Community Development Director or Design Review Board. This additional information may include a report from a qualified, professional arborist selected and employed by the City. The applicant shall be required to reimburse the City for the cost of such a report.
- B. *Noticing.* A notice of the filing of an application for a Tree Removal Permit shall be mailed by the City to persons owning property adjacent to the project site. The mailed notice of application shall advise persons of the date of action and that the application is available for public review at City Hall.

C. *Action.* The Director or the Design Review Board shall approve or conditionally approve a Tree Removal Permit if the Protected Tree is:

1. Dead, diseased or injured beyond reclamation, as certified by a tree condition report from an arborist;
2. Crowded by other healthier protected trees; thinning (removal) would promote healthier growth in the trees to remain, as certified by a tree condition report from an arborist;
3. Interfering with existing utilities and/or primary structures, as certified by a report from the public utility operator or a structural engineer;
4. Causing substantial damage to a Primary or Accessory Structure or associated utilities, as certified by a structural engineer when applicable;
5. Interfering with existing improvements, and/or is a danger to the public health, safety, or welfare in the Central Commercial, Open Space Overlay Zone, or on public property or right-of-way;
6. Deemed a safety hazard in a tree condition report from a Certified Arborist. The report shall include a completed ISA-Hazard Evaluation Form or other methodology acceptable to the City of Del Mar, as well as the observations and opinions of the Arborist. The City reserves the right to retain a Certified Arborist, at the expense of the Applicant, when needed to review a hazardous tree determination;
7. Located within 30 feet of a Primary or Accessory Structure, when measured two feet above ground level, and the canopy of the tree cannot be reduced so as to:
 - (i) Avoid overhanging the roof of a Primary or Accessory Structure;
 - (ii) Be at least ten feet from the canopy of any other tree; and
 - (iii) Be at least ten feet from the chimney of any residence.The feasibility of reducing the tree(s) canopy shall be determined by the City's Arborist and Fire Chief;
8. Voluntarily replaced in accordance with Subsection 23.50.090.A.1. The replacement tree(s) shall be indicated in a covenant on the property on which the tree(s) are located. The replacement tree(s) shall not be eligible for removal in accordance with this Code until it has attained a circumference of at least 20 inches when measured two feet above ground level; or
9. Obstructing proposed improvements that cannot be reasonably designed to avoid the need for tree removal, as certified by a report from the project planner and determined by the Director of Planning and Community Development or the Design Review Board based on the following factors:
 - (i) Early consultation with the City;
 - (ii) Consideration of practical design alternatives;
 - (iii) Saving the Protected Tree eliminates all reasonable use of the property; or
 - (iv) Saving the Protected Tree requires the removal of more desirable trees.

Notwithstanding the existence of Subsections 1. through 10. above, the Director or the Design Review Board may deny a Tree Removal Permit if any of the following conditions exist:

1. The tree removal will, even after the imposition of permit conditions, endanger the public health, safety, peace, or welfare;

2. The tree removal will have an adverse impact on the aesthetics of the area surrounding the proposed activity;
3. Reasonable alternatives to a concurrent development proposal exist which would eliminate the need to remove a Protected Tree; or
4. The applicant has not agreed to perform the conditions of approval imposed by Section 23.050.090.

SECTION FOUR:

This Ordinance was assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the City. The City Council hereby finds that under Section 15061(b)(3) of the State CEQA Guidelines, this Ordinance is exempt from the requirements of CEQA because it can be seen with certainty that the provisions contained herein would not have the potential for causing a significant effect on the environment.

SECTION FIVE :

This Ordinance was introduced by the City Council on October 6, 2025.

SECTION SIX:

The City Clerk is directed to prepare and have published a summary of this Ordinance no less than five days prior to the consideration of its adoption and again within 15 days following adoption indicating votes cast.

SECTION SEVEN:

If any section, subsection, subdivision, paragraph, sentence, clause, phrase or portion of this Ordinance is, for any reason, held invalid or unconstitutional, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance.

SECTION EIGHT:

Upon adoption, the Ordinance will take effect and be in force 30 days from the date of City Council adoption (“Effective Date”).

PASSED, APPROVED AND ADOPTED by the City Council of the City of Del Mar, California at the Regular Meeting held this 20th day of October, 2025.

Terry Gaasterland, Mayor
City of Del Mar

APPROVED AS TO FORM:

Leslie E. Devaney, City Attorney
City of Del Mar

ATTEST AND CERTIFICATION:

STATE OF CALIFORNIA
COUNTY OF SAN DIEGO
CITY OF DEL MAR

I, SARAH KRIETOR, Administrative Services Manager/City Clerk of the City of Del Mar, California, DO HEREBY CERTIFY, that the foregoing is a true and correct copy of Ordinance No. XXXX, which has been published pursuant to law, and adopted by the City Council of the City of Del Mar, California, at a Regular Meeting held the XX day of _____, by the following vote:

AYES:

NOES:

RECUSE

ABSENT:

ABSTAIN:

Sarah Krietor, Administrative Services
Manager/City Clerk
City of Del Mar

Exhibit "A" to Ordinance No. _____

Chapter 23.51 TREES, SCENIC VIEWS AND SUNLIGHT

23.51.010 Purpose and Application of Chapter.

A. Purpose.

1. The City recognizes that Trees, Scenic Views and plentiful Sunlight contribute to the special character of Del Mar and to the overall quality of life enjoyed by residents, property owners and visitors.
2. The City further recognizes that Trees, Scenic Views and Sunlight produce a wide variety of significant psychological and tangible benefits, and contribute to the economic value and comfortable enjoyment of the community, neighborhoods and individual properties, including, but not limited to, the following:
 - a. Trees, vegetation and other landscaping provide aesthetic value as part of an urban forest, visual and auditory privacy, carbon sequestration, climate control, wind screening, soil stability, and wildlife habitat.
 - b. Scenic Views, whether of the Pacific Ocean, nearby lagoons, canyons, the community and its landscapes and urban forest character, or other scenic backcountry (eastern) vistas, encourage distinctive architecture, artistic expression, and provide creative inspiration.
 - c. Plentiful Sunlight provides an opportunity to utilize solar energy both actively and passively for home heating and climate control, thereby reducing dependence on fossil fuels.
3. This Chapter acknowledges the benefits derived from Trees, Scenic Views and plentiful Sunlight, and balances the goal of maintaining each of them, when possible.
4. This Chapter further provides a process by which any Person may seek to preserve and restore Scenic Views and/or Sunlight when there is an unreasonable Obstruction of such Scenic Views and/or Sunlight by the growth, improper maintenance and/or installation of Trees and/or vegetation located on a property within three hundred (300) feet of the Applicant's property line.

B. Application.

1. This Chapter applies to all properties within the jurisdictional boundaries of the City of Del Mar, excluding property owned by governmental entities not subject to the City's regulatory jurisdiction.
2. Any Person shall have the right to file an Application with the City alleging Obstruction of pre-existing Scenic Views and/or Sunlight, and further seeking Restorative Action to restore the pre-existing Scenic Views and/or Sunlight that existed on or after the later of the following:
 - a. Date the Applicant acquired Applicant's property; or

- b. Ten (10) years prior to the submittal date of a complete Trees, Scenic Views and Sunlight application.
- 3. A decision by the Planning Commission, or City Council on appeal, that an Obstruction of Scenic Views and/or Sunlight has occurred, and any associated Restorative Action, is specific to the Applicant and does not run with the land. Any orders issued by the Planning Commission, or City Council on appeal, for ongoing maintenance of the Subject Tree are not binding on subsequent property owners and shall terminate with the transfer of property title. This paragraph does not apply when property title is transferred due to inheritance

23.51.020 Definitions.

For purposes of this Chapter, the following definitions shall apply:

- A. *Applicant* shall mean any Person who owns residential real property within the jurisdictional boundaries of the City of Del Mar (or the legal occupant of said real property with written permission from the property owner of record to act on their behalf), who files an Application with the City pursuant to this Chapter.
- B. *Application* shall mean a Trees, Scenic Views and Sunlight Application filed with the City alleging that any Tree located on the property of another Person is causing an unreasonable Obstruction of the Applicant’s pre-existing Scenic Views and/or Sunlight, for which the Applicant seeks Restorative Action.
- C. *Certified Arborist* shall mean a professional arborist who holds a valid ISA Certified Arborist credential from the International Society of Arboriculture (ISA). For purposes of this Chapter, a Registered Consulting Arborist (RCA) with current membership in the American Society of Consulting Arborists (ASCA) shall be considered a “Certified Arborist” for purposes of providing professional tree surveys, reports, recommendations, and other technical information related to arboriculture.
- D. *City* shall mean the City of Del Mar.
- E. *City Tree* shall mean any Tree planted, installed, owned, and/or maintained by the City, which is located in, within or on a City park, Parkway, street, median, or other property owned by the City. For purposes of this Chapter and consistent with Section 23.51.030 of this Chapter, the term “City Tree” does not include any Tree located within the public right-of-way between the improved street edge and the property boundary of a private lot.
- F. *Crown Reduction/Shaping* shall mean a method of comprehensive trimming that reduces a Tree's height and/or spread. Crown Reduction/Shaping entails the reduction of the top, sides or individual limbs of a Tree by removal of leaders or the longest portion of limbs to a lateral large enough to assume the terminal role.
- G. *Director* shall mean the City’s Planning and Community Development Director, or his or her designee.
- H. *Heading Back* shall mean a pruning process whereby overall reduction of the mass of a Tree is achieved by modification to major limbs.

- I. *Hedge* shall mean generally dense vegetation so aligned as to form a physical barrier or fence.
- J. *Imminent Danger* shall mean an immediate risk to the health, safety and/or welfare of any Person or property, whether privately- or publicly-owned.
- K. *Lacing* shall mean a comprehensive method of Trimming that systematically and sensitively removes excess portions of a Tree and improves the structure of the Tree.
- L. *Mediation* shall mean a private, voluntary process in which an impartial and qualified third-party professional negotiator facilitates communication between parties to a dispute to promote settlement and reach a mutually satisfactory solution, in this case regarding a claim for Obstruction of Scenic Views and/or Sunlight.
- M. *Obstruction* shall mean any substantial and unreasonable blocking or diminishment of Scenic Views and/or Sunlight that is attributable to the growth, improper maintenance and/or the location of a Tree, as determined by the Planning Commission or City Council on appeal, consistent with the findings of fact required by this Chapter.
- N. *Parkway* shall mean that area of the street between the back of curb and the sidewalk that is typically planted or landscaped.
- O. *Person* shall mean any individual(s), corporation, partnership, firm, or other legal entity (including the City of Del Mar), owning real property or residing in real property within the Del Mar City limits.
- P. *Primary Living Area (PLA)* shall mean that (single) portion of a primary residence (typically the living room, dining room or great room) determined by the Planning Commission, or City Council on appeal, to be the main gathering and entertainment room of the primary residence.
 1. The determination of a PLA is to be made on a case-by-case basis and shall be consistent with any prior determinations made by the City. Each primary residence shall be limited to the designation of only one (1) PLA (a primary residence does not include “Accessory Dwelling Units”, as that term is defined by Chapter 30.91 of this Municipal Code).
 2. Under rare and extraordinary circumstances, the Planning Commission, or City Council on appeal, may determine that another area of a primary residence (other than the living room, dining room or great room) is the PLA.
 3. Under no circumstances shall a bathroom, laundry room, storage room, stairwell, hallway, outdoor deck, patio, balcony, or any other area outside of the enclosing walls of a primary residence, be designated as a PLA. Additionally, a PLA may not be from any space within an Accessory Dwelling Unit (as that term is defined by Chapter 30.91 of this Municipal Code).
- Q. *Protected Tree* shall mean any of the following:
 1. A Tree of the species *Hesperocyparis macrocarpa* (Monterey Cypress);
 2. A Tree of the species *Pinus torreyana* (Torrey Pine);

3. A Tree of any species and located on property within the Central Commercial or Open Space Overlay zones of the City, within a public right-of-way, or on public- or City-owned property; or
 4. Any Tree planted as a result of required mitigation for the removal of another Protected Tree.
- R. *Restorative Action* shall mean any specific action(s) and conditions required by the Planning Commission, or City Council on appeal, to be implemented to resolve a dispute relating to the Obstruction of the Applicant's pre-existing Scenic Views and/or Sunlight.
 - S. *Scenic View* shall mean a view of the ocean, lagoons, canyons, the community and its landscapes and urban forest character, or other scenic backcountry (eastern) vistas from the PLA of a primary residence. When observed through more than one window or multiple locations within the PLA, the full extent of the Scenic View shall be a culmination of all vantage points from within the PLA. A Scenic View shall not have been created by natural disaster/causes such as storms, fire, disease or pest infestation, or illegal activity.
 - T. *Severe Pruning* shall mean the cutting of branches and/or the trunk of a Tree in a manner which substantially reduces the overall size of the Tree or destroys the existing symmetrical appearance, natural shape and/or health of the Tree, and which results in the removal of main lateral branches leaving the trunk and branches of the Tree in a stub appearance. "Topping" and "Heading Back" as defined herein are considered to be Severe Pruning. As stated herein, Severe Pruning should be avoided due to the damage that such practices can cause to a Tree's form and health.
 - U. *Site of the Subject Tree* shall mean the property on which a Subject Tree is located, which shall be located within three hundred (300) feet of the Applicant's property boundary.
 - V. *Solar Energy System* shall have the same meaning as set forth in Section 801.5(a) of the California Civil Code, as that Section may be amended, renumbered, or redesignated from time to time. For purposes of this Chapter, the location of a Solar Energy System collector is required to comply with the local building and setback regulations.
 - W. *Subject Tree* shall mean a Tree for which an Application has been submitted regarding the alleged Obstruction of Scenic Views and/or Sunlight.
 - X. *Sunlight* shall mean the availability of direct and/or indirect sunlight to a room or rooms, or to the existing Solar Energy System of an Applicant's primary residence.
 - Y. *Thinning* shall mean the selective removal of entire branches from a Tree so as to improve visibility through the Tree and/or improve the Tree's structural condition.
 - Z. *Topping* shall mean eliminating the upper portion of the trunk or main leader of a Tree. Topping is not recommended in almost all cases.
 - AA. *Tree* shall mean any perennial plant growing on public or private property in the ground or in an above-ground container, with a self-supporting woody main stem or trunk. For purposes of this Chapter, "Tree" shall also include vegetation such as shrubs, Hedges, and bushes. References to "Tree" herein shall include both the singular and the plural form.

- BB. *Tree Owner* shall mean the Person who holds title of the real property for the Site of the Subject Tree, or the Person responsible for maintenance of the Subject Tree in accordance with Section 23.51.030 of this Chapter.
- CC. *Tree Removal* shall mean the elimination of any Tree from its present location.
- DD. *Trimming* shall mean the selective removal of portions of branches from a Tree to modify the Tree shape or profile or otherwise alter the Tree's appearance.

23.51.030 Private Property Owner Maintenance of Adjacent Trees Located in Public Right-of-Way.

The maintenance of any Tree located within the public right-of-way, between the improved street edge and the property boundary of a private lot, shall be the responsibility of the adjacent private property owner, and not the City. As such, the adjacent private property owner shall be considered the “Tree Owner” for purposes of this Chapter.

23.51.040 Process for Alleging Obstruction of Scenic Views and/or Sunlight.

A. Application Submission to City.

1. Any Person alleging Obstruction of Scenic Views and/or Sunlight may submit an Application to the City Department of Planning and Community Development, which shall contain the following information and may be subject to review and approval by the Director:
 - a. Uniform Development Application on a form provided by the City;
 - b. Trees, Scenic Views and Sunlight Supplemental Questionnaire on a form provided by the City;
 - c. Floor plan of the Applicant’s PLA depicting the direction of the Scenic Views and/or floor plan and building elevation plans depicting the source of Sunlight (e.g., windows, doors, or other transparent surfaces);
 - d. Photographic evidence taken from the Applicant’s PLA depicting both of the following:
 - (1) Pre-existing Scenic Views– Photograph must have been taken at some point in time during the timeframe set forth in Section 23.51.010(B)(2) of this Chapter to the present; and
 - (2) Alleged Obstruction of Scenic Views– Photograph must have been taken on or around the time of Application submittal;
 - e. Shade study demonstrating the amount and duration of the alleged Obstruction of Sunlight from a PLA or Solar Energy System (for Applications alleging Obstruction of Sunlight only); and

f. Tree survey of the Subject Tree(s) signed and/or stamped by a Certified Arborist and providing the following information, which may be subject to review and approval by the City's Arborist:

- (1) Species, common name and variety of the Subject Tree(s);
- (2) Physical measurements of the Subject Tree(s) (e.g., height and trunk circumference at two (2) feet above the natural grade);
- (3) Approximate age of the Subject Tree(s);
- (4) Overall health and structural condition of the Subject Tree(s);
- (5) Life expectancy and suitability for preservation of the Subject Tree(s);
- (6) Desired Restorative Action, anticipated impact of such Restorative Action on the Subject Tree(s), and recommended maintenance activities (if any) for the long-term preservation of Applicant's Scenic Views and/or Sunlight; and
- (7) Other recommendations for management of the Subject Tree(s) and/or pertinent information related to the Subject Tree(s).

If the Tree Owner does not grant Applicant's Certified Arborist access to the Site of the Subject Tree to conduct the tree survey required by this Subsection, then a tree survey shall be prepared containing as much of the above information as possible. Applicant's Certified Arborist may use other sources to obtain this information, such as photographs taken from other properties, satellite photographs from commercially-available sources, and public record permit information for work performed on the Tree Owner's property.

2. Together with the submission of an Application, the Applicant shall remit an Application fee to the City in an amount established by Ordinance or Resolution of the City Council.
3. Upon review of the Application for completeness, the Director may request additional information, if necessary, within thirty (30) days following Application submittal.
4. The Application will not be deemed complete for further processing by the City until all materials required by this Section and any additional information requested by the Director have been submitted in a format deemed acceptable by the Director.
5. By submitting an Application to the City, Applicant agrees to allow City staff and/or the Tree Owner to personally enter upon Applicant's property (under Applicant's supervision) to view and photograph the alleged Obstruction of Scenic Views from the Applicant's PLA, or in case of sunlight obstruction, from the affected room(s) and/or Solar Energy System.
6. Group Applications are not permitted. A single Application must be submitted for each Person alleging Obstruction of Scenic Views and/or Sunlight. Each Application will be considered on an individual basis at a public hearing before the Planning Commission, or City Council on appeal.

B. Mediation Efforts.

1. Together with the information required under Subsection (A) of this Section, Applicant shall also submit documentation to the City demonstrating the following:
 - a. Applicant contacted the Tree Owner and made reasonable efforts to resolve the dispute alleging Obstruction of Scenic Views and/or Sunlight, including, at a minimum, offering to engage in Mediation.
 - b. Proof of Applicant's efforts to meet and confer with the Tree Owner shall include:
 - (1) Documented attempts offering to participate in Mediation (via certified mail, e-mail exchanges, text messages, etc.); and
 - (2) An explanation of whether such offers to participate in Mediation were declined in writing by the Tree Owner, or if Mediation was unsuccessful between the parties.
2. The Tree Owner's failure to respond to Applicant's offer for Mediation within thirty (30) days following receipt of the offer shall be deemed a refusal by the Tree Owner to participate in Mediation.
3. If the Tree Owner agrees to Mediation, the Mediation shall be completed within one hundred and eighty (180) days following Tree Owner's acceptance of Applicant's offer for Mediation, unless an extension is granted by the Director.

C. Notice to Tree Owner. Within thirty (30) days following receipt of a complete Application, City staff shall provide notice to the Tree Owner including the following information:

1. Copy of the Application and any other materials submitted by the Applicant;
2. Copy of this Chapter 23.51;
3. Statement notifying the Tree Owner that there is still time and an opportunity for the parties to resolve the dispute prior to the public hearing;
4. Statement encouraging the Tree Owner to participate in Mediation and informational materials associated with the Mediation process, such as a referral to the National Conflict Resolution Center; and
5. Notice that a written response to the Application may be submitted in advance of the public hearing for review by the Planning Commission, the deadline for any such response, and the anticipated date and time of the public hearing.

D. Public Hearing and Decision.

1. The Application shall be presented at a noticed public hearing conducted by the City of Del Mar Planning Commission. The public hearing procedures shall be consistent with those contained in Section 7.2 of the Planning Commission's adopted Policy Manual.

2. The Applicant and the Tree Owner shall each be allowed one (1) request for a postponement of the public hearing, provided that the written request is received by the Director at least fourteen (14) days prior to the scheduled hearing date.
3. At least ten (10) days prior to the scheduled public hearing date, notice shall be published and mailed to all real property owners of record located within three hundred (300) feet of the Applicant's property boundary and the Site of the Subject Tree.
4. During the public hearing, the Applicant and the Tree Owner shall each be allowed an opportunity to present testimony and evidence relating to the Application and the Subject Tree(s). The public shall also be given an opportunity to provide comment on the Application and the Subject Tree(s).
5. The Planning Commission shall issue a decision regarding the Application to determine whether an Obstruction of Scenic Views and/or Sunlight has occurred based on the criteria set forth in Section 23.51.060 of this Chapter.
 - a. The Planning Commission's decision shall be documented in the form of a Resolution.
 - b. If the Planning Commission finds in favor of the Applicant, the Planning Commission's Resolution shall also include the requirement to perform Restorative Action work in accordance with Section 23.51.080 of this Chapter. If desired, the Planning Commission may choose to appoint a subcommittee of the Planning Commission to work with City staff on the creation of a draft Restorative Action plan for consideration and action by the Planning Commission at a future meeting.
 - c. The Planning Commission's decision on the Application shall become final on the eleventh (11th) business day following the adoption of the Planning Commission's Resolution, unless appealed to the City Council in accordance with Section 23.51.100 of this Chapter.

23.51.050 Criteria for Determining Unreasonable Obstruction of Scenic Views.

- A. In considering whether an unreasonable Obstruction of Scenic Views has occurred pursuant to this Chapter, the Planning Commission, or City Council on appeal, shall determine whether the Subject Tree(s) obstructs the Applicant’s Scenic Views (observed from the Applicant’s PLA) by more than the permissible percentages listed for the type of Scenic Views identified in Table 1 of this Section.
- B. The Planning Commission, or City Council on appeal, shall be responsible for determining the type(s) of Scenic View and appropriate view angle upon which to base its review from those listed in Table 1 of this Section. In making this determination, the recommendation of staff may be considered.
- C. Scenic Views of a specific type (e.g., White Water, Blue Water, etc.) could possibly be observed from multiple vantage points and directions inside the Applicant’s PLA, resulting in several separated views of a similar type. When this occurs, the Planning Commission, or the City Council on appeal, shall consider the Scenic View to be the culmination of all (separated) views that can be observed within a 180-degree corridor from the PLA, and shall apply the allowable percentages of Obstruction accordingly.

Table 1

<u>ALLOWABLE SCENIC VIEW OBSTRUCTION – 180 DEGREE CORRIDOR</u>			
Type of Scenic View	Slot (< 45°)	Middle (45° – 90°)	Panorama (> 90°)
White Water	0 – 5 %	0 – 5 %	0 – 10 %
Blue Water	0 – 10 %	0 – 10 %	0 – 15 %
Horizon/Back Country	0 – 15 %	0 – 20 %	0 – 20 %

23.51.060 Findings for Determining Unreasonable Obstruction of Scenic Views and/or Sunlight.

- A. Obstruction of Scenic Views (from the Applicant’s PLA). To render a decision in favor of the Applicant regarding unreasonable Obstruction of Scenic Views, the Planning Commission, or City Council on appeal, shall make all of the following findings of fact:
 - 1. The Subject Tree(s) is/are located on the Tree Owner’s property, which is located within three hundred (300) feet of the Applicant’s property (also referred to herein as the “Site of the Subject Tree”);

-
2. The Applicant's Scenic View is consistent with the definition of "Scenic View" as provided in Section 23.51.020 of this Chapter;
 3. The Applicant's stated PLA is consistent with the definition of "Primary Living Area (PLA)" as provided in Section 23.51.020 of this Chapter;
 4. The Applicant has contacted the Tree Owner and made reasonable efforts to resolve the dispute alleging Obstruction of Scenic Views, as required by Section 23.51.040(B) of this Chapter;
 5. Consistent with Section 23.51.040(A) of this Chapter, the Applicant has provided photographic evidence of prior Scenic Views taken from the Applicant's PLA on or after the later of the following: (i) the date Applicant acquired Applicant's property; or (ii) August 1, 2002;
 6. Based on a review of the photographic evidence submitted by the Applicant, the Applicant's Scenic View has been reduced by more than the maximum allowed percentage of Obstruction listed in Table 1 under Section 23.51.050 of this Chapter; and
 7. Restoration of the Applicant's Scenic Views will not create an infringement on the Tree Owner's privacy that cannot be reasonably mitigated.
- B. Obstruction of Sunlight (to the Applicant's Solar Energy System). To render a decision in favor of the Applicant regarding unreasonable Obstruction of Sunlight to Applicant's existing Solar Energy System, the Planning Commission, or City Council on appeal, shall make the following findings of fact:
1. The Subject Tree(s) is/are located on the Tree Owner's property, which is located within three hundred (300) feet of the Applicant's property (also referred to herein as the "Site of the Subject Tree");
 2. The Applicant's Sunlight is consistent with the definition of "Sunlight" as provided in Section 23.51.020 of this Chapter;
 3. The Applicant's Solar Energy System is consistent with the definition of "Solar Energy System" as provided in Section 23.51.020 of this Chapter;
 4. The Applicant has contacted the Tree Owner and made reasonable efforts to resolve the dispute alleging Obstruction of Sunlight, as required by Section 23.51.040(B) of this Chapter;
 5. Consistent with Section 23.51.040(A) of this Chapter, the Applicant has provided photographic or other documentable evidence of prior Sunlight to the Solar Energy System taken on or after the later of the following: (i) date Applicant acquired Applicant's property; or (ii) ten (10) years prior to the submittal date of a complete Trees, Scenic Views and Sunlight application;
 6. The Applicant has provided an exhibit demonstrating the amount and duration of the Obstruction of Sunlight in a graphic format, such as a shadow study, as required by Section 23.51.040(A) of this Chapter;
 7. Based on a review of the photographic evidence and exhibit submitted by the Applicant, the Subject Tree(s) cast(s) a shadow on the Applicant's Solar Energy System that is greater than ten
-

percent (10%) of the Solar Energy System absorption area at any time between 10:00 a.m. and 2:00 p.m., Pacific Standard Time (PST); and

8. Restoration of Sunlight to the Applicant's Solar Energy System will not create an infringement on the Tree Owner's privacy that cannot be reasonably mitigated.
- C. Obstruction of Sunlight (to a room or rooms of the Applicant's primary residence). To render a decision in favor of the Applicant regarding unreasonable Obstruction of Sunlight to one or more rooms in the Applicant's primary residence, the Planning Commission, or City Council on appeal, shall make the following findings of fact:
1. The Subject Tree(s) is/are located on the Tree Owner's property, which is located within three hundred (300) feet of the Applicant's property (also referred to herein as the "Site of the Subject Tree");
 2. The Applicant's Sunlight is consistent with the definition of "Sunlight" as provided in Section 23.51.020 of this Chapter;
 3. The Applicant has contacted the Tree Owner and made reasonable efforts to resolve the dispute alleging Obstruction of Sunlight, as required by Section 23.51.040(B) of this Chapter;
 4. Consistent with Section 23.51.040(A) of this Chapter, the Applicant has provided photographic or other documentable evidence of prior Sunlight to one or more rooms taken on or after the later of the following: (i) the date Applicant acquired Applicant's property; or (ii) ten (10) years prior to the submittal date of a complete Trees, Scenic Views and Sunlight application;
 5. The Applicant has provided an exhibit demonstrating the amount and duration of the Obstruction of Sunlight in a graphic format, such as a shadow study, as required by Section 23.51.040(A) of this Chapter;
 6. Based on a review of the photographic evidence and exhibit submitted by the Applicant, the Subject Tree(s) cast(s) shadows greater than fifty percent (50%) of the total window glazing of a room or rooms within the Applicant's primary residence at any time between 10:00 a.m. and 2:00 p.m., Pacific Standard Time (PST); and
 7. Restoration of Sunlight to the sunlight obstructed room or rooms will not create an infringement on the Tree Owner's privacy that cannot be reasonably mitigated.

23.51.070 Criteria for Determining Appropriate Restorative Action.

After it has been determined through the hearing process that an unreasonable Obstruction has occurred, then the following unweighted factors may be considered by the Planning Commission, or City Council on appeal, in determining the appropriate Restorative Action:

- A. Any hazards posed by the Subject Tree(s) to any Persons or structures on the Applicant's property, including, but not limited to, fire danger, as determined by a City Fire Official, and the danger of falling limbs or Trees, as determined by a Certified Arborist;

-
- B. The variety of the Subject Tree(s), its/their projected rate of growth and maintenance requirements;
 - C. The aesthetic quality of the Subject Tree(s), including but not limited to, species characteristics, size, growth, form and vigor;
 - D. The location of the Subject Tree(s) with respect to overall appearance, design and/or use of the Site of the Subject Tree(s);
 - E. Soil stability provided by the Subject Tree(s) considering soil structure, degree of slope and extent of the Subject Tree's root system per a report from a soils engineer licensed by the State of California;
 - F. Privacy (visual and auditory) and wind screening provided by the Subject Tree(s) to the Tree Owner and neighbors of the Tree Owner;
 - G. Energy conservation and/or climate control provided by the Subject Tree(s);
 - H. Wildlife habitat provided by the Subject Tree(s);
 - I. Whether the Subject Tree(s) is/are considered a "Protected Tree", as defined herein and in Chapter 23.50 (Trees) of this Municipal Code;
 - J. The value of the Subject Tree(s) to the community/neighborhood;
 - K. Whether the Subject Tree(s) is/are located on or in the public right-of-way or City-owned property; and
 - L. Whether the Subject Tree(s) has/have been deemed "discouraged" or undesirable by the City, as provided in the City's Public Tree Policy Manual.

23.51.080 Determination of Restorative Action Work to be Performed.

- A. Consideration of Recommendations. In determining the type(s) of Restorative Action work to be performed under this Chapter, the Planning Commission, or City Council on appeal, shall first consider any recommendation(s) made by City staff, which could include recommendation(s) from a Certified Arborist retained by the Applicant, Tree Owner and/or City.
- B. Types of Restorative Action. Restorative Action work may include, but is not limited to, any of the following (in order of preference):
 - 1. Crown Cleaning. Removing dead, dying, diseased and broken branches from the crown of the Subject Tree(s).
 - 2. Lacing/Thinning. Lacing is the preferred pruning technique, which removes excess foliage within the canopy, improves general views through the Subject Tree(s), and can improve the structure of the Subject Tree(s).

-
3. Crown Raising. Selectively removing the lower limbs from the crown of the Subject Tree(s).
 4. Crown Reduction/Shaping. Crown Reduction/Shaping of the Subject Tree(s) is preferable to Topping or Tree Removal, if it is determined that the impact of Crown Reduction/Shaping would not destroy the visual proportions of the Subject Tree(s), adversely affect the Subject Tree's growth pattern or health, or otherwise constitute a detriment to the Subject Tree(s).
 5. Heading Back. Heading Back should only be permitted if all of the following apply:
 - a. The Subject Tree(s) is/are specifically planted and maintained as a Hedge, espalier, bonsai, or in pollard form;
 - b. Restorative Actions 1 through 4 of this Section will not accomplish the intended Restorative Action; and
 - c. Subsequent growth characteristics will not create a future Obstruction of greater proportions.
 6. Tree Removal. Tree Removal of the Subject Tree(s) may be considered when the above-mentioned Restorative Actions are judged to be ineffective. Where Tree Removal is required, replacement by appropriate species shall be considered by the Planning Commission, or City Council on appeal for feasibility, but is not required.
 7. Stand Thinning. The removal of a portion of the total number of Trees from a grove of Trees on the Site of the Subject Tree, including the removal of the Subject Tree(s), without any replacement plantings.

In cases where Trimming or any other type(s) of Restorative Action work may affect the health of a Tree that is intended to be preserved or trees the vicinity, such Restorative Action work shall be carried out in accordance with the standards established by the International Society of Arboriculture (ISA) for use in the State of California and under the supervision of a Certified Arborist. Severe Pruning should be avoided due to the damage that such practices can cause to a Tree's form and health.

- C. Written Conditions. Restorative Action imposed by the Planning Commission, or City Council on appeal, may also include written conditions (such as ongoing maintenance), and directions as to the appropriate timing of such conditions.
 - D. Ongoing Maintenance. If ongoing maintenance is required by the Planning Commission, or City Council on appeal, as part of the Restorative Action work to be performed, then such ongoing maintenance shall be performed according to the time schedule (e.g., annually, bi-annually, etc.) established by the Planning Commission, or City Council on appeal. On each such occasion that ongoing maintenance is scheduled to occur, the procedures set forth in Section 23.51.090(E) of this Chapter shall apply.
 - E. Consistency with Chapter. The performance of any Restorative Action work required under this Chapter shall be performed consistent with all other provisions of this Chapter.
-

-
- F. Timeline for Compliance. Any Restorative Action work required under this Chapter shall be performed no later than the timelines set forth in Section 23.51.090 of this Chapter, unless an exception applies, as follows:
1. An exception applies if it is determined by the Planning Commission, or City Council on appeal, that it would be less harmful to the Subject Tree(s) for the Restorative Action work to occur at a specific time of the year.
 2. If it is determined that an exception applies, then the Restorative Action work shall be performed no later than ninety (90) days following the specific date set forth by the Planning Commission, or City Council on appeal.

23.51.090 Allocation of Costs and Procedures for the Payment of Restorative Action Work.

- A. Responsibility for Application Fees and Related Costs. The Applicant shall be responsible for the Application fee(s) owed to the City, and any other fees and costs relating to providing the required Application materials to the City, including other information requested by the City to review and process the Application, as well as the costs associated with the public noticing requirement under Section 23.51.040(D) of this Chapter.
- B. Responsibility for Costs of Initial Restorative Action Work. When Restorative Action is required by the Planning Commission, or City Council on appeal, the costs for the initial Restorative Action work required to be performed under this Chapter (excluding any ongoing maintenance) shall be as follows:
1. The Applicant and the Tree Owner shall each pay fifty percent (50%) of all costs associated with the initial Restorative Action work, which includes the full cost of the Tree Survey required by DMMC Section 23.51.040(g), unless an exception applies, as set forth below.
 2. The Tree Owner shall pay one hundred percent (100%) of all costs associated with the initial Restorative Action work, which includes the full cost of the Tree Survey required by DMMC Section 23.51.040(g), if the Planning Commission, or City Council on appeal, makes a determination that:
 - a. The Tree Owner has refused to participate in good faith attempts to resolve the dispute as required by Section 23.51.040(B) of this Chapter; and/or
 - b. The Subject Tree constitutes a hazard to the safety of the Applicant and/or the Applicant's property, and is being maintained by the Tree Owner in disregard for the safety of others and/or property.
- C. Responsibility for Costs of Ongoing Maintenance. The Tree Owner shall pay one hundred percent (100%) of all costs associated with any ongoing maintenance of the Subject Tree(s) required by the Restorative Action plan approved by the Planning Commission, or City Council on appeal, whether or not the Applicant paid any or all of the costs for the initial Restorative Action work.
- D. Procedures for Payment, Scheduling and Completion of Initial Restorative Action Work.

1. Applicant Partially Responsible for Costs of Initial Restorative Action Work. When the Applicant is partially responsible for the cost of the initial Restorative Action work as set forth in Subsection (B)(1) of this Section, then the following procedures shall be enacted:

- a. For any initial Restorative Action work, the Tree Owner shall submit to the City two (2) itemized written cost estimates for performing the initial Restorative Action work. The estimates shall be prepared by licensed and insured landscape or Tree service contractors, under the supervision of a Certified Arborist, and acceptable to the City. The estimates shall be submitted to the City within thirty (30) days following the adoption of the Resolution approving the Restorative Action plan. The estimates shall be subject to review for acceptance by the Director. The Director reserves the right to consult with a Certified Arborist retained by the City if both of the estimates appear to be substantially above the professional average for such services, and in that case, the Tree Owner shall be responsible for reimbursing the City for the cost of consultation with the City Arborist and may be required to submit additional estimates to the City.
- b. Estimates provided by the Tree Owner shall only include, and the Applicant shall only be responsible for, payment of costs to perform the initial Restorative Action work (excluding any ongoing maintenance) as required by the Planning Commission, or City Council on appeal. Such costs may include debris removal/recycling fees, and the purchase and installation of mitigation Trees (if required by the Planning Commission, or City Council on appeal). Applicant shall not be responsible for any other costs associated with the Restorative Action work required to be performed, including, but not limited to, tarping, removal and/or replacement of fencing, walls or other improvements to bring equipment onto the Site of the Subject Tree, temporary relocation and re-installation or removal and replacement of appurtenances, structures, fixtures and other improvements on the Site of the Subject Tree, and/or any other costs not directly related to the costs of performing the Restorative Action work, as required by the Restorative Action plan approved by the Planning Commission, or City Council on appeal.
- c. Within fifteen (15) days following the Director's acceptance of the cost estimates submitted by the Tree Owner, the Applicant shall deposit with the City an amount equal to the cost percentage required to be paid by the Applicant pursuant to Subsection (B) of this Section, using the lower amount of the two cost estimates. Failure of the Applicant to timely make the required deposit within these fifteen (15) days will render the City's Resolution requiring the Restorative Action work to become null and void.
- d. Once the Applicant's deposit is received by the City, the Tree Owner shall, at the Tree Owner's sole discretion, choose which one of the two companies that submitted estimates accepted by the Director will perform the initial Restorative Action work, and shall notify the City of its decision. Within thirty (30) days following the City's receipt of the Applicant's deposit (or such other period of time as the Planning Commission, or City Council on appeal, may determine to be reasonable and appropriate), the Tree Owner shall schedule the initial Restorative Action work to be completed. If the Tree Owner does not have the initial Restorative Action work completed within thirty (30) days or within the time-period indicated by the Planning Commission, or City Council on appeal, then the City may pursue

any and all available remedies and enforcement mechanisms against the Tree Owner, in accordance with Section 23.51.110 of this Chapter.

- e. The Tree Owner shall notify the City in advance of the date and time that the initial Restorative Action work is scheduled to take place. City staff, or a qualified third party designated by the City, shall inspect the initial Restorative Action work, upon completion, to determine whether the work complies with and satisfies the requirements and conditions contained in the Restorative Action plan. The City's inspection of the initial Restorative Action work shall be scheduled for a time when the contractors performing the initial Restorative Action work are still present at the Site of the Subject Tree and available to perform additional work, if deemed required by the City. The final determination of compliance with and satisfaction of the Restorative Action plan is made by the Director.
 - f. Following City approval of the initial Restorative Action work, the Tree Owner shall submit a copy of an invoice for the work performed to the City. Upon submittal of the invoice, the City shall transmit the funds held in the City's deposit account to the Tree Owner.
2. Tree Owner Fully Responsible for Costs of Initial Restorative Action Work. When the Tree Owner is fully responsible for the cost of the initial Restorative Action as set forth in Subsection (B)(2) of this Section, then the following procedures shall be enacted:
- a. The initial Restorative Action work shall be completed within thirty (30) days following adoption of the Resolution approving the Restorative Action plan (or such other period of time as the Planning Commission, or City Council on appeal, may determine to be reasonable and appropriate). If the Tree Owner does not have the initial Restorative Action work completed within the time-period indicated by the Planning Commission or within thirty (30) days, then the City may pursue any and all available remedies and enforcement mechanisms against the Tree Owner, in accordance with Section 23.51.110 of this Chapter.
 - b. The Tree Owner shall notify the City in advance of the date and time that the initial Restorative Action work is scheduled to take place. City staff, or a qualified third party designated by the City, shall inspect the initial Restorative Action work, upon completion, to determine whether the work complies with and satisfies the requirements and conditions contained in the Restorative Action plan. The City's inspection of the initial Restorative Action work shall be scheduled for a time when the contractors performing the initial Restorative Action work are still present at the Site of the Subject Tree and available to perform additional work, if deemed required by the City. The final determination of compliance with and satisfaction of the Restorative Action plan is made by the Director.
- E. Procedures for Scheduling and Completion of Ongoing Restorative Action Work.
- 1. Any ongoing maintenance required as part of the Restorative Action plan shall be completed according to the time schedule (e.g., annually, bi-annually, etc.) established by the Planning Commission, or City Council on appeal. If the Tree Owner does not timely complete the ongoing maintenance work, then the City may pursue any and all available remedies and enforcement mechanisms against the Tree Owner, in accordance with Section 23.51.110 of this Chapter.

-
2. The Tree Owner shall notify the City in advance of the date and time that the ongoing maintenance work is scheduled to take place. City staff, or a qualified third party designated by the City, shall inspect the ongoing maintenance work upon its completion to determine whether the work complies with and satisfies the requirements and conditions contained in the Restorative Action plan. The City's inspection of the ongoing maintenance work shall be scheduled for a time when the contractors performing the work are still present at the Site of the Subject Tree and available to perform additional work, if deemed required by the City. The final determination of compliance with and satisfaction of the Restorative Action plan is made by the Director.

23.51.100 Appeal.

- A. The Planning Commission's decision under this Chapter shall become final on the eleventh (11th) business day following the adoption of the Planning Commission's Resolution documenting the decision, unless the decision is appealed pursuant to this Section.
- B. The Planning Commission's decision may be appealed to the City Council consistent with the appeal provisions of this Municipal Code.
- C. The provisions of Section 1094.6 of the California Code of Civil Procedure are applicable to judicial review of any final decision made by the City of Del Mar pursuant to this Chapter.

23.51.110 Enforcement.

Failure to comply with any provision under this Chapter shall constitute a misdemeanor or infraction, punishable in accordance with the provisions of Chapter 1.08 of this Municipal Code, and is further declared to be a public nuisance that may be enjoined or abated as provided by law.

23.51.120 Liability.

- A. The City shall not be liable for any claims, demands, causes of actions, damages, injuries, litigation, costs, and/or liability arising out of or related to any agreement, decision, determination, or order concerning claims relating to Scenic Views and/or Sunlight that may result from Mediation or litigation.
- B. Under no circumstances shall the City have any responsibility or liability to enforce or seek any legal redress (civil or criminal) for any agreement, decision, determination, or order that any other Person or entity makes concerning claims relating to Scenic Views and/or Sunlight.

23.51.140 Limitations.

- A. It is not the intent of the City in adopting this Chapter to affect obligations imposed by an existing easement or a valid pre-existing covenant or agreement between private parties.
- B. Nothing in the Chapter shall deny private parties the right to seek remedial action for any Imminent Danger caused by any Tree(s).

23.51.150 Process for Alleging Obstruction of Scenic Views and/or Sunlight by City Trees.

The below provisions shall apply when any Person alleges Obstruction of Scenic Views and/or Sunlight caused by City Trees. The process for determining whether an unreasonable Obstruction of Scenic Views and/or Sunlight has occurred as a result of City Trees is set forth below.

A. Application Submittal.

1. Any Person who believes that the growth, improper maintenance and/or installation of a City Tree has caused an unreasonable Obstruction of Scenic Views and/or Sunlight may submit an Application to the City in accordance with the provisions of Section 23.51.040(A) of this Chapter.
2. Together with the submission of an Application, the Applicant shall remit an Application fee to the City in an amount established by Ordinance or Resolution of the City Council.
3. Upon review of the Application for completeness, the Director may request additional information, if necessary, within thirty (30) days following Application submittal.
4. The Application will not be deemed complete for further processing by the City until all materials required by this Section and any additional information requested by the Director have been submitted in a format deemed acceptable by the Director.

B. City's Review of the Alleged Obstruction. Upon receipt of a complete Application, the Director, in consultation with the City's Public Works Director and/or a City Arborist, shall:

1. Review and evaluate the Application to determine whether the required findings of fact can be made pursuant to Section 23.51.060 of this Chapter;
2. Perform a site visit to the Applicant's PLA, room or rooms affected by Sunlight Obstruction, or Solar Energy System; and
3. Consider the public interest in maintaining the public environment created by the existing City Tree(s) and its/their contribution to the community character.

C. City's Decision and Public Notice.

1. The Director shall approve or deny the Application by written decision within thirty (30) days following the Application has been deemed complete.
2. The Director's written decision shall specify findings of fact for Application approval or denial as provided in Section 23.51.060 of this Chapter.
3. Approval of an Application under this Section shall include appropriate Restorative Action based on a recommendation by City staff working in consultation with a City Arborist. The Restorative Action plan shall consider the criteria set forth in Section 23.51.070 of this Chapter, shall be consistent with Section 23.51.080 of this Chapter, and shall involve the least amount of impact necessary to the overall aesthetic of the City Tree(s).

-
4. If the Restorative Action plan requires Tree Removal of a Protected City Tree, the City shall provide public notice of the Director's decision, as follows:
 - a. Notice shall be posted on the City's website and mailed to all owners of real property located within three hundred (300) feet of the location of the City Tree(s).
 - b. Notice shall include a number assigned to the Application, a description of the City Tree(s) causing an Obstruction of Applicant's Scenic Views and/or Sunlight, and information on the process for appealing the Director's decision.
 5. The Director's decision shall become final on the eleventh (11th) business day following the date of the posted/mailed public notice, unless appealed.
- D. Appeal of Director's Decision. For purposes of this Section only, the Director's decision may be appealed to the Planning Commission pursuant to the provisions of this Municipal Code. The Planning Commission's decision shall become final on the eleventh (11th) business day following the adoption of the Planning Commission's Resolution, unless appealed to the City Council in accordance with Section 23.51.100 of this Chapter.
- E. Procedures for Restorative Action Work and Allocation of Costs.
1. If any Restorative Action work is required to be performed in accordance with this Section, the City and the Applicant shall each be responsible for paying fifty percent (50%) of the cost to perform the Restorative Action work.
 2. Within thirty (30) days following the date the Director's written decision approving the Application, City staff shall provide the written decision to the City's contracted tree maintenance company to obtain a cost estimate for the performance of the Restorative Action work.
 3. Upon receipt of the cost estimate for the performance of the Restorative Action work, City staff shall provide the Applicant with an invoice for fifty percent (50%) of the total cost estimate.
 4. Within fifteen (15) days following receipt of the invoice from the City, the Applicant shall remit the full invoiced amount to the City as a deposit for the performance of the Restorative Action work. Failure of the Applicant to timely make the required deposit within these fifteen (15) days will render the Director's decision requiring the Restorative Action work to become null and void.
 5. Upon completion of the Restorative Action work, the deposited funds shall be used towards payment of the Applicant's fifty percent (50%) share of the total cost to perform the Restorative Action work.
 - a. If the final cost of the Restorative Action work is less than the initial estimate, any unused amount of the deposit shall be returned to the Applicant.
 - b. If the final cost of the Restorative Action work exceeds the initial estimate, the City shall provide the Applicant with an invoice for the remaining amount owed by the Applicant.
-

Within fifteen (15) days following receipt of the invoice, the Applicant shall remit to the City the remaining amount of the Applicant's share owed to the City.

TSVS Code/Process Update **“Guiding Principles”** *(Accepted by City Council on 10/7/2024)*

1. Ensure administration of the new regulations will not overburden City resources (including staff/legal resources);
2. Establish objective application criteria and processing framework;
3. Rely upon precise, objective, and documentable decision findings to reduce appeals and legal challenges to the greatest extent possible;
4. Incorporate a clear and expedited process for applications involving “City” and “Protected” trees;
5. Ensure an equitable cost allocation process to initiate the view/sunlight restoration process, perform view restoration work, and maintain restored scenic views;
6. Encourage and create a pathway for neighbors to seek an alternative route to successful dispute resolution outside of the City TSVS process;
7. Balance and acknowledge the needs of private view/sunlight protection with all benefits provided by tree and vegetation growth, the goals of the Climate Action Plan, the goals and provisions of the Design Review process and the City’s tree policies and regulations;
8. Address the applicability of “accidental” views (downed trees, fire impacts, etc.) and “good neighbor” view creation in the context of view rights established by the regulations;
9. Provide an objective balance between the privacy provided by hedges and a neighbor’s established scenic views and/or sunlight through consideration of height regulations.



City of Del Mar Agenda Report

TO: Honorable Mayor and City Councilmembers

FROM: Matt Bator, AICP, Principal Planner
Karen Brindley, Planning and Community Development Director
Via Ashley Jones, City Manager

DATE: December 2, 2024

SUBJECT: Identification of Issues for Updating the Trees, Scenic Views, and Sunlight Regulations

REQUESTED ACTION/RECOMMENDATION:

Staff recommends the City Council receive an informational update and provide feedback and direction regarding proposed issue areas to be amended in the City's Trees, Scenic Views, and Sunlight regulations.

BACKGROUND:

The City Council Work Plan for Fiscal Year 2024-2025 includes updating Del Mar Municipal Code (DMMC) Chapter 23.51, also known as the Trees, Scenic Views, and Sunlight (TSVS) Ordinance, and the City's Tree Policy Manual and associated code/regulations (DMMC Chapter 23.50) with the goal of protecting and enhancing the City's urban forest tree canopy while managing the City's wildfire risk.

On October 7, 2024, staff presented to the City Council nine "guiding principles" to inform and influence the updating of the TSVS. The City Council received public testimony, discussed the draft guiding principles, and provided additional direction to ensure that the preservation of "sunlight," in addition to scenic views, is given equal weight in the guiding principles and revisions to the TSVS regulations. The guiding principles have been included as Attachment A.

DISCUSSION:

Since the City Council's acceptance of the guiding principles, staff has evaluated the reoccurring issues that have arisen while processing TSVS applications since the original adoption of the TSVS Ordinance (No. 747) in July 2002. Additionally, staff has reviewed information and reports pertaining to view regulations in twenty-seven (27) other jurisdictions, identifying common implementation issues and how the respective regulations have been modified and improved over time.

Through this research staff has identified a series of amendments/revisions that implement the guiding principles and the direction they provide for improvement of Del Mar's TSVS regulations, process, and procedures. Staff also met with the City Council's

City Council Action:

NO ACTION TAKEN

Planning Process Subcommittee (Mayor Druker and Deputy Mayor Gaasterland) as part of this issue identification process.

Of the five issue areas identified, staff is seeking early input and direction prior to proceeding with draft language for introduction of an ordinance to amend the TSVS regulations (DMMC Chapter 23.51). The five specific issues are related to: 1) the time period for which view restoration can be sought; 2) required findings for determining unreasonable scenic view and/or sunlight obstruction; 3) cost apportionment; 4) claims against City trees; and 5) unregulated hedge heights. Staff review and discussion of these issue areas is provided in Attachment B, and each discussion includes a specific policy question, associated background information, staff’s recommendation, and the guiding principles that apply. Following the five policy inquiries is a list of additional sections and components of the TSVS regulations identified for proposed revision.

Staff requests that the City Council review and provide feedback and direction as to whether staff should proceed with drafting amendments to DMMC Chapter 23.51 as indicated and recommended in Attachment B.

FISCAL IMPACT:

There is no fiscal action to be taken by the City Council related to this agenda item.

ENVIRONMENTAL IMPACT:

There is no environmental impact on receiving the report. The proposed City Council action does not constitute a “project” under the definition set forth in the California Environmental Quality Act (CEQA) Guidelines Section 15378 because it will not have a potential to result in a direct or indirect physical change in the environment and is not subject to CEQA.

NEXUS TO CITY COUNCIL GOALS AND PRIORITIES:

Updating the Trees, Scenic Views, and Sunlight Ordinance is an identified Tier 2 Council priority for Fiscal Year 2024-25.

ATTACHMENTS:

- Attachment A – TSVS Update Guiding Principles
- Attachment B – Identification of TSVS Issues and Potential Revisions

TSVS Code/Process Update
“Guiding Principles”
(Accepted by City Council on 10/7/2024)

1. Ensure administration of the new regulations will not overburden City resources (including staff/legal resources);
2. Establish objective application criteria and processing framework;
3. Rely upon precise, objective, and documentable decision findings to reduce appeals and legal challenges to the greatest extent possible;
4. Incorporate a clear and expedited process for applications involving “City” and “Protected” trees;
5. Ensure an equitable cost allocation process to initiate the view/sunlight restoration process, perform view restoration work, and maintain restored scenic views;
6. Encourage and create a pathway for neighbors to seek an alternative route to successful dispute resolution outside of the City TSVS process;
7. Balance and acknowledge the needs of private view/sunlight protection with all benefits provided by tree and vegetation growth, the goals of the Climate Action Plan, the goals and provisions of the Design Review process and the City’s tree policies and regulations;
8. Address the applicability of “accidental” views (downed trees, fire impacts, etc.) and “good neighbor” view creation in the context of view rights established by the regulations;
9. Provide an objective balance between the privacy provided by hedges and a neighbor’s established scenic views and/or sunlight through consideration of height regulations.

TSVS Issue Identification for Code Amendment

Issue #1: Rights Established (DMMC §23.51.030)

“A person shall have the right to seek restoration and preservation of Scenic Views or Sunlight that existed at the time they purchased or occupied a property or in the last ten years, whichever is shorter...”

Policy Question - Should the “ten-year” criteria be kept, changed, or eliminated?

- Most view Ordinances allow for view rights dating back to property purchase, Ordinance adoption, or both.
- In order for residents to be able to use the new TSVS Ordinance to restore views obstructed prior to its adoption, the (then) City Council determined that going back ten years was an appropriate amount of time.
- Del Mar is the only city with a view Ordinance that provides a specified time limit in addition to the purchase/occupancy date.
- When the regulations were being created, it was important to the Council that property buyers would not have a right to a view that didn’t exist at the time of purchase.

Staff Recommendation – Replace “ten years” with “the adoption of Ordinance No. 747 (July 1, 2002). This will allow residents to seek restoration of scenic views and/or sunlight obstructed since the time they purchased the property, or since adoption of the TSVS process, whichever timeframe is shorter.

Associated Guiding Principle - #1 Ensure administration of the new regulations will not overburden City resources (including staff/legal resources)

Issue #2: Standards of Determining Unreasonable Obstruction (Findings) are not Objective

Policy Question - Should the criteria in the City’s Design Guidelines and California Solar Shade Control Act be used to make the Standards of Review “objective?”

- 100% view restoration was never the intent of the TSVS Ordinance, otherwise the word “unreasonable” would not have been incorporated as a metric.
- Objective criteria for view obstruction have already been adopted by City Council for proposed projects subject to Design Guidelines and considered by the Design Review Board.
- California Solar Shade Control Act criteria can be referenced to locally enforce existing State Code.
- DMMC §23.51.050(B) (“Standards for Determining Unreasonable Obstruction”) factors 8-17 are already stated in DMMC §23.51.060 as “Criteria for Determining Appropriate Restorative Action.”

- Thirty-six (36) applications have been submitted to the City in twenty-two (22) years since the regulations became effective:
 - Fifteen (15) resulted in City decisions (including five being denied); and
 - Only one (1) out of ten (10) determinations of unreasonable view obstruction resulted in an order to remove a tree (Deftos/White).
 - Updated application submittal materials will include photographic documentation and exhibits that visually calculate the percentage of obstruction.

Staff Recommendation – Narrow the “Standards of Review” down to specific, objective, verifiable findings of fact (5 or 6) for each view obstruction scenario (Scenic View, Sunlight to Solar Panels, Sunlight to Primary Living Area (PLA)).

Associated Guiding Principles:

#1 Ensure administration of the new regulations will not overburden City resources (including staff/legal resources); and #2 Establish objective application criteria and processing framework”

Issue #3: Allocation of Costs

Policy Question – Should some of the cost burden of the TSVS process be shifted to the Tree Owner and if so, how?

- The original apportionment of assigning all of the financial burden on the Applicant has been changed or updated by most jurisdictions to include the Tree Owner to some degree.
- Assigning part of the cost burden on the Tree Owner will encourage alternative conflict resolution.
- Improvement of the TSVS process by requiring more technical information at submittal, being more objective, and reducing staff time should reduce application costs.

Staff Recommendation - Inclusion of the following revisions:

- A. Application fee should remain the responsibility of the Applicant.
- B. Restoration cost is split 50/50 for Trees/Vegetation planted or sprouted after July 1, 2002 (initial adoption of TSVS Ordinance).
- C. Tree Owner pays 100%:
 - i. When refuses to resolve early or mediate;
 - ii. Plants tree/vegetation against written objection of neighbor (Applicant);
 - iii. For all on-going maintenance trimming in accordance with Restoration Plan; and
 - iv. Applicant pays 100% for all other circumstances.
- D. The applicant pays restoration costs in all other cases.

Associated Guiding Principles - #5 Ensure an equitable cost allocation process to initiate the view/sunlight restoration process, perform view restoration work, and maintain restored scenic views; and #6 Encourage and create a pathway for neighbors to seek an alternative route to successful dispute resolution outside of the City TSVS process

Issue #4: View/Sunlight Obstruction by City Trees

Policy Question – How should TSVS claims be handled when the obstruction is caused by City trees?

- City has been a “good neighbor” relative to the TSVS process, working with residents to resolve the view blockage concern through the Encroachment Permit process, allowing the Applicant to trim City trees in order to restore views when appropriate.
- The City’s process for addressing City trees is not defined in the Ordinance.
- Trimming and cost have always been resident responsibility, but City trimming could be a consideration to discuss when the subject tree is identified for routine City trimming within the next trimming cycle.

Staff Recommendation – Differentiate City trees that are in the right-of-way fronting a private property vs. City trees in parks, medians, and City-owned lots. Residents are responsible for trees between the street and their property line. For “City Trees,” create new DMMC subsection that includes a process similar to TSVS that uses the Encroachment Permit process, making the TSVS determination a staff decision, appealable to the City Council.

Associated Guiding Principle - #4 Incorporate a clear and expedited process for applications involving “City” and “Protected” trees

Issue #5: Hedge Height Regulations

Policy Question - Should the City consider creating regulatory height limits for hedges, similar to or the same as fence heights regulations?

- Thirteen (13) of twenty-six (26) jurisdictions with View Ordinances surveyed also have hedge height restrictions.
- Most jurisdictions with hedge regulations consider hedges the same as fences in the front, rear and side yard setbacks.
- Need to consider how existing over-height hedges would be addressed.
- Approximately 1/3 of all TSVS application submitted since 2002 involved hedges or hedge-like plantings of trees.
- Could add “hedges” where applicable in DMMC Section 30.86.090.A.1-3 (Fences/Retaining Walls), and this would not require a Local Coastal Program Amendment (LCPA).

Staff Recommendation – Regulate hedges with heights found to be appropriate by the City Council. Incorporating hedges into DMMC §30.86.090 would not allow hedges to exceed six (6) feet in most setback areas, solving traffic sightline issues, “tunnel effect” on streets, etc. Hedges taller than the fence/wall regulations could be planted in the “buildable” area of the lot and would be more susceptible to TVSV claims.

Associated Guiding Principle - #9 Provide an objective balance between the privacy provided by hedges and a neighbor’s established scenic views and/or sunlight through consideration of height regulations

Additional Proposed TSVS Amendments/Revisions

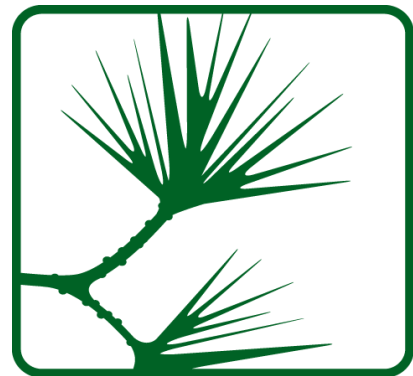
The following have been identified as proposed revisions to the TSVS regulations, process, and procedures.

- A. Various revisions and additions to definitions section of Del Mar Municipal Code Chapter 23.51 (TSVS).
- B. Prohibit “group” applications (multiple properties seeking restoration)
- C. Require application materials to include a tree report and restoration recommendation from a certified arborist (at the cost of the applicant).
- D. Add allowances and limitations on requested postponements of the public hearing.
- E. Prohibit significantly excessive restoration costs.
- F. Transfer oversight of Restorative Action from Planning staff to a 3rd Party.

Item 10

Issue Identification for an Update to the Trees, Scenic Views, and Sunlight (TSVS) Regulations

December 2, 2024



CITY OF
DELMAR

October 6, 2025

Background/Purpose

- On October 7, 2024, staff presented to the City Council nine “guiding principles” to inform and influence the updating of the TSVS. The City Council received public testimony, discussed the draft guiding principles, and provided additional direction to ensure that the preservation of “sunlight,” in addition to scenic views, is given equal weight in the guiding principles and revisions to the TSVS regulations.
- Evaluation of the TSVS regulations has identified many reoccurring issues to be addressed in an amendment to DMMC Chapter 23.51.
- Staff is seeking early City Council input and direction for five (5) specific issue areas at this time:
 - 1) The time-period for which view restoration can be sought
 - 2) Required findings for determining unreasonable scenic view and/or sunlight obstruction
 - 3) Cost apportionment
 - 4) Claims against City trees
 - 5) Hedge height regulations

Issue #1 – Established Rights

Policy Question – In DMMC Section 23.51.030, should the “ten-year” criteria be kept, changed, or eliminated?

*“A person shall have the right to seek restoration and preservation of Scenic Views or Sunlight that existed at the time they purchased or occupied a property or in the last **ten years**, whichever is shorter...”*

Staff Recommendation – Replace “ten years” with “the adoption of Ordinance No. 747 (July 1, 2002). This will allow residents to seek restoration of scenic views and/or sunlight obstructed since the time they purchased the property, or since adoption of the TSVS process, whichever timeframe is shorter.

Associated Guiding Principle:

#1 Ensure administration of the new regulations will not overburden City resources (including staff/legal resources)

Issue # 2 - Required Findings

Policy Question - Should the criteria in the City's Design Guidelines and California Solar Shade Control Act be used to make the Standards of Review "objective?"

Staff Recommendation – Narrow the "Standards of Review" down to specific, objective, verifiable findings of fact (5 or 6) for each view obstruction scenario (Scenic View, Sunlight to Solar Panels, Sunlight to Primary Living Area (PLA)).

Associated Guiding Principles:

#1 Ensure administration of the new regulations will not overburden City resources (including staff/legal resources); and

#2 Establish objective application criteria and processing framework"

Issue # 3 - Cost Apportionment

Policy Question – Should some of the cost burden of the TSVS process be shifted to the Tree Owner and if so, how?

Staff Recommendation - Inclusion of the following revisions:

- A. Application fee should remain the responsibility of the Applicant.
- B. Restoration cost is split 50/50 for Trees/Vegetation planted or sprouted after July 1, 2002 (initial adoption of TSVS Ordinance).
- C. Tree Owner pays 100%:
 - i. When refuses to resolve early or mediate
 - ii. Plants tree/vegetation against written objection of neighbor (Applicant)
 - iii. For all on-going maintenance trimming in accordance with Restoration Plan
 - iv. Applicant pays 100% for all other circumstances
- D. The applicant pays restoration costs in all other circumstances.

Associated Guiding Principles:

#5 Ensure an equitable cost allocation process to initiate the view/sunlight restoration process, perform view restoration work, and maintain restored scenic views

#6 Encourage and create a pathway for neighbors to seek an alternative route to successful dispute resolution outside of the City TSVS process

Issue # 4 – City Trees

Policy Question – How should TSVS claims be handled when the obstruction is caused by City trees?

Staff Recommendation – Differentiate trees that are in the public right-of-way fronting a private property vs. “City trees” in parks, medians, and City-owned lots.

- Residents are responsible for trees between the street and their property line.
- For “City Trees,” create new DMMC subsection that includes a process similar to TSVS that uses the Encroachment Permit process, making the TSVS determination a staff decision, appealable to the City Council.

Associated Guiding Principle:

#4 Incorporate a clear and expedited process for applications involving “City” and “Protected” trees

Issue # 5 - Regulating Hedge Heights

Policy Question - Should the City consider creating regulatory height limits for hedges, similar to or the same as fence heights regulations?

Staff Recommendation – Regulate hedges with heights found to be appropriate by the City Council. Incorporating hedges into DMMC §30.86.090 would not allow hedges to exceed six (6) feet in most setback areas, solving traffic sightline issues, “tunnel effect” on streets, etc. Hedges taller than the fence/wall regulations could be planted in the “buildable” area of the lot and would be more susceptible to TVSV claims.

Associated Guiding Principle:

#9 Provide an objective balance between the privacy provided by hedges and a neighbor’s established scenic views and/or sunlight through consideration of height regulations

Additional Revisions Proposed

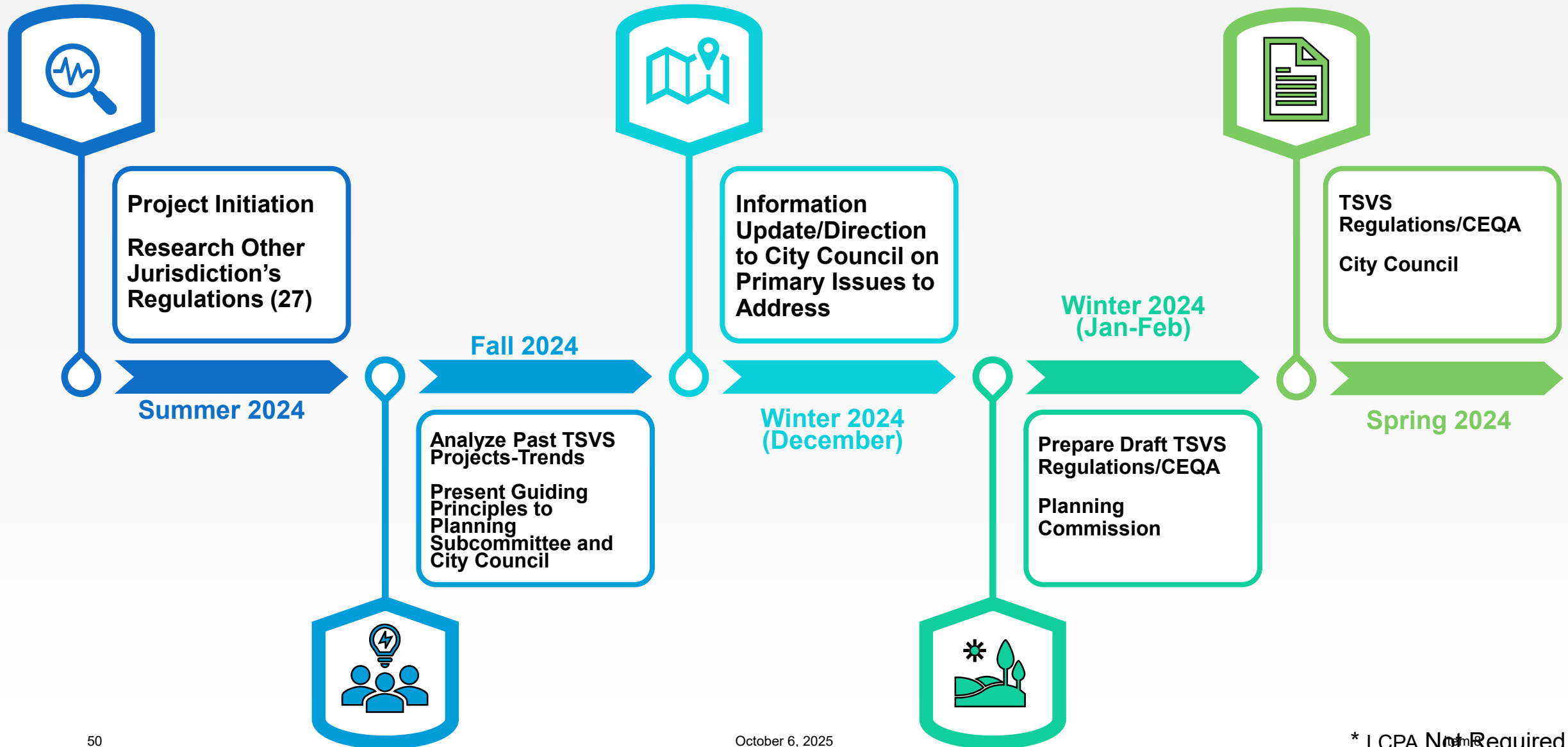
The following have been identified as proposed revisions to the TSVS regulations, process, and procedures.

- A. Various revisions and additions to definitions section of Del Mar Municipal Code Chapter 23.51 (TSVS)
- B. Prohibit “group” applications (multiple properties seeking restoration)
- C. Require application materials to include a tree report and restoration recommendation from a certified arborist (at the cost of the applicant)
- D. Add allowances and limitations on requested postponements of the public hearing
- E. Prohibit significantly excessive restoration costs
- F. Transfer oversight of Restorative Action from Planning staff to a 3rd Party

Recommended Action

Staff recommends the City Council receive an informational update and provide feedback and direction regarding proposed issue areas to be amended in the City's Trees, Scenic Views, and Sunlight regulations

Update of TSVS Regulations - Timeline



Questions?

TSVS Update – Guiding Principles

1. Ensure administration of the new regulations will not overburden City resources (including staff/legal resources)
2. Establish objective application criteria and processing framework
3. Rely upon precise, objective, and documentable decision findings to reduce appeals and legal challenges to the greatest extent possible
4. Incorporate a clear and expedited process for applications involving “City” and “Protected” trees
5. Ensure an equitable cost allocation process to initiate the view/sunlight restoration process, perform view restoration work, and maintain restored scenic views
6. Encourage and create a pathway for neighbors to seek an alternative route to successful dispute resolution outside of the City TSVS process
7. Balance and acknowledge the needs of private view/sunlight protection with all benefits provided by tree and vegetation growth, the goals of the Climate Action Plan, the goals and provisions of the Design Review process and the City’s tree policies and regulations
8. Address the applicability of “accidental” views (downed trees, fire impacts, etc.) and “good neighbor” view creation in the context of view rights established by the regulations
9. Provide an objective balance between the privacy provided by hedges and a neighbor’s established scenic views and/or sunlight through consideration of height regulations

Potential Draft Objective Findings

1. The subject Tree(s) is located within 300 feet of the Applicant's property.
2. The Applicant's Scenic View is consistent with the definition provided in DMMC Section 23.51.020 (M).
3. The Applicant's stated Primary Living Area is consistent with the definition provided in DMMC Section 23.51.020 (J).
4. The Applicant has contacted the subject Tree owner and has made reasonable efforts to resolve the dispute as set forth in DMMC Subsection 23.51.040.B. Proof of the Applicant's efforts shall include documented attempts (registered mail, etc.) to reach and confer with the Subject Tree owner, and documentation supporting efforts to mediate the dispute.
5. Based on review of verified photographic documentation and calculations, the Applicant's scenic view has been reduced more than the maximum allowed percentage of obstruction listed for the "View type," as provided in the table contained in DMMC Section 23.51. XXX.
6. Restoration of the Applicant's Scenic View will not create an infringement on the Tree Owner's privacy that cannot be reasonably mitigated.



Melinda Gould

From: Camilla Rang <camillarang@yahoo.com>
Sent: Wednesday, November 27, 2024 9:53 AM
To: City Clerk Mail Box
Subject: Item #10, City Council meeting 12.02.2024

Follow Up Flag: Follow up
Flag Status: Flagged

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear City Council,

I am so grateful that you are updating the TSVS and putting an effort into making the view blocking neighbor be more active in the process and cost. The view blocking neighbor has to be aware that part of the cost will be shifted over to him/her if the case is decided against him/her, or there is absolutely no incentive for him/her to do anything to resolve the issue (which we have seen happening over and over).

I would even push it a little further. Since the application fee is so high, I would ask that the view blocking neighbor will have to either pay full or half that cost if the case is decided against him/her. In legal trials, the party who loses the case pays all. This is not a legal trial, but there should be a hefty cost to not participate in the process and being unwilling to be a good neighbor and following the rules. Rows of 30-80 foot trees as a wall is not OK.

Thank you again.

Sincerely,

Camilla Rang

Council discussion focused on the rationale of the Councilmembers who set this item for a de novo hearing.

IT WAS MOVED BY MAYOR GAASTERLAND AND SECONDED BY DEPUTY MAYOR MARTINEZ TO UPHOLD TO DRB'S DECISION WITH THE CONDITIONS OUTLINED IN THE RESOLUTION PREPARED BY STAFF AND ADOPTED RESOLUTION 2025-27, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DEL MAR, APPROVING DESIGN REVIEW PERMIT DRB24-006, A MAJOR REMODEL OF AN EXISTING 1,578 SQUARE-FOOT, ONE-STORY RESIDENCE THAT WOULD INCLUDE CONSTRUCTION A 689 SQUARE-FOOT ADDITION AND VARIOUS IMPROVEMENTS TO THE PROJECT SITE LOCATED WITHIN THE R1-10 ZONE AT 483 AVENIDA PRIMAVERA, DEL MAR, CALIFORNIA ASSESSOR PARCEL NUMBER (APN): 299-290-04-00." (VOTE 4-0)

Ayes: Mayor Gaasterland; Deputy Mayor Martinez; Councilmembers Quirk and Spelich; Noes: 0; Recuse: 0; Absent: 0; Abstain: 0.

ITEM 17: INTRODUCTION OF AN ORDINANCE TO AMEND MUNICIPAL CODE CHAPTERS 23.50 AND 23.51 RELATED TO TREES, SCENIC VIEWS, AND SUNLIGHT REGULATIONS (A25-001) AND AMENDMENTS TO CHAPTERS 30.04 AND 30.86 ESTABLISHING A MAXIMUM ALLOWED HEIGHT FOR HEDGES (ZA25-001) (CLERK'S FILE NO. 401-4, 401-9)

An introduction to the item was provided by Mayor Gaasterland. A presentation was provided by Principal Planner Matt Bator. Planning and Community Development Director Brindley was available to answer questions.

Councilmember Quirk left the meeting during staff's presentation at approximately 7:01 p.m.

Council questions focused on consideration to remove hedges from the TSVS ordinance updates and to address separately; length of the proposed look back period; whether prior TSVS without photos could be re-opened under the new regulations if adopted; proposed fees; rationale for inclusion of the indemnification language in the proposed ordinance; appeal procedure in the proposed ordinance; whether potted plants are covered by the proposed ordinance; protected trees definition related to tree removal permits; current tree removal permit procedure; 15 day period for payment prior to issuing penalties included in the proposed ordinance; City process for resolving hedges or other landscaping that creates safety issues in the public right-of-way; proposed grandfathering of hedges in the proposed ordinance; whether the fire marshal has reviewed the vegetation on the Staver property adjacent to Del Mar Woods; fire risk mitigation related to overgrown vegetation; sunlight provisions related to primary living area in the proposed ordinance; State of California Solar Rights Act; cost shifting in the proposed regulations; and how the proposed ordinance would affect or potentially change a cost sharing agreement for a prior TSVS with a restorative action plan.

Mayor Gaasterland opened the item to public comment and the following people spoke:

- 1) Catherine Cramton
- 2) Shirli Weiss with two donations of time from Shelly Duncan and Cindy Griffith
- 3) Janet Wilson with one donation of time from Nigel Hook
- 4) Lori Ritman
- 5) Judy Hunt
- 6) Karen Lare
- 7) John Stahl
- 8) Richard Jamison

- 9) Robert Anderson submitted a speaker slip but did not wish to speak. He indicated he supports regulating hedges but does not support grandfathering in existing hedges.

10) Graham Bernstein

Mayor Gaasterland closed the item to public comment.

Council discussion focused on hedge regulations; importance of sunlight provision; indemnification language; TSVS documentation requirements related to use of historical photos and/or Google Street View images; length of the proposed look back period; desire to maintain arborist oversight of any trimming or maintenance scheduled imposed by a TSVS restorative action plan; desire to address fire mitigation risk; proposed fee structure; and desire to cover potted trees under updated TSVS regulations.

Council consensus was for staff to return with a revised ordinance based on Council feedback including: protect sunlight access to all windows of a residence, not just the Primary Living Area; remove indemnification language; reassess the eligibility time period (look-back) and prevent “double jeopardy” situations; amend the proposed ordinance to consider potted trees as trees under the TSVS; the City Council directed staff to track fees recovered over a one-year period and report back to Council; and separate the proposed hedge height regulations from the TSVS ordinance update and to emphasize fire risk mitigation in any revisions to the hedge height standards.

VOTE TO CONTINUE MEETING

IT WAS MOVED BY MAYOR GAASTERLAND SECONDED BY DEPUTY MAYOR MARTINEZ TO CONTINUE THE MEETING TIME CERTAIN UNTIL 10:20 P.M. (VOTE 3-0-1 WITH COUNCILMEMBER QUIRK ABSENT)

Ayes: Mayor Gaasterland; Deputy Mayor Martinez; and Councilmember Spelich; Noes: 0; Recuse: 0; Absent: Councilmember Quirk; Abstain: 0.

COUNCIL MEETING RECESS:

The City Council took a meeting recess from approximately 6:33 p.m. to 6:49 p.m.

CITY COUNCIL OTHER BUSINESS

ITEM 18: RESOLUTION SUPPORTING A 2026 STATE BALLOT INITIATIVE SPONSORED BY OUR NEIGHBORHOOD VOICES TO RESTORE LOCAL AUTHORITY OVER LAND USE PLANNING & ZONING LAW RELATED TO HOUSING (CLERK’S FILE NO. 303-1, 401-14)

A presentation was provided by Mayor Gaasterland and Deputy Mayor Martinez.

There were no public speakers for the item.

Council discussion focused on support for affordable housing; desire for local control over housing policies; and concerns about the methodology used by the San Diego Association of Governments (SANDAG) for the Regional Housing Needs Assessment (RHNA) allocation.

IT WAS MOVED BY COUNCILMEMBER SPELICH AND SECONDED BY MAYOR GAASTERLAND TO ADOPT RESOLUTION 2025-28 “A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DEL MAR, CALIFORNIA, IN SUPPORT OF THE “OUR NEIGHBORHOOD VOICES” BALLOT INITIATIVE TO AMEND ARTICLE IX OF THE CONSTITUTION OF THE STATE OF CALIFORNIA TO MAKE ZONING, DEVELOPMENT, AND LAND USE MATTERS OF LOCAL AUTHORITY.” (VOTE 3-0-1 WITH COUNCILMEMBER QUIRK ABSENT)

23.51.010 - Purpose.

- A. The City recognizes that Trees, Scenic Views and plentiful Sunlight contribute to the special character of Del Mar and to the overall quality of life enjoyed by residents, property owners, and visitors in Del Mar.
- B. Trees, Vegetation, and other landscaping produce a wide variety of significant psychological and tangible benefits for residents, property owners, and visitors in Del Mar. Trees contribute to the economic value and comfortable enjoyment of the community, neighborhoods and individual properties. Trees provide aesthetic value as part of an urban forest, visual and auditory privacy, climate control, wind screening, soil stability, and wildlife habitat.
- C. Scenic views, whether of the Pacific Ocean, nearby lagoons, canyons, the community and its landscapes and urban forest character, or other scenic vistas, produce a variety of significant and tangible benefits for residents, property owners and visitors. Scenic views provide inspiring vistas, encourage distinct and creative architecture, and contribute to the economic value and comfortable enjoyment of real property within the City of Del Mar.
- D. Plentiful Sunlight provides an opportunity to utilize solar energy and contributes to the economic value and comfortable enjoyment of real property within the City of Del Mar.
- E. The purpose of this Chapter is to acknowledge the benefits derived from Trees, Scenic Views and plentiful Sunlight and to balance the goal of maintaining each of them when possible. This Chapter also provides a process by which persons may seek to restore Scenic Views and/or Sunlight that has been unreasonably obstructed by the growth and/or installation of Trees and Vegetation.

(Ord. No. 747; Ord. No. 780)

23.51.020 - Definitions.

For the purposes of this Chapter, the following words and phrases shall have the meanings respectively ascribed to them by this Section:

- A. *Applicant* shall mean any property owner (or legal occupant with written permission of the property owner) who alleges that Trees or Vegetation located on the property of another person unreasonably obstructs a pre-existing Scenic View or Sunlight and who has filed a (Trees, Scenic Views and Sunlight) Application with the City to restore said view or sunlight.
- B. *Certified Arborist* shall mean Certified Arborist as that term is defined by the International Society of Arboriculture.

- C. *Crown Reduction/Shaping* shall mean a method of comprehensive trimming that reduces a Tree's height and/or spread. Crown reduction entails the reduction of the top, sides or individual limbs of a Tree by removal of leaders or the longest portion of limbs to a lateral large enough to assume to terminal.
- D. *Heading back* shall mean a pruning process where overall reduction of the mass of a Tree is achieved by modification to major limbs.
- E. *Imminent Danger* shall mean the immediate risk to the health, safety or welfare of any person or real property, whether private or publicly owned.
- F. *Lacing* shall mean a comprehensive method of trimming that systematically and sensitively removes excess portions of a Tree and improves the structure of the Tree.
- G. *Mediation* shall mean a private, voluntary process in which an impartial and qualified third party facilitates communication between parties to a dispute to promote settlement.
- H. *Obstruction* shall mean any substantial blocking or diminishment of Scenic Views and/or Sunlight that is attributable to the growth, improper maintenance or location of a Tree or Vegetation.
- I. *Person* shall mean any individual, corporation, partnership, firm, or other legal entity (including the City of Del Mar), owning property or residing within the Del Mar City limits.
- J. *Primary Living Area* shall mean that (single) portion of a residence from which a Scenic View is observed most often by the occupants and guests at the residence. The determination of Primary Living Area is to be made on a case-by case basis and shall be consistent with any prior determinations made by the City.
- K. *Protected Tree* shall mean any of the following:
1. A Tree of the species *Cupressus macrocarpa* (Monterey Cypress);
 2. A Tree of the species *Pinus torreyana* (Torrey Pine);
 3. A Tree of any species and located on property within the Central Commercial, Open Space Overlay zones of the City, within a public right-of-way, or on public or City-owned property; or
 4. Any Tree planted as a result of required mitigation for the removal of another Protected Tree.
- L. *Restorative Action* shall mean any specific action required to resolve a dispute relating to the unreasonable obstruction of a pre-existing Scenic View or Sunlight.
- M. *Scenic View* shall mean a view of the ocean, lagoons, canyons, the community and its landscapes and urban forest character, or other scenic vistas, from the Primary Living Area of a residence.
- N.

Severe Pruning shall mean the cutting of branches and/or trunk of a Tree in a manner which substantially reduces the overall size of the Tree or destroys the existing symmetrical appearance, natural shape or health of the Tree and which results in the removal of main lateral branches leaving the trunk and branches of the Tree in a stub appearance. "Topping" and "Heading back" as defined herein are considered to be severe pruning.

- O. *Site of Subject Tree* shall mean the property on which a Subject Tree is located.
- P. *Subject Tree* shall mean a Tree for which a claim has been made by an Applicant regarding the unreasonable obstruction of a Scenic View or Sunlight.
- Q. *Sunlight* shall mean the availability of direct or indirect Sunlight to the Primary Living Area or to the existing solar energy system of a residence.
- R. *Thinning* shall mean the selective removal of entire branches from a Tree so as to improve visibility through the Tree and/or improve the Tree's structural condition.
- S. *Tree* shall mean any perennial plant growing on public or private property, having a self-supporting woody main stem or trunk with the potential to obstruct Scenic Views or Sunlight, including but not limited to Trees, shrubs, hedges, and bushes or any plant material planted or growing in a dense continuous line so as to form a thicket barrier or naturally grown fence. References to "Tree" shall include the plural.
- T. *Tree Removal* shall mean the elimination of any Tree or plant from its present location.
- U. *Topping* shall mean eliminating the upper portion of the trunk or main leader of a Tree. Topping is not recommended in almost all cases.
- V. *Trimming* shall mean the selective removal of portions of branches from a Tree so as to modify the Tree shape or profile or otherwise alter the Tree's appearance.
- W. *Vegetation* shall mean all plant material, including but not limited to, those referenced in this Section for the term "Tree".
- X. *Windowing* shall mean a form of thinning by which openings or "windows" are created to restore Scenic Views and/or Sunlight.

(Ord. No. 729; Ord. No. 780)

23.51.030 - Rights Established.

- A. A person shall have the right to seek restoration and preservation of Scenic Views or Sunlight that existed at the time they purchased or occupied a property or in the last ten years, whichever is shorter, when such Scenic Views from the Primary Living Area, or Sunlight available to the Primary Living Area or solar energy system of a residence, have subsequently been unreasonably obstructed by the growth of Trees or Vegetation located within the Del Mar City limits and 300 feet of the Applicant's property boundary.

B.

In order to establish such rights pursuant to this Chapter, the Applicant shall follow the process established in this Chapter.

- C. Any person whose Tree(s) is the subject of a Trees, Scenic Views and Sunlight application shall be granted the right to, under Applicant supervision, access the Applicant's Primary Living Area and personally view and/or document the alleged blockage and Scenic Views and/or Sunlight. By signing the Trees, Scenic Views and Sunlight application, the Applicant shall acknowledge and accept this right given to the Tree owner.
- D. All persons are advised that the alteration and removal of certain Trees requires a permit under DMMC Chapter 23.50 (Trees). The applicability of DMMC Chapter 23.50 should be determined by the City prior to any action on Trees.

23.51.040 - Procedure.

- A. Any person who desires to resolve a conflict between Trees, Scenic Views and Sunlight may submit an application to the Department of Planning and Community Development on a form approved by the Director.
- B. The application shall be deemed to have been filed when:
 - 1. The Director has determined that the application is complete, has been submitted in proper form and meets the criteria established in Subsection 23.51.030.A. of this Chapter;
 - 2. The Applicant has submitted to the City the required fee, in an amount to be established by resolution of the City Council, to cover the administrative costs of processing the application; and
 - 3. The Director has determined that the Applicant has contacted the Subject Tree owner and has made reasonable efforts, including documented efforts to engage in mediation, to resolve the dispute and that these efforts have not been successful.
- C. The Director shall cause the application to be presented at a noticed public hearing conducted by the City of Del Mar Planning Commission.
- D. Within ten working days after the application has been deemed filed, City staff shall notify the Subject Tree owner, in writing, and provide the following:
 - 1. A copy of the Trees, Scenic Views and Sunlight application;
 - 2. A copy of DMMC Chapter 23.51;
 - 3. A statement explaining that there is still time and an opportunity to resolve the matter by discussions between the Applicant and the Subject Tree owner prior to the scheduled public hearing;
 - 4. Information about the mediation process, including a handout from the Del Mar Community Mediation Advisory Committee, and encouragement to use mediation. Additional informational materials associated with dispute resolution shall be distributed as they are

made available; and

5. Notice that a written response to the application may be submitted for review by the Planning Commission prior to the hearing, the deadline for any such response, and the date and time of the hearing.
- E. At least ten days prior to the public hearing, notice shall be published and mailed to property owners of record of real property within 300 feet of both the Applicant's property boundaries and of the site of the Subject Tree.
- F. At the hearing, each party shall be allowed time to present evidence pertinent to the application/claim. The public shall also be given an opportunity to comment on the application. The Applicant shall not thereafter raise arguments that were not presented during the public hearing or in the written record.
- G. The Planning Commission shall make a decision on the Application based on the criteria listed in Section 23.51.050 of this Chapter. An action approving an Application shall be set forth in a Resolution and accompanied by Conditions of Restorative Action that identify the specific manner in which the Subject Tree is to be trimmed, pruned, removed or otherwise altered in accordance with Section 23.51.070 of this Chapter. The Planning Commission's decision shall become final on the 11th working day following such determination, unless the decision is appealed to the City Council in accordance with the provisions of this Code (Section 23.51.100).
- H. The Conditions of Restorative Action and required term of maintenance (if deemed appropriate) imposed by the Planning Commission may be recorded in a covenant against the deed for the property on which the Subject Tree is located. If required, the covenant shall run with the land to help guarantee permanent preservation of pre-existing Scenic Views and/or Sunlight.

(Ord. No. 780)

23.51.050 - Standards for Determining Unreasonable Obstruction.

Prior to rendering a decision in favor of the Applicant, the Planning Commission shall make the following findings of fact:

- A. That the Applicant has contacted the Subject Tree owner and has made reasonable efforts to resolve the dispute as set forth in DMMC Subsection 23.51.040.B. Proof of the Applicant's efforts shall include documented attempts (registered mail, etc.) to reach and confer with the Subject Tree owner, and documentation supporting efforts to mediate the dispute; and
- B. That the Scenic View from or the Sunlight reaching the real property of the Applicant is unreasonably obstructed and the manner in which the Scenic View and/or Sunlight is obstructed. In determining whether the Scenic View from and/or Sunlight reaching the real property of the Applicant is unreasonably obstructed, the Planning Commission shall consider several factors, which include but are not limited to, the following:

1. The extent of alleged Scenic View obstruction, expressed as a percentage of the total Scenic View, and calculated by means of a surveyor's transit or by photographs or both;
2. Documentable evidence that demonstrates the Scenic Views and/or Sunlight that existed at the time the Applicant purchased or began occupying a property, or in the last ten years, whichever is shorter;
3. The quality of the pre-existing Scenic View(s) and/or Sunlight being obstructed;
4. That the implementation of a Restorative Action will not create an unreasonable infringement of the Subject Tree owner's privacy that could not be mitigated;
5. The extent to which the Subject Tree interferes with efficient operation of an Applicant's pre-existing solar energy systems;
6. The extent to which the Subject Tree causes shadows or reduces air circulation and/or light;
7. The extent to which the Applicant's Scenic Views and/or Sunlight has been diminished over time by factors other than Subject Tree growth;
8. The variety of Subject Tree, its projected rate of growth and maintenance requirements;
9. The aesthetic quality of the Subject Tree, including but not limited to species characteristics, size, growth, form and vigor;
10. The extent to which the location of the Subject Tree with respect to overall appearance, design, or use benefits the Subject Tree owner's property;
11. The extent to which soil stability is provided by the Subject Tree, considering soil structure, degree of slope and extent of the Subject Tree's root system per a report from a licensed soils engineer (if applicable);
12. The extent to which privacy (visual and auditory) and wind screening is provided by the Subject Tree to the owner and to neighbors;
13. The extent to which energy conservation and/or climate control is provided by the Subject Tree;
14. The extent to which wildlife habitat is provided by the Subject Tree;
15. Whether the Subject Tree is a "Protected Tree", as defined herein and in Chapter 23.50 (Trees);
16. The value of the Subject Tree to the community/neighborhood; and
17. Whether the Subject Tree is located on public right-of-way or City-owned property.

(Ord. No. 780)

23.51.060 - Criteria for Determining Appropriate Restorative Action.

After it has been determined, through the hearing process, that unreasonable obstruction has occurred, then the following unweighted factors shall be considered in determining appropriate Restorative Action:

- A. Any hazards posed by the Subject Tree to persons or structures on the property of the Applicant including, but not limited to, fire danger, as determined by a City Fire Official, and the danger of falling limbs or Trees, as determined by a Certified Arborist;
- B. The variety of Subject Tree, its projected rate of growth and maintenance requirements;
- C. The aesthetic quality of the Subject Tree, including but not limited to species characteristics, size, growth, form and vigor;
- D. The location of the Subject Tree with respect to overall appearance, design, or use of the Subject Tree owner's property;
- E. Soil stability provided by the Subject Tree considering soil structure, degree of slope and extent of the Subject Tree's root system per a report from a licensed soils engineer;
- F. Privacy (visual and auditory) and wind screening provided by the Subject Tree to the owner and to neighbors;
- G. Energy conservation and or climate control provided by the Subject Tree;
- H. Wildlife habitat provided by the Subject Tree;
- I. Whether the Subject Tree is a "Protected Tree", as defined herein and in Chapter 23.50 (Trees);
- J. The value of the Subject Tree to the community/neighborhood; and
- K. Whether the Subject Tree is located on public right-of-way or City-owned property.

23.51.070 - Hierarchy of Restorative Actions.

- A. Restorative Action may include additional written conditions (including ongoing maintenance), and directions as to appropriate timing of such actions, and may be made to run with the land and apply to successors in interest. Where removal is required, replacement by appropriate species should be considered, but may not always be required.
- B. View and/or Sunlight Restorative Actions must be consistent with all other provisions of this Chapter. In cases where Trimming, Windowing, or other Restorative Action may affect the health of a Tree which is to be preserved, such actions should be carried out in accordance with standards established by the International Society of Arboriculture for use in the State of California. Severe pruning should be avoided due to the damage such practice causes a Tree's form and health. Restorative Actions may include, but are not limited to the following, in order of preference:
 - 1.

Lacing. Lacing is the most preferred pruning technique that removes excess foliage and can improve the structure of the Tree.

2. *Windowing.* Windowing may be utilized where possible, if it does not adversely affect the Tree's growth pattern or health. Topping should not be done to accomplish windowing.
3. *Crown reduction/shaping.* Crown reduction/shaping is preferable to topping or Tree removal, if it is determined that the impact of crown reduction does not destroy the visual proportions of the Tree, adversely affect the Tree's growth pattern or health, or otherwise constitute a detriment to the Tree in question.
4. *Heading back.* Heading back is only to be permitted for Trees specifically planted and maintained as a hedge, espalier, bonsai or in pollard form and if Restorative Actions 1 through 3 of this Section will not accomplish the determined restoration and the subsequent growth characteristics will not create a future obstruction of greater proportions.
5. *Tree Removal.* Tree removal may be considered when the above-mentioned Restorative Actions are judged to be ineffective and may be accompanied by replacement plantings of appropriate plant materials to restore the maximum level of benefits lost due to Tree removal. The City of Del Mar has designated certain Trees as "Protected Trees". Any alteration or removal of Protected Trees will require a permit from the City's Planning Director pursuant to DMMC Chapter 23.50.
6. *Stand Thinning.* The removal of a portion of the total number of Trees from a grove of Trees, without any replacement plantings.

23.51.080 - Restorative Work and Allocation of Costs.

When the Planning Commission has rendered a decision in favor of the Applicant, the following procedures shall be enacted:

- A. 1. The Subject Tree owner shall submit to the Applicant and the City two itemized estimates for carrying out the Restorative Work required by the Resolution. The estimates shall be supplied by licensed landscape or licensed Tree service contractors, under the supervision of a Certified Arborist, acceptable to the City, within 30 days after the adoption of the Resolution.
2. Within 15 days of receiving the cost estimates, the Applicant shall deposit with the City an amount equal to the lower cost estimate. Failure of the Applicant to make the required deposit within 15 days will render the resolution of approval null and void. After the required deposit is received by the City, the Subject Tree owner will then, at her/his sole discretion, choose the company by which she/he wishes the work done, as found acceptable to the City, and shall order the work done within 30 days after receiving the Applicant's deposit or such other period of time as the Planning Commission may

determine to be reasonable and appropriate. If the Subject Tree owner does not have the work completed within the time period indicated by the Planning Commission or within 30 days, the City will order the work completed and charge the Subject Tree owner with any costs incurred above the estimate selected.

3. Upon completion of the work, the Subject Tree owner shall notify the City and shall submit a copy of an invoice showing that the work was performed. Upon submittal of the invoice and verification by City staff of the compliance, the City shall transmit the funds from the City deposit account to the Subject Tree owner. If the paid invoice submitted by the Subject Tree owner is for an amount less than the funds in the City's trust account, the Subject Tree owner shall only be transmitted an amount equal to the actual cost of the trimming. In such situations, the balance of the trust account shall be refunded back to the Applicant or applied to the Applicant's permit processing account, if that account contains a negative balance. If the paid invoice submitted by the Subject Tree owner is for an amount that exceeds the funds in the City's trust account, the Subject Tree owner shall only receive the funds from the City trust account, and the Subject Tree owner shall be responsible for paying the difference. If a Subject Tree owner chooses to do the required work himself/herself, then the Subject Tree owner shall not be compensated from the City trust account and the amount in the trust account shall be refunded to the Applicant(s).

- B. In the event that the Planning Commission or Council makes the determination that the Subject Tree constitutes a hazard to the safety of the Applicant or his/her property, and is being maintained by the Subject Tree owner in disregard for the safety of others, the Subject Tree owner shall:
1. Cause appropriate corrective work to be performed within 30 days;
 2. Pay all costs for work performed; and
 3. Deposit with the City an amount equal to that expended by the Applicant as required by Subsection 23.51.040.B.2. of this Chapter and the fees shall be refunded to the Applicant.

(Ord. No. 780)

23.51.090 - Ongoing Maintenance.

If ongoing maintenance is required as a condition of the Planning Commission's approval in favor of the Applicant, said maintenance work shall be performed according to the time schedule (annually, bi-annually, etc.) established by the Planning Commission. On each occasion that scheduled maintenance is to occur, the procedures indicated in Section 23.51.080 shall apply.

(Ord. No. 780)

23.51.100 - Appeal.

The decision of the Planning Commission may be appealed to the City Council pursuant to this Code. The provisions of Section 1094.6 of the California Code of Civil Procedure are applicable to judicial review of the City of Del Mar's decisions pursuant to this Chapter.

(Ord. No. 780)

23.51.110 - Enforcement.

The Subject Tree owner shall comply with any work prescribed by the Planning Commission or Council no later than 90 days after final action on the Application, unless, it is determined that it is less harmful to the Subject Tree for the work to occur at a specific time of the year, in which case, the work shall be performed no later than 90 days from a date set by the Planning Commission or Council. Thereafter, the continued maintenance (if required by Resolution) of the Subject Tree that is not in compliance with the final order prescribed by the Planning Commission or Council shall constitute a misdemeanor or infraction, punishable in accordance with the provisions of DMMC Chapter 1.08 and is declared a public nuisance which may be enjoined or abated as provided by law.

(Ord. No. 780)

23.51.120 - Limitations.

- A. It is not the intent of the City in adopting this Chapter to affect obligations imposed by an existing easement or a valid pre-existing covenant or agreement.
- B. Nothing in the Chapter shall deny private parties the right to seek remedial action for imminent danger caused by Trees.

ATTACHMENT F

Chapter 23.51 TREES, SCENIC VIEWS AND SUNLIGHT

23.51.010 Purpose and Application of Chapter.

A. Purpose.

1. The City recognizes that Trees, Scenic Views and plentiful Sunlight contribute to the special character of Del Mar and to the overall quality of life enjoyed by residents, property owners and visitors.
2. The City further recognizes that Trees, Scenic Views and Sunlight produce a wide variety of significant psychological and tangible benefits, and contribute to the economic value and comfortable enjoyment of the community, neighborhoods and individual properties, including, but not limited to, the following:
 - a. Trees, vegetation and other landscaping provide aesthetic value as part of an urban forest, visual and auditory privacy, carbon sequestration, climate control, wind screening, soil stability, and wildlife habitat.
 - b. Scenic Views, whether of the Pacific Ocean, nearby lagoons, canyons, the community and its landscapes and urban forest character, or other scenic backcountry (eastern) vistas, encourage distinctive architecture, artistic expression, and provide creative inspiration.
 - c. Plentiful Sunlight provides an opportunity to utilize solar energy both actively and passively for home heating and climate control, thereby reducing dependence on fossil fuels.
3. This Chapter acknowledges the benefits derived from Trees, Scenic Views and plentiful Sunlight, and balances the goal of maintaining each of them, when possible.
4. This Chapter further provides a process by which any Person may seek to preserve and restore Scenic Views and/or Sunlight when there is an unreasonable Obstruction of such Scenic Views and/or Sunlight by the growth, improper maintenance and/or installation of Trees and/or vegetation located on a property within three hundred (300) feet of the Applicant's property line.

B. Application.

1. This Chapter applies to all properties within the jurisdictional boundaries of the City of Del Mar, excluding property owned by governmental entities not subject to the City's regulatory jurisdiction.
2. Any Person shall have the right to file an Application with the City alleging Obstruction of pre-existing Scenic Views and/or Sunlight, and further seeking Restorative Action to restore the pre-existing Scenic Views and/or Sunlight that existed on or after the later of the following:
 - a. Date the Applicant acquired Applicant's property; or

b. ~~August 1, 2002 (the effective date of City Ordinance No. 747 relating to the adoption of the City's initial Trees, Scenic Views and Sunlight Ordinance). Ten (10) years prior to the submittal date of a complete Trees, Scenic Views and Sunlight application.~~

3. A decision by the Planning Commission, or City Council on appeal, that an Obstruction of Scenic Views and/or Sunlight has occurred, and any associated Restorative Action, is specific to the Applicant and does not run with the land. Any orders issued by the Planning Commission, or City Council on appeal, for ongoing maintenance of the Subject Tree are not binding on subsequent property owners and shall terminate with the transfer of property title. This paragraph does not apply when property title is transferred due to inheritance

23.51.020 Definitions.

For purposes of this Chapter, the following definitions shall apply:

- A. *Applicant* shall mean any Person who owns residential real property within the jurisdictional boundaries of the City of Del Mar (or the legal occupant of said real property with written permission from the property owner of record to act on their behalf), who files an Application with the City pursuant to this Chapter.
- B. *Application* shall mean a Trees, Scenic Views and Sunlight Application filed with the City alleging that any Tree located on the property of another Person is causing an unreasonable Obstruction of the Applicant's pre-existing Scenic Views and/or Sunlight, for which the Applicant seeks Restorative Action.
- C. *Certified Arborist* shall mean a professional arborist who holds a valid ISA Certified Arborist credential from the International Society of Arboriculture (ISA). For purposes of this Chapter, a Registered Consulting Arborist (RCA) with current membership in the American Society of Consulting Arborists (ASCA) shall be considered a "Certified Arborist" for purposes of providing professional tree surveys, reports, recommendations, and other technical information related to arboriculture.
- D. *City* shall mean the City of Del Mar.
- E. *City Tree* shall mean any Tree planted, installed, owned, and/or maintained by the City, which is located in, within or on a City park, Parkway, street, median, or other property owned by the City. For purposes of this Chapter and consistent with Section 23.51.030 of this Chapter, the term "City Tree" does not include any Tree located within the public right-of-way between the improved street edge and the property boundary of a private lot.
- F. *Crown Reduction/Shaping* shall mean a method of comprehensive trimming that reduces a Tree's height and/or spread. Crown Reduction/Shaping entails the reduction of the top, sides or individual limbs of a Tree by removal of leaders or the longest portion of limbs to a lateral large enough to assume the terminal role.
- G. *Director* shall mean the City's Planning and Community Development Director, or his or her designee.
- H. *Heading Back* shall mean a pruning process whereby overall reduction of the mass of a Tree is achieved by modification to major limbs.

- I. *Hedge* shall mean generally dense vegetation so aligned as to form a physical barrier or fence.
- J. *Imminent Danger* shall mean an immediate risk to the health, safety and/or welfare of any Person or property, whether privately- or publicly-owned.
- K. *Lacing* shall mean a comprehensive method of Trimming that systematically and sensitively removes excess portions of a Tree and improves the structure of the Tree.
- L. *Mediation* shall mean a private, voluntary process in which an impartial and qualified third-party professional negotiator facilitates communication between parties to a dispute to promote settlement and reach a mutually satisfactory solution, in this case regarding a claim for Obstruction of Scenic Views and/or Sunlight.
- M. *Obstruction* shall mean any substantial and unreasonable blocking or diminishment of Scenic Views and/or Sunlight that is attributable to the growth, improper maintenance and/or the location of a Tree, as determined by the Planning Commission or City Council on appeal, consistent with the findings of fact required by this Chapter.
- N. *Parkway* shall mean that area of the street between the back of curb and the sidewalk that is typically planted or landscaped.
- O. *Person* shall mean any individual(s), corporation, partnership, firm, or other legal entity (including the City of Del Mar), owning real property or residing in real property within the Del Mar City limits.
- P. *Primary Living Area (PLA)* shall mean that (single) portion of a primary residence (typically the living room, dining room or great room) determined by the Planning Commission, or City Council on appeal, to be the main gathering and entertainment room of the primary residence.
 - 1. The determination of a PLA is to be made on a case-by-case basis and shall be consistent with any prior determinations made by the City. Each primary residence shall be limited to the designation of only one (1) PLA (a primary residence does not include “Accessory Dwelling Units”, as that term is defined by Chapter 30.91 of this Municipal Code).
 - 2. Under rare and extraordinary circumstances, the Planning Commission, or City Council on appeal, may determine that another area of a primary residence (other than the living room, dining room or great room) is the PLA.
 - 3. Under no circumstances shall a bathroom, laundry room, storage room, stairwell, hallway, outdoor deck, patio, balcony, or any other area outside of the enclosing walls of a primary residence, be designated as a PLA. Additionally, a PLA may not be from any space within an Accessory Dwelling Unit (as that term is defined by Chapter 30.91 of this Municipal Code).
- Q. *Protected Tree* shall mean any of the following:
 - 1. A Tree of the species *Hesperocyparis macrocarpa* (Monterey Cypress);
 - 2. A Tree of the species *Pinus torreyana* (Torrey Pine);

3. A Tree of any species and located on property within the Central Commercial or Open Space Overlay zones of the City, within a public right-of-way, or on public- or City-owned property; or
 4. Any Tree planted as a result of required mitigation for the removal of another Protected Tree.
- R. *Restorative Action* shall mean any specific action(s) and conditions required by the Planning Commission, or City Council on appeal, to be implemented to resolve a dispute relating to the Obstruction of the Applicant's pre-existing Scenic Views and/or Sunlight.
 - S. *Scenic View* shall mean a view of the ocean, lagoons, canyons, the community and its landscapes and urban forest character, or other scenic backcountry (eastern) vistas from the PLA of a primary residence. When observed through more than one window or multiple locations within the PLA, the full extent of the Scenic View shall be a culmination of all vantage points from within the PLA. A Scenic View shall not have been created by natural disaster/causes such as storms, fire, disease or pest infestation, or illegal activity.
 - T. *Severe Pruning* shall mean the cutting of branches and/or the trunk of a Tree in a manner which substantially reduces the overall size of the Tree or destroys the existing symmetrical appearance, natural shape and/or health of the Tree, and which results in the removal of main lateral branches leaving the trunk and branches of the Tree in a stub appearance. "Topping" and "Heading Back" as defined herein are considered to be Severe Pruning. As stated herein, Severe Pruning should be avoided due to the damage that such practices can cause to a Tree's form and health.
 - U. *Site of the Subject Tree* shall mean the property on which a Subject Tree is located, which shall be located within three hundred (300) feet of the Applicant's property boundary.
 - V. *Solar Energy System* shall have the same meaning as set forth in Section 801.5(a) of the California Civil Code, as that Section may be amended, renumbered, or redesignated from time to time. For purposes of this Chapter, the location of a Solar Energy System collector is required to comply with the local building and setback regulations.
 - W. *Subject Tree* shall mean a Tree for which an Application has been submitted regarding the alleged Obstruction of Scenic Views and/or Sunlight.
 - X. *Sunlight* shall mean the availability of direct and/or indirect sunlight to ~~the PLA~~a room or rooms, or to the existing Solar Energy System of an Applicant's primary residence.
 - Y. *Thinning* shall mean the selective removal of entire branches from a Tree so as to improve visibility through the Tree and/or improve the Tree's structural condition.
 - Z. *Topping* shall mean eliminating the upper portion of the trunk or main leader of a Tree. Topping is not recommended in almost all cases.
 - AA. *Tree* shall mean any perennial plant growing on public or private property in the ground or in an above-ground container, with a self-supporting woody main stem or trunk. For purposes of this Chapter, "Tree" shall also include vegetation such as shrubs, Hedges, and bushes. References to "Tree" herein shall include both the singular and the plural form.

BB. *Tree Owner* shall mean the Person who holds title of the real property for the Site of the Subject Tree, or the Person responsible for maintenance of the Subject Tree in accordance with Section 23.51.030 of this Chapter.

CC. *Tree Removal* shall mean the elimination of any Tree from its present location.

DD. *Trimming* shall mean the selective removal of portions of branches from a Tree to modify the Tree shape or profile or otherwise alter the Tree's appearance.

23.51.030 Private Property Owner Maintenance of Adjacent Trees Located in Public Right-of-Way.

The maintenance of any Tree located within the public right-of-way, between the improved street edge and the property boundary of a private lot, shall be the responsibility of the adjacent private property owner, and not the City. As such, the adjacent private property owner shall be considered the "Tree Owner" for purposes of this Chapter.

23.51.040 Process for Alleging Obstruction of Scenic Views and/or Sunlight.

A. Application Submission to City.

1. Any Person alleging Obstruction of Scenic Views and/or Sunlight may submit an Application to the City Department of Planning and Community Development, which shall contain the following information and may be subject to review and approval by the Director:

- a. Uniform Development Application on a form provided by the City;
- b. Trees, Scenic Views and Sunlight Supplemental Questionnaire on a form provided by the City;
- c. Floor plan of the Applicant's PLA depicting the direction of the Scenic Views and/or floor plan and building elevation plans depicting the source of Sunlight (e.g., windows, doors, or other transparent surfaces);
- d. Photographic evidence taken from the Applicant's PLA depicting both of the following:
 - (1) Pre-existing Scenic Views ~~and/or Sunlight~~— Photograph must have been taken at some point in time during the timeframe set forth in Section 23.51.010(B)(2) of this Chapter to the present; and
 - (2) Alleged Obstruction of Scenic Views ~~and/or Sunlight~~— Photograph must have been taken on or around the time of Application submittal;
- e. Shade study demonstrating the amount and duration of the alleged Obstruction of Sunlight from a PLA or Solar Energy System (for Applications alleging Obstruction of Sunlight only); and

f. Tree survey of the Subject Tree(s) signed and/or stamped by a Certified Arborist and providing the following information, which may be subject to review and approval by the City's Arborist:

- (1) Species, common name and variety of the Subject Tree(s);
- (2) Physical measurements of the Subject Tree(s) (e.g., height and trunk circumference at two (2) feet above the natural grade);
- (3) Approximate age of the Subject Tree(s);
- (4) Overall health and structural condition of the Subject Tree(s);
- (5) Life expectancy and suitability for preservation of the Subject Tree(s);
- (6) Desired Restorative Action, anticipated impact of such Restorative Action on the Subject Tree(s), and recommended maintenance activities (if any) for the long-term preservation of Applicant's Scenic Views and/or Sunlight; and
- (7) Other recommendations for management of the Subject Tree(s) and/or pertinent information related to the Subject Tree(s).

If the Tree Owner does not grant Applicant's Certified Arborist access to the Site of the Subject Tree to conduct the tree survey required by this Subsection, then a tree survey shall be prepared containing as much of the above information as possible. Applicant's Certified Arborist may use other sources to obtain this information, such as photographs taken from other properties, satellite photographs from commercially-available sources, and public record permit information for work performed on the Tree Owner's property.

2. Together with the submission of an Application, the Applicant shall remit an Application fee to the City in an amount established by Ordinance or Resolution of the City Council.
3. Upon review of the Application for completeness, the Director may request additional information, if necessary, within thirty (30) days following Application submittal.
4. The Application will not be deemed complete for further processing by the City until all materials required by this Section and any additional information requested by the Director have been submitted in a format deemed acceptable by the Director.
5. By submitting an Application to the City, Applicant agrees to allow City staff and/or the Tree Owner to personally enter upon Applicant's property (under Applicant's supervision) to view and photograph the alleged Obstruction of Scenic Views ~~and/or Sunlight~~ from the Applicant's PLA, or in case of sunlight obstruction, from the affected room(s) and/or Solar Energy System.
6. Group Applications are not permitted. A single Application must be submitted for each Person alleging Obstruction of Scenic Views and/or Sunlight. Each Application will be considered on an individual basis at a public hearing before the Planning Commission, or City Council on appeal.

B. Mediation Efforts.

1. Together with the information required under Subsection (A) of this Section, Applicant shall also submit documentation to the City demonstrating the following:
 - a. Applicant contacted the Tree Owner and made reasonable efforts to resolve the dispute alleging Obstruction of Scenic Views and/or Sunlight, including, at a minimum, offering to engage in Mediation.
 - b. Proof of Applicant's efforts to meet and confer with the Tree Owner shall include:
 - (1) Documented attempts offering to participate in Mediation (via certified mail, e-mail exchanges, text messages, etc.); and
 - (2) An explanation of whether such offers to participate in Mediation were declined in writing by the Tree Owner, or if Mediation was unsuccessful between the parties.
2. The Tree Owner's failure to respond to Applicant's offer for Mediation within thirty (30) days following receipt of the offer shall be deemed a refusal by the Tree Owner to participate in Mediation.
3. If the Tree Owner agrees to Mediation, the Mediation shall be completed within one hundred and eighty (180) days following Tree Owner's acceptance of Applicant's offer for Mediation, unless an extension is granted by the Director.

C. Notice to Tree Owner. Within thirty (30) days following receipt of a complete Application, City staff shall provide notice to the Tree Owner including the following information:

1. Copy of the Application and any other materials submitted by the Applicant;
2. Copy of this Chapter 23.51;
3. Statement notifying the Tree Owner that there is still time and an opportunity for the parties to resolve the dispute prior to the public hearing;
4. Statement encouraging the Tree Owner to participate in Mediation and informational materials associated with the Mediation process, such as a referral to the National Conflict Resolution Center; and
5. Notice that a written response to the Application may be submitted in advance of the public hearing for review by the Planning Commission, the deadline for any such response, and the anticipated date and time of the public hearing.

D. Public Hearing and Decision.

1. The Application shall be presented at a noticed public hearing conducted by the City of Del Mar Planning Commission. The public hearing procedures shall be consistent with those contained in Section 7.2 of the Planning Commission's adopted Policy Manual.
2. The Applicant and the Tree Owner shall each be allowed one (1) request for a postponement of the public hearing, provided that the written request is received by the Director at least fourteen (14) days prior to the scheduled hearing date.
3. At least ten (10) days prior to the scheduled public hearing date, notice shall be published and mailed to all real property owners of record located within three hundred (300) feet of the Applicant's property boundary and the Site of the Subject Tree.
4. During the public hearing, the Applicant and the Tree Owner shall each be allowed an opportunity to present testimony and evidence relating to the Application and the Subject Tree(s). The public shall also be given an opportunity to provide comment on the Application and the Subject Tree(s).
5. The Planning Commission shall issue a decision regarding the Application to determine whether an Obstruction of Scenic Views and/or Sunlight has occurred based on the criteria set forth in Section 23.51.060 of this Chapter.
 - a. The Planning Commission's decision shall be documented in the form of a Resolution.
 - b. If the Planning Commission finds in favor of the Applicant, the Planning Commission's Resolution shall also include the requirement to perform Restorative Action work in accordance with Section 23.51.080 of this Chapter. If desired, the Planning Commission may choose to appoint a subcommittee of the Planning Commission to work with City staff on the creation of a draft Restorative Action plan for consideration and action by the Planning Commission at a future meeting.
 - c. The Planning Commission's decision on the Application shall become final on the eleventh (11th) business day following the adoption of the Planning Commission's Resolution, unless appealed to the City Council in accordance with Section 23.51.100 of this Chapter.

23.51.050 Criteria for Determining Unreasonable Obstruction of Scenic Views.

- A. In considering whether an unreasonable Obstruction of Scenic Views has occurred pursuant to this Chapter, the Planning Commission, or City Council on appeal, shall determine whether the Subject Tree(s) obstructs the Applicant’s Scenic Views (observed from the Applicant’s PLA) by more than the permissible percentages listed for the type of Scenic Views identified in Table 1 of this Section.
- B. The Planning Commission, or City Council on appeal, shall be responsible for determining the type(s) of Scenic View and appropriate view angle upon which to base its review from those listed in Table 1 of this Section. In making this determination, the recommendation of staff may be considered.
- C. Scenic Views of a specific type (e.g., White Water, Blue Water, etc.) could possibly be observed from multiple vantage points and directions inside the Applicant’s PLA, resulting in several separated views of a similar type. When this occurs, the Planning Commission, or the City Council on appeal, shall consider the Scenic View to be the culmination of all (separated) views that can be observed within a 180-degree corridor from the PLA, and shall apply the allowable percentages of Obstruction accordingly.

Table 1

<u>ALLOWABLE SCENIC VIEW OBSTRUCTION – 180 DEGREE CORRIDOR</u>			
Type of Scenic View	Slot (< 45°)	Middle (45° – 90°)	Panorama (> 90°)
White Water	0 – 5 %	0 – 5 %	0 – 10 %
Blue Water	0 – 10 %	0 – 10 %	0 – 15 %
Horizon/Back Country	0 – 15 %	0 – 20 %	0 – 20 %

23.51.060 Findings for Determining Unreasonable Obstruction of Scenic Views and/or Sunlight.

- A. Obstruction of Scenic Views (from the Applicant’s PLA). To render a decision in favor of the Applicant regarding unreasonable Obstruction of Scenic Views, the Planning Commission, or City Council on appeal, shall make all of the following findings of fact:
 - 1. The Subject Tree(s) is/are located on the Tree Owner’s property, which is located within three hundred (300) feet of the Applicant’s property (also referred to herein as the “Site of the Subject Tree”);

-
2. The Applicant's Scenic View is consistent with the definition of "Scenic View" as provided in Section 23.51.020 of this Chapter;
 3. The Applicant's stated PLA is consistent with the definition of "Primary Living Area (PLA)" as provided in Section 23.51.020 of this Chapter;
 4. The Applicant has contacted the Tree Owner and made reasonable efforts to resolve the dispute alleging Obstruction of Scenic Views, as required by Section 23.51.040(B) of this Chapter;
 5. Consistent with Section 23.51.040(A) of this Chapter, the Applicant has provided photographic evidence of prior Scenic Views taken from the Applicant's PLA on or after the later of the following: (i) the date Applicant acquired Applicant's property; or (ii) August 1, 2002;
 6. Based on a review of the photographic evidence submitted by the Applicant, the Applicant's Scenic View has been reduced by more than the maximum allowed percentage of Obstruction listed in Table 1 under Section 23.51.050 of this Chapter; and
 7. Restoration of the Applicant's Scenic Views will not create an infringement on the Tree Owner's privacy that cannot be reasonably mitigated.
- B. Obstruction of Sunlight (to the Applicant's Solar Energy System). To render a decision in favor of the Applicant regarding unreasonable Obstruction of Sunlight to Applicant's existing Solar Energy System, the Planning Commission, or City Council on appeal, shall make the following findings of fact:
1. The Subject Tree(s) is/are located on the Tree Owner's property, which is located within three hundred (300) feet of the Applicant's property (also referred to herein as the "Site of the Subject Tree");
 2. The Applicant's Sunlight is consistent with the definition of "Sunlight" as provided in Section 23.51.020 of this Chapter;
 3. The Applicant's Solar Energy System is consistent with the definition of "Solar Energy System" as provided in Section 23.51.020 of this Chapter;
 4. The Applicant has contacted the Tree Owner and made reasonable efforts to resolve the dispute alleging Obstruction of Sunlight, as required by Section 23.51.040(B) of this Chapter;
 5. Consistent with Section 23.51.040(A) of this Chapter, the Applicant has provided photographic or other documentable evidence of prior Sunlight to the Solar Energy System taken on or after the later of the following: (i) date Applicant acquired Applicant's property; or (ii) ten (10) years prior to the submittal date of a complete Trees, Scenic Views and Sunlight application August 1, 2002;
 6. The Applicant has provided an exhibit demonstrating the amount and duration of the Obstruction of Sunlight in a graphic format, such as a shadow study, as required by Section 23.51.040(A) of this Chapter;
-

-
7. Based on a review of the photographic evidence and exhibit submitted by the Applicant, the Subject Tree(s) cast(s) a shadow on the Applicant's Solar Energy System that is greater than ten percent (10%) of the Solar Energy System absorption area at any time between 10:00 a.m. and 2:00 p.m., Pacific Standard Time (PST); and
 8. Restoration of Sunlight to the Applicant's Solar Energy System will not create an infringement on the Tree Owner's privacy that cannot be reasonably mitigated.

C. Obstruction of Sunlight (to a room or rooms of the Applicant's primary residence the Applicant's PLA). To render a decision in favor of the Applicant regarding unreasonable Obstruction of Sunlight to Applicant's PLA one or more rooms in the Applicant's primary residence, the Planning Commission, or City Council on appeal, shall make the following findings of fact:

1. The Subject Tree(s) is/are located on the Tree Owner's property, which is located within three hundred (300) feet of the Applicant's property (also referred to herein as the "Site of the Subject Tree");
2. The Applicant's Sunlight is consistent with the definition of "Sunlight" as provided in Section 23.51.020 of this Chapter;

~~3. The Applicant's stated PLA is consistent with the definition of "Primary Living Area (PLA)" as provided in Section 23.51.020 of this Chapter;~~

~~4.3.~~ The Applicant has contacted the Tree Owner and made reasonable efforts to resolve the dispute alleging Obstruction of Sunlight, as required by Section 23.51.040(B) of this Chapter;

~~5.4.~~ Consistent with Section 23.51.040(A) of this Chapter, the Applicant has provided photographic or other documentable documentation evidence of prior Sunlight to one or more rooms from the PLA taken on or after the later of the following: (i) the date Applicant acquired Applicant's property; or (ii) ten (10) years prior to the submittal date of a complete Trees, Scenic Views and Sunlight application August 1, 2002;

~~6.5.~~ The Applicant has provided an exhibit demonstrating the amount and duration of the Obstruction of Sunlight in a graphic format, such as a shadow study, as required by Section 23.51.040(A) of this Chapter;

~~7.6.~~ Based on a review of the photographic evidence and exhibit submitted by the Applicant, the Subject Tree(s) cast(s) shadows greater than fifty percent (50%) of the total window glazing ~~in of~~ a room or rooms within the Applicant's primary residence the Applicant's PLA at any time between 10:00 a.m. and 2:00 p.m., Pacific Standard Time (PST); and

~~8.7.~~ Restoration of Sunlight to the sunlight obstructed room or rooms Applicant's PLA will not create an infringement on the Tree Owner's privacy that cannot be reasonably mitigated.

23.51.070 Criteria for Determining Appropriate Restorative Action.

After it has been determined through the hearing process that an unreasonable Obstruction has occurred, then the following unweighted factors may be considered by the Planning Commission, or City Council on appeal, in determining the appropriate Restorative Action:

- A. Any hazards posed by the Subject Tree(s) to any Persons or structures on the Applicant's property, including, but not limited to, fire danger, as determined by a City Fire Official, and the danger of falling limbs or Trees, as determined by a Certified Arborist;
- B. The variety of the Subject Tree(s), its/their projected rate of growth and maintenance requirements;
- C. The aesthetic quality of the Subject Tree(s), including but not limited to, species characteristics, size, growth, form and vigor;
- D. The location of the Subject Tree(s) with respect to overall appearance, design and/or use of the Site of the Subject Tree(s);
- E. Soil stability provided by the Subject Tree(s) considering soil structure, degree of slope and extent of the Subject Tree's root system per a report from a -soils engineer licensed by the State of California;
- F. Privacy (visual and auditory) and wind screening provided by the Subject Tree(s) to the Tree Owner and neighbors of the Tree Owner;
- G. Energy conservation and/or climate control provided by the Subject Tree(s);
- H. Wildlife habitat provided by the Subject Tree(s);
- I. Whether the Subject Tree(s) is/are considered a "Protected Tree", as defined herein and in Chapter 23.50 (Trees) of this Municipal Code;
- J. The value of the Subject Tree(s) to the community/neighborhood;
- K. Whether the Subject Tree(s) is/are located on or in the public right-of-way or City-owned property; and
- L. Whether the Subject Tree(s) has/have been deemed "discouraged" or undesirable by the City, as provided in the City's Public Tree Policy Manual.

23.51.080 Determination of Restorative Action Work to be Performed.

- A. Consideration of Recommendations. In determining the type(s) of Restorative Action work to be performed under this Chapter, the Planning Commission, or City Council on appeal, shall first consider any recommendation(s) made by City staff, which could include recommendation(s) from a Certified Arborist retained by the Applicant, Tree Owner and/or City.
- B. Types of Restorative Action. Restorative Action work may include, but is not limited to, any of the following (in order of preference):

-
1. Crown Cleaning. Removing dead, dying, diseased and broken branches from the crown of the Subject Tree(s).
 2. Lacing/Thinning. Lacing is the preferred pruning technique, which removes excess foliage within the canopy, improves general views through the Subject Tree(s), and can improve the structure of the Subject Tree(s).
 3. Crown Raising. Selectively removing the lower limbs from the crown of the Subject Tree(s).
 4. Crown Reduction/Shaping. Crown Reduction/Shaping of the Subject Tree(s) is preferable to Topping or Tree Removal, if it is determined that the impact of Crown Reduction/Shaping would not destroy the visual proportions of the Subject Tree(s), adversely affect the Subject Tree's growth pattern or health, or otherwise constitute a detriment to the Subject Tree(s).
 5. Heading Back. Heading Back should only be permitted if all of the following apply:
 - a. The Subject Tree(s) is/are specifically planted and maintained as a Hedge, espalier, bonsai, or in pollard form;
 - b. Restorative Actions 1 through 4 of this Section will not accomplish the intended Restorative Action; and
 - c. Subsequent growth characteristics will not create a future Obstruction of greater proportions.
 6. Tree Removal. Tree Removal of the Subject Tree(s) may be considered when the above-mentioned Restorative Actions are judged to be ineffective. Where Tree Removal is required, replacement by appropriate species ~~may~~shall be considered by the Planning Commission, or City Council on appeal for feasibility, but is not required.
 7. Stand Thinning. The removal of a portion of the total number of Trees from a grove of Trees on the Site of the Subject Tree, including the removal of the Subject Tree(s), without any replacement plantings.

In cases where Trimming or any other type(s) of Restorative Action work may affect the health of a Tree that is intended to be preserved or trees the vicinity, such Restorative Action work shall be carried out in accordance with the standards established by the International Society of Arboriculture (ISA) for use in the State of California and under the supervision of a Certified Arborist. Severe Pruning should be avoided due to the damage that such practices can cause to a Tree's form and health.

- C. Written Conditions. Restorative Action imposed by the Planning Commission, or City Council on appeal, may also include written conditions (such as ongoing maintenance), and directions as to the appropriate timing of such conditions.
 - D. Ongoing Maintenance. If ongoing maintenance is required by the Planning Commission, or City Council on appeal, as part of the Restorative Action work to be performed, then such ongoing maintenance shall be performed according to the time schedule (e.g., annually, bi-annually, etc.)
-

established by the Planning Commission, or City Council on appeal. On each such occasion that ongoing maintenance is scheduled to occur, the procedures set forth in Section 23.51.090(E) of this Chapter shall apply.

- E. Consistency with Chapter. The performance of any Restorative Action work required under this Chapter shall be performed consistent with all other provisions of this Chapter.
- F. Timeline for Compliance. Any Restorative Action work required under this Chapter shall be performed no later than the timelines set forth in Section 23.51.090 of this Chapter, unless an exception applies, as follows:
 - 1. An exception applies if it is determined by the Planning Commission, or City Council on appeal, that it would be less harmful to the Subject Tree(s) for the Restorative Action work to occur at a specific time of the year.
 - 2. If it is determined that an exception applies, then the Restorative Action work shall be performed no later than ninety (90) days following the specific date set forth by the Planning Commission, or City Council on appeal.

23.51.090 Allocation of Costs and Procedures for the Payment of Restorative Action Work.

- A. Responsibility for Application Fees and Related Costs. The Applicant shall be responsible for the Application fee(s) owed to the City, and any other fees and costs relating to providing the required Application materials to the City, including other information requested by the City to review and process the Application, as well as the costs associated with the public noticing requirement under Section 23.51.040(D) of this Chapter.
- B. Responsibility for Costs of Initial Restorative Action Work. When Restorative Action is required by the Planning Commission, or City Council on appeal, the costs for the initial Restorative Action work required to be performed under this Chapter (excluding any ongoing maintenance) shall be as follows:
 - 1. The Applicant and the Tree Owner shall each pay fifty percent (50%) of all costs associated with the initial Restorative Action work, which includes the full cost of the Tree Survey required by DMMC Section 23.51.040(g), unless an exception applies, as set forth below.
 - 2. The Tree Owner shall pay one hundred percent (100%) of all costs associated with the initial Restorative Action work, which includes the full cost of the Tree Survey required by DMMC Section 23.51.040(g), if the Planning Commission, or City Council on appeal, makes a determination that:
 - a. The Tree Owner has refused to participate in good faith attempts to resolve the dispute as required by Section 23.51.040(B) of this Chapter; and/or
 - b. The Subject Tree constitutes a hazard to the safety of the Applicant and/or the Applicant's property, and is being maintained by the Tree Owner in disregard for the safety of others and/or property.

-
- C. Responsibility for Costs of Ongoing Maintenance. The Tree Owner shall pay one hundred percent (100%) of all costs associated with any ongoing maintenance of the Subject Tree(s) required by the Restorative Action plan approved by the Planning Commission, or City Council on appeal, whether or not the Applicant paid any or all of the costs for the initial Restorative Action work.
- D. Procedures for Payment, Scheduling and Completion of Initial Restorative Action Work.
1. Applicant Partially Responsible for Costs of Initial Restorative Action Work. When the Applicant is partially responsible for the cost of the initial Restorative Action work as set forth in Subsection (B)(1) of this Section, then the following procedures shall be enacted:
 - a. For any initial Restorative Action work, the Tree Owner shall submit to the City two (2) itemized written cost estimates for performing the initial Restorative Action work. The estimates shall be prepared by licensed and insured landscape or Tree service contractors, under the supervision of a Certified Arborist, and acceptable to the City. The estimates shall be submitted to the City within thirty (30) days following the adoption of the Resolution approving the Restorative Action plan. The estimates shall be subject to review for acceptance by the Director. The Director reserves the right to consult with a Certified Arborist retained by the City if both of the estimates appear to be substantially above the professional average for such services, and in that case, the Tree Owner shall be responsible for reimbursing the City for the cost of consultation with the City Arborist and may be required to submit additional estimates to the City.
 - b. Estimates provided by the Tree Owner shall only include, and the Applicant shall only be responsible for, payment of costs to perform the initial Restorative Action work (excluding any ongoing maintenance) as required by the Planning Commission, or City Council on appeal. Such costs may include debris removal/recycling fees, and the purchase and installation of mitigation Trees (if required by the Planning Commission, or City Council on appeal). Applicant shall not be responsible for any other costs associated with the Restorative Action work required to be performed, including, but not limited to, tarping, removal and/or replacement of fencing, walls or other improvements to bring equipment onto the Site of the Subject Tree, temporary relocation and re-installation or removal and replacement of appurtenances, structures, fixtures and other improvements on the Site of the Subject Tree, and/or any other costs not directly related to the costs of performing the Restorative Action work, as required by the Restorative Action plan approved by the Planning Commission, or City Council on appeal.
 - c. Within fifteen (15) days following the Director's acceptance of the cost estimates submitted by the Tree Owner, the Applicant shall deposit with the City an amount equal to the cost percentage required to be paid by the Applicant pursuant to Subsection (B) of this Section, using the lower amount of the two cost estimates. Failure of the Applicant to timely make the required deposit within these fifteen (15) days will render the City's Resolution requiring the Restorative Action work to become null and void.
 - d. Once the Applicant's deposit is received by the City, the Tree Owner shall, at the Tree Owner's sole discretion, choose which one of the two companies that submitted estimates accepted by the Director will perform the initial Restorative Action work, and shall notify the

City of its decision. Within thirty (30) days following the City's receipt of the Applicant's deposit (or such other period of time as the Planning Commission, or City Council on appeal, may determine to be reasonable and appropriate), the Tree Owner shall schedule the initial Restorative Action work to be completed. If the Tree Owner does not have the initial Restorative Action work completed within thirty (30) days or within the time-period indicated by the Planning Commission, or City Council on appeal, then the City may pursue any and all available remedies and enforcement mechanisms against the Tree Owner, in accordance with Section 23.51.110 of this Chapter.

- e. The Tree Owner shall notify the City in advance of the date and time that the initial Restorative Action work is scheduled to take place. City staff, or a qualified third party designated by the City, shall inspect the initial Restorative Action work, upon completion, to determine whether the work complies with and satisfies the requirements and conditions contained in the Restorative Action plan. The City's inspection of the initial Restorative Action work shall be scheduled for a time when the contractors performing the initial Restorative Action work are still present at the Site of the Subject Tree and available to perform additional work, if deemed required by the City. The final determination of compliance with and satisfaction of the Restorative Action plan is made by the Director.
 - f. Following City approval of the initial Restorative Action work, the Tree Owner shall submit a copy of an invoice for the work performed to the City. Upon submittal of the invoice, the City shall transmit the funds held in the City's deposit account to the Tree Owner.
2. Tree Owner Fully Responsible for Costs of Initial Restorative Action Work. When the Tree Owner is fully responsible for the cost of the initial Restorative Action as set forth in Subsection (B)(2) of this Section, then the following procedures shall be enacted:
- a. The initial Restorative Action work shall be completed within thirty (30) days following adoption of the Resolution approving the Restorative Action plan (or such other period of time as the Planning Commission, or City Council on appeal, may determine to be reasonable and appropriate). If the Tree Owner does not have the initial Restorative Action work completed within the time-period indicated by the Planning Commission or within thirty (30) days, then the City may pursue any and all available remedies and enforcement mechanisms against the Tree Owner, in accordance with Section 23.51.110 of this Chapter.
 - b. The Tree Owner shall notify the City in advance of the date and time that the initial Restorative Action work is scheduled to take place. City staff, or a qualified third party designated by the City, shall inspect the initial Restorative Action work, upon completion, to determine whether the work complies with and satisfies the requirements and conditions contained in the Restorative Action plan. The City's inspection of the initial Restorative Action work shall be scheduled for a time when the contractors performing the initial Restorative Action work are still present at the Site of the Subject Tree and available to perform additional work, if deemed required by the City. The final determination of compliance with and satisfaction of the Restorative Action plan is made by the Director.

E. Procedures for Scheduling and Completion of Ongoing Restorative Action Work.

-
1. Any ongoing maintenance required as part of the Restorative Action plan shall be completed according to the time schedule (e.g., annually, bi-annually, etc.) established by the Planning Commission, or City Council on appeal. If the Tree Owner does not timely complete the ongoing maintenance work, then the City may pursue any and all available remedies and enforcement mechanisms against the Tree Owner, in accordance with Section 23.51.110 of this Chapter.
 2. The Tree Owner shall notify the City in advance of the date and time that the ongoing maintenance work is scheduled to take place. City staff, or a qualified third party designated by the City, shall inspect the ongoing maintenance work upon its completion to determine whether the work complies with and satisfies the requirements and conditions contained in the Restorative Action plan. The City's inspection of the ongoing maintenance work shall be scheduled for a time when the contractors performing the work are still present at the Site of the Subject Tree and available to perform additional work, if deemed required by the City. The final determination of compliance with and satisfaction of the Restorative Action plan is made by the Director.

23.51.100 Appeal.

- A. The Planning Commission's decision under this Chapter shall become final on the eleventh (11th) business day following the adoption of the Planning Commission's Resolution documenting the decision, unless the decision is appealed pursuant to this Section.
- B. The Planning Commission's decision may be appealed to the City Council consistent with the appeal provisions of this Municipal Code.
- C. The provisions of Section 1094.6 of the California Code of Civil Procedure are applicable to judicial review of any final decision made by the City of Del Mar pursuant to this Chapter.

23.51.110 Enforcement.

Failure to comply with any provision under this Chapter shall constitute a misdemeanor or infraction, punishable in accordance with the provisions of Chapter 1.08 of this Municipal Code, and is further declared to be a public nuisance that may be enjoined or abated as provided by law.

23.51.120 Liability.

- A. The City shall not be liable for any claims, demands, causes of actions, damages, injuries, litigation, costs, and/or liability arising out of or related to any agreement, decision, determination, or order concerning claims relating to Scenic Views and/or Sunlight that may result from Mediation or litigation.
- B. Under no circumstances shall the City have any responsibility or liability to enforce or seek any legal redress (civil or criminal) for any agreement, decision, determination, or order that any other Person or entity makes concerning claims relating to Scenic Views and/or Sunlight.

~~**23.51.130 Indemnification.**~~

~~By submitting the Application to the City, Applicant acknowledges and agrees to defend, indemnify and hold harmless the City of Del Mar and its officers, boards, commissions, agents, and employees (collectively, "City Indemnified Parties") from and against any and all claims, demands, causes of actions, damages, injuries, litigation, costs, and/or liability (collectively, "Claims") arising out of or related to any Claims brought against the City Indemnified Parties to attack, set aside, void, or annul any determination granted by the City relating to the Application, including, but not limited to, the adoption of a Resolution and issuance of a plan for Restorative Action work, including ongoing maintenance, required to be performed by the Planning Commission, or City Council on appeal, and any and all costs incurred in enforcing the same, except for those costs of enforcement that the City may recover from the Tree Owner. The City may, at its sole and absolute discretion, choose to participate in the defense of such Claims undertaken by the Applicant, or retain separate counsel whose attorneys' fees and costs shall be paid by the Applicant. Such participation by the City in the defense of such Claims or the retention of separate counsel by the City shall not relieve the Applicant of their obligations under this Section.~~

23.51.140 Limitations.

- A. It is not the intent of the City in adopting this Chapter to affect obligations imposed by an existing easement or a valid pre-existing covenant or agreement between private parties.
- B. Nothing in the Chapter shall deny private parties the right to seek remedial action for any Imminent Danger caused by any Tree(s).

23.51.150 Process for Alleging Obstruction of Scenic Views and/or Sunlight by City Trees.

The below provisions shall apply when any Person alleges Obstruction of Scenic Views and/or Sunlight caused by City Trees. The process for determining whether an unreasonable Obstruction of Scenic Views and/or Sunlight has occurred as a result of City Trees is set forth below.

A. Application Submittal.

1. Any Person who believes that the growth, improper maintenance and/or installation of a City Tree has caused an unreasonable Obstruction of Scenic Views and/or Sunlight may submit an Application to the City in accordance with the provisions of Section 23.51.040(A) of this Chapter.
2. Together with the submission of an Application, the Applicant shall remit an Application fee to the City in an amount established by Ordinance or Resolution of the City Council.
3. Upon review of the Application for completeness, the Director may request additional information, if necessary, within thirty (30) days following Application submittal.
4. The Application will not be deemed complete for further processing by the City until all materials required by this Section and any additional information requested by the Director have been submitted in a format deemed acceptable by the Director.

- B. City's Review of the Alleged Obstruction. Upon receipt of a complete Application, the Director, in consultation with the City's Public Works Director and/or a City Arborist, shall:

-
1. Review and evaluate the Application to determine whether the required findings of fact can be made pursuant to Section 23.51.060 of this Chapter;
 2. Perform a site visit to the Applicant's PLA, room or rooms affected by Sunlight Obstruction, or Solar Energy System; and
 3. Consider the public interest in maintaining the public environment created by the existing City Tree(s) and its/their contribution to the community character.

C. City's Decision and Public Notice.

1. The Director shall approve or deny the Application by written decision within thirty (30) days following the Application has been deemed complete.
2. The Director's written decision shall specify findings of fact for Application approval or denial as provided in Section 23.51.060 of this Chapter.
3. Approval of an Application under this Section shall include appropriate Restorative Action based on a recommendation by City staff working in consultation with a City Arborist. The Restorative Action plan shall consider the criteria set forth in Section 23.51.070 of this Chapter, shall be consistent with Section 23.51.080 of this Chapter, and shall involve the least amount of impact necessary to the overall aesthetic of the City Tree(s).
4. If the Restorative Action plan requires Tree Removal of a Protected City Tree, the City shall provide public notice of the Director's decision, as follows:
 - a. Notice shall be posted on the City's website and mailed to all owners of real property located within three hundred (300) feet of the location of the City Tree(s).
 - b. Notice shall include a number assigned to the Application, a description of the City Tree(s) causing an Obstruction of Applicant's Scenic Views and/or Sunlight, and information on the process for appealing the Director's decision.
5. The Director's decision shall become final on the eleventh (11th) business day following the date of the posted/mailed public notice, unless appealed.

D. Appeal of Director's Decision. For purposes of this Section only, the Director's decision may be appealed to the Planning Commission pursuant to the provisions of this Municipal Code. The Planning Commission's decision shall become final on the eleventh (11th) business day following the adoption of the Planning Commission's Resolution, unless appealed to the City Council in accordance with Section 23.51.100 of this Chapter.

E. Procedures for Restorative Action Work and Allocation of Costs.

1. If any Restorative Action work is required to be performed in accordance with this Section, the City and the Applicant shall each be responsible for paying fifty percent (50%) of the cost to perform the Restorative Action work.

-
2. Within thirty (30) days following the date the Director's written decision approving the Application, City staff shall provide the written decision to the City's contracted tree maintenance company to obtain a cost estimate for the performance of the Restorative Action work.
 3. Upon receipt of the cost estimate for the performance of the Restorative Action work, City staff shall provide the Applicant with an invoice for fifty percent (50%) of the total cost estimate.
 4. Within fifteen (15) days following receipt of the invoice from the City, the Applicant shall remit the full invoiced amount to the City as a deposit for the performance of the Restorative Action work. Failure of the Applicant to timely make the required deposit within these fifteen (15) days will render the Director's decision requiring the Restorative Action work to become null and void.
 5. Upon completion of the Restorative Action work, the deposited funds shall be used towards payment of the Applicant's fifty percent (50%) share of the total cost to perform the Restorative Action work.
 - a. If the final cost of the Restorative Action work is less than the initial estimate, any unused amount of the deposit shall be returned to the Applicant.
 - b. If the final cost of the Restorative Action work exceeds the initial estimate, the City shall provide the Applicant with an invoice for the remaining amount owed by the Applicant. Within fifteen (15) days following receipt of the invoice, the Applicant shall remit to the City the remaining amount of the Applicant's share owed to the City.

Matt Bator

Subject: FW: TSVS Rewrite: Concerns Regarding "Run with the Land" Language
Attachments: Jurisdictional View Ordinance Comparison Chart.pdf; RunWithTheLand_Research.xlsx

From: Janet Wilson <janet@silverhook.com>
Sent: Tuesday, August 5, 2025 4:07 PM
To: Planning Mail Box <Planning@delmar.ca.us>; Tracy Martinez <tmartinez@delmar.ca.us>; Dan Quirk <dquirk@delmar.ca.us>; Terry Gaasterland <tgaasterland@delmar.ca.us>; John Spelich <jspelich@delmar.ca.us>
Cc: Janet Wilson <janet@silverhook.com>
Subject: TSVS Rewrite: Concerns Regarding "Run with the Land" Language

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Planning and City Councilmembers,

Thank you for your hard work rewriting Del Mar's TSVS ordinance. For this update, the Planning Department developed a Jurisdictional View Ordinance Comparison Chart of 27 other "view" cities and reviewed historical staff reports from Clyde Hill, which served as the original template for Del Mar's TSVS in 2002.

Aligning with other cities provides a solid foundation, promotes consistent decision-making, and enhances legal defensibility. These are meaningful goals that should guide the revision process. With this in mind, there are observations about two of the proposed changes in **Section 23.51.010 – Purpose:**

1. Look-back Window - A Consistent Change

When the Planning Commission asked why the 10-year look-back window was changing, the explanation was that Del Mar is the *only* city with such a limit, and that removing it would align our ordinance with other "view" cities.

While there doesn't appear to be controversy around the current 10-year window, **the rationale to align with other jurisdictions is sound.**

2. Run with the Land - An Inconsistent Shift

When asked why restorative actions shouldn't "run with the land", the Planning Commissioners were told that was never the intent.

The Staff reports (to both the Planning Commission and City Council) describe this change as follows:

*"Language to **clarify and affirm** that approvals of TSVS applications and associated restorative actions do not run with the land, and rights provided by such approvals terminate upon the sale of applicant's property."*

These statements **contradict** our current ordinance, **DMMC 23.51.070(A)**, which says:

Restorative Action may include additional written conditions (including ongoing maintenance), and directions as to appropriate timing of such actions, and may be made to run with the land and apply to successors in interest.

https://library.municode.com/ca/del_mar/codes/municipal_code?nodeId=TIT23BUCO_CH23.51TRSCVISU_23.51.070HIREAC

Describing this proposed change as a clarification may be misleading, because it is effectively a **reversal**.

Running with the Land - Comparable Cities:

Alameda County	C. Restorative action may include written conditions (including ongoing maintenance), and directions as to appropriate timing of such actions, and may be made to run with the land and apply to successors in interest.
Belvedere	Access to a view or sunlight does not run with the land as an easement.
Beverly Hills	10-8-107: DECISIONS INTENDED TO RUN WITH THE LAND ; DISCLOSURE: Decisions regarding view restoration shall be binding on all current and future owners of view owner's property and foliage owner's property, and such decisions must be disclosed by each owner to subsequent owners of the property.
Clyde Hill WA	The hearing examiner may direct that the work prescribed pursuant to CHMC 17.38.070 be continuously maintained and that the examiner's decision may be binding upon future owners and run with the land , in which case the city shall record the examiner's decision with the King County recording office and shall be reimbursed by the complainant.
Culver City	C. Restoration action may include written conditions (including ongoing maintenance) and directions as to appropriate timing of such actions, as well as recordation of an agreement containing covenants or other documentation to memorialize the conditions and make them applicable.
Del Mar	A. Restorative Action may include additional written conditions (including ongoing maintenance), and directions as to appropriate timing of such actions, and may be made to run with the land and apply to successors in interest.
El Cerrito	10. Restorative action may include written conditions concerning ongoing maintenance and should be recorded, made to run with the land and apply to successors in interest.
Laguna Beach	§ 12.16.100 View decisions binding on future owners—Disclosure obligations. Decisions made by city staff and the view restoration committee regarding view restoration and view preservation run with the land and shall be binding on the claimant and the vegetation owner and their heirs, successors and assigns. Such decisions, to the extent permitted, shall be recorded in the official records of the county of Orange. In addition, such decisions shall be set forth in any real property report required by Chapter 14.76 and should be disclosed by each owner to prospective purchasers of their properties.
Malibu	Restorative action may be made to run with the land and apply to successors in interest.
Orinda	D. Restorative action may include written conditions (including ongoing maintenance) and directions as to timing for taking appropriate actions and may be made to run with the land and apply to successors in interest.
Rolling Hills Estates	It is also not the intent or purpose of this chapter for the city to create either a covenant running with the land (for example, CC&Rs or deed restriction) or an equitable servitude (for example, easement or license). However, the city will keep a record of agreements and decisions reached pursuant to Sections 17.55.070, 17.55.080, 17.55.090 and 17.55.110 of which it is notified, and provide those agreements and/or decisions as part of the pre-purchase inspection report it provides to prospective purchasers of property in the city who request such a report.
Santa Barbara	Not a Covenant or Servitude. It is not the intent and purpose of this chapter for the City to create either a covenant running with the land or an equitable servitude.
Tiburon	(c) Restorative action may include written conditions (including ongoing maintenance), and directions as to appropriate timing of such actions, and may be made to run with the land and apply to successors in interest.
Torrance	Nor is it the intent or purpose of this Article for the City to create either a covenant running with the land (for example, CC&Rs or deed restriction) or an equitable servitude (for example, easement or license). However, the City will keep a record of agreements and decisions reached pursuant to Sections 92.41.100, 92.41.110, and 92.41.120 of which it is notified, and provide those agreements and/or decisions to those who request such a report.
Ventura County	E. Not a Covenant or Servitude. It is not the intent and purpose of this Chapter for the City to create either a covenant running with the land or an equitable servitude.
Westlake Village	C. Restorative action may include written conditions (including ongoing maintenance) and directions as to appropriate timing of the required conduct. Restorative action may be made to run with the land and apply to successors in interest.

Comparison Snapshot:

- Only 5 cities explicitly state that view decisions do not run with the land.

- 11 cities (including Del Mar’s current ordinance) state they may run with the land.
- The other 12 cities from the Jurisdictional View Ordinance Comparison Chart are silent, which typically implies the default legal assumption: that decisions tied to the land bind future owners.

In total, **81% of cities** either affirmatively or implicitly allow view decisions to run with the land.

Importantly, **none** of the comparison cities includes an exception based on inheritance. A scenic view doesn’t change when ownership changes, so why should the protection? Linking rights to how a property is transferred (sold vs inherited) is inconsistent. Additionally, requiring a new owner to restart a process that was already resolved is unnecessary, burdensome, and may undermine the integrity of the original decision.

Adopting this change would put Del Mar **out of step with the majority of comparable cities**. And should an inheritance exception be included, Del Mar would **stand alone as the only city** with such a clause.

Summary

The look-back window change makes sense because it follows the logic of **aligning with what other cities are doing**. But the “run with the land” proposal doesn’t follow that same logic at all. In fact, it moves Del Mar in the opposite direction.

If one of the goals of this TSVS update is to align with other view cities, the “run with the land” language should be revisited. Laguna Beach offers a clear, well-written model that could serve as a template.

My research can be verified using the attached spreadsheet with direct links to the relevant ordinances.

Thank you for your time,
Janet Wilson

Matt Bator

Subject: FW: Strengthening Del Mar's Sunlight Provisions - Comment on July 7 Council Meeting
Attachments: SunshineArea.xlsx

From: Janet Wilson <janet@silverhook.com>
Sent: Thursday, August 7, 2025 6:28 PM
To: Planning Mail Box <Planning@delmar.ca.us>
Cc: Terry Gaasterland <tgaasterland@delmar.ca.us>; John Spelich <jspelich@delmar.ca.us>; Dan Quirk <dquirk@delmar.ca.us>; Tracy Martinez <tmartinez@delmar.ca.us>; Janet Wilson <janet@silverhook.com>
Subject: Strengthening Del Mar's Sunlight Provisions - Comment on July 7 Council Meeting

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Planning and City Councilmembers,

Although the restorative actions when obstructed are similar, **Views** and **Sunlight** differ in essential ways. Both contribute to a sense of openness which we all value, but Sunlight surrounds us daily, shaping quality of life, supporting health, and sustaining gardens. Therefore, I was pleased to hear during the July 7 City Council meeting that the scope of Sunlight protection will be revisited and that it will no longer be limited to only Del Mar's narrowly defined "primary living area."

How do other "View" cities manage Sunlight protections?

Reviewing 27 other "View" cities and 18 of them address Sunlight, of which 9 contain a Sunlight definition:

- 3 have "availability or access to light from the sun across **property lines**"
- 6 have "availability of **direct or indirect** Sunlight to the primary living area of a residence"

Overview Chart (the spreadsheet with a direct link is attached to double-check this information):

City	Wording	Defi
Del Mar	(single) portion	direct or
Alameda County	portion or portions of a residence	direct or
Belvedere	parcel of real property	-
Berkeley	view from a structure access to sunlight to the real property	-
Clyde Hill WA	areas which may include both interior and exterior spaces	-
Contra Costa	primary living areas or exterior deck attached to a residence	-
Corte Madera	point(s) portion or portions	direct or
Hillsboro	parcel of property	-
Kensington	primary living areas or exterior deck attached to a residence	-
Laguna Beach	viewing locations or areas	-
Los Altos Hills	portion or portions of a residence	direct or
Martinez	those portions of a residence primarily living areas	-
Orinda	the portion of a residence	direct or
Rolling Hills	one common interior or exterior space (can apply for one additional view)	property
San Francisco	available to the garden or home	-
Santa Barbara	real property point(s)	property
Sausalito	primary living areas property	-
Tiburon	portion or portions	direct or
Ventura County	benefiting the real property	property

Note: View cities that do NOT mention Sunlight protection are Beverly Hills, Culver City, El Cerrito, Malibu, Torrance, Oakland, Rancho Palos Verdes, and Westlake Village.

Interestingly, most jurisdictions allow Sunlight (and View) claims from multiple areas of a home and property and even Del Mar's "template" city, Clyde Hill, states:

"Living and entertainment areas" means areas from which a view is observed most often by the occupants relative to other portions of the residence, which may include both interior and exterior spaces."

The majority of View cities reference broader property areas or the entire real property; very few rely solely on a narrowly defined interior space.

While I understand it might be challenging to change Del Mar's definition of Primary Living Area, for Sunshine the broader definition makes sense especially if there aren't privacy issues!

Concerns about a Obstruction of Sunlight & Shade Study Requirement

It is being proposed to add the following language to 23.51.040:

"For applications involving sunlight obstruction, requires a shade study."

This is entirely new territory. No other "View" city with Sunlight protection requires this. I wasn't sure what a shade study might be, so I looked it up:

A shade study, also known as a shadow study, is an analysis of how sunlight and shadows interact with a building or site at different times of the day and year. It helps architects, urban planners, and landscape designers understand how sunlight will affect a space, optimize building design, and ensure comfortable outdoor environments.

Requiring residents to provide technical studies like a shade study places an **unreasonable burden on applicants**. Most homeowners would never anticipate needing to document “before” conditions or hire consultants to demonstrate a loss of sunlight.

Critically, Del Mar’s ordinance defines sunlight as **both direct and indirect**.

Vegetation may not cast sharply defined shadows on windows, but it can still **significantly reduce the ambient light** around a property, such as the soft, diffused light typical in Del Mar during overcast coastal days (May Gray and June Gloom). Overgrown vegetation can also **lessen the quality** of low-angle sunlight during late afternoon or sunset year-round. Excessive vegetation can negatively impact daily livability and enjoyment, which is exactly what this ordinance aims to protect.

Shade studies are not designed to measure these qualitative aspects of natural sunlight, and residents should not be expected to have documented such subtle lighting conditions in advance. For all of these reasons, the following proposed language should be reconsidered as unrealistic and overly burdensome:

“Based on a review of the photographic evidence and exhibit submitted by the Applicant, the Subject tree(s) cast(s) shadows greater than fifty percent (50%) of the total window glazing in the Applicant’s PLA at any time between 10:00 a.m. and 2:00 p.m., Pacific Standard Time (PST).”

Balancing Burden & Justification

It’s difficult and stressful for someone to take a stand and initiate conflict with a neighbor. However, it seems that conflict is a common outcome in every TSVS application. These situations should be more balanced and the property owner causing the issue should be required to justify that their vegetation does not create undue risk or negatively impact their neighbors for several reasons:

- **Accountability** - Property owners are responsible for maintaining their land, including trees and vegetation. If their property affects others, by blocking Views or Sunlight, they should be accountable for the impact and justify why no action is warranted.
- **Precedent and Policy Consistency** - Requiring justification helps build a consistent record for how similar cases are handled. This supports clearer future policies and reduces subjective or arbitrary outcomes.
- **Encouraging Resolution** - When both sides must justify their stance, it often encourages communication and compromise, leading to more amicable resolutions without prolonged disputes.

Current Definitions

Sunlight shall mean the availability of direct or indirect Sunlight to the Primary Living Area or to the existing solar energy system of a residence.

Primary Living Area shall mean that (single) portion of a residence from which a Scenic View is observed most often by the occupants and guests at the residence. The determination of Primary Living Area is to be made on a case-by-case basis and shall be consistent with any prior determinations made by the City.

Proposed Definitions

Sunlight shall mean the availability of direct and/or indirect sunlight to the PLA or to the existing Solar Energy System of an Applicant’s primary residence.

Primary Living Area (PLA) shall mean that (single) portion of a primary residence (typically the living room, dining room or great room) determined by the Planning Commission, or City Council on appeal, to be the main gathering and entertainment room of the primary residence.

1. The determination of a PLA is to be made on a case-by-case basis and shall be consistent with any prior determinations made by the City. Each primary residence shall be limited to the designation of only one (1) PLA (a primary residence does not include “Accessory Dwelling Units”, as that term is defined by Chapter 30.91 of this Municipal Code).

2. Under rare and extraordinary circumstances, the Planning Commission, or City Council on appeal, may determine that another area of a primary residence (other than the living room, dining room or great room) is the PLA.
3. Under no circumstances shall a bathroom, laundry room, storage room, stairwell, hallway, outdoor deck, patio, balcony, or any other area outside of the enclosing walls of a primary residence, be designated as a PLA. Additionally, a PLA may not be from any space within an Accessory Dwelling Unit (as that term is defined by Chapter 30.91 of this Municipal Code)

Comments

Regarding the current and proposed Primary Living Area requirement of “consistent with any prior determinations,” there are circumstances (such as a remodel) where the Primary Living Area or View Corridor might change.

Accessory Dwelling Units (ADU) are not currently part of Del Mar’s TSVS. Is adding them just unnecessary wording and complications since none of the other View cities include ADU in their ordinance?

Sunlight and solar energy are closely connected, and Del Mar already has a Solar Energy Ordinance (DMMC 23.20). So, would it make sense for the TSVS ordinance to reference the Solar Energy Ordinance and recognize it as having precedence where solar access is concerned? Doing so would clarify the scope of each ordinance and allow this chapter to focus specifically on revising *general* Sunlight access, which is the primary purpose.

Consider Real Property or Property Lines vs Primary Living Area?

Berkeley does not have a definition for Sunlight, but it is addressed in the definition of Obstruction:

*"Obstruction" means any substantial blocking or diminishment of a **view from a structure** lawfully used as a dwelling or **access to sunlight to the real property** which is attributable to the growth, maintenance or location of tree(s)."*

Perhaps Del Mar follows that lead to update the definition of Obstruction (new words in green):

*Obstruction shall mean any substantial blocking or diminishment of Scenic Views **from the Primary Living area** and/or **access to Sunlight to the real property** that is attributable to the growth, improper maintenance or location of a Tree or Vegetation.*

I hope these observations help ensure that Sunlight access remains a clear, equitable, and enforceable right for every Del Mar resident.

Thank you for your continued attention to this important revision.

Janet Wilson

619.733.1428

Matt Bator

Subject: FW: TSVS Ordinance Rewrite - Regarding Section 23.51.090 – Concerns Regarding Cost Shifting and Fairness
Attachments: 23.51.090_AllocationsofCosts.pdf

From: Janet Wilson <janet@silverhook.com>
Sent: Wednesday, August 13, 2025 9:47 PM
To: Planning Mail Box <Planning@delmar.ca.us>; Dan Quirk <dquirk@delmar.ca.us>; John Spelich <jspelich@delmar.ca.us>; Tracy Martinez <tmartinez@delmar.ca.us>; Terry Gaasterland <tgaasterland@delmar.ca.us>
Cc: Janet Wilson <janet@silverhook.com>
Subject: TSVS Ordinance Rewrite - Regarding Section 23.51.090 – Concerns Regarding Cost Shifting and Fairness

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Planning and City Councilmembers,

For the TSVS rewrite, **Guiding Principle #5** states: *Ensure an equitable cost allocation process to initiate the view/sunlight restoration process, perform view restoration work, and maintain restored scenic views and sunlight.* Extensive revisions have been made to **Section 23.51.090** to support **Guiding Principle #5** and what has been called **Cost Shifting**. To better understand these significant changes, I created the attached flowchart. These are my observations.

Overall Observation — Burden on Applicants

The proposed revisions still place a disproportionate burden on Applicants, who must pay substantial up-front costs that are never reimbursed, even when the Reviewing Authority finds the Tree Owner at fault. This imbalance deters legitimate applications, and the expanded length and complexity of the revised ordinance will make the process harder to navigate and more intimidating.

1. Application Fees & Tree Survey Costs

Del Mar's application fees are among the highest compared to other View Cities. Under both the current ordinance and the proposed revisions, regardless of the decision, the Applicant is always responsible for the application fees. This policy should be reconsidered. By the time the Applicant pays the fee, every effort to resolve the matter amicably has already been made. When the Reviewing Authority determines restorative action is appropriate, reimbursement of the fees to the Applicant should be required.

Similarly, when the Reviewing Authority determines restorative action is appropriate, reimbursement of tree survey costs to the Applicant should be required *even* if the Tree Owner participated in mediation that failed to resolve the matter.

Partial cost-sharing should be allowed only when both parties share responsibility.

Matt Bator

Subject: FW: Chapter 23.51 - TSVS - Proposed changes - Comments regarding 'City Tree,' 'Parkway,' and right-of-way responsibilities

From: Janet Wilson <janet@silverhook.com>

Sent: Saturday, August 23, 2025 2:20 PM

To: Planning Mail Box <Planning@delmar.ca.us>; Dan Quirk <dquirk@delmar.ca.us>; Terry Gaasterland <tgaasterland@delmar.ca.us>; John Spelich <jspelich@delmar.ca.us>; Tracy Martinez <tmartinez@delmar.ca.us>; Ashley Jones <ajones@delmar.ca.us>

Cc: Janet Wilson <janet@silverhook.com>

Subject: Chapter 23.51 - TSVS - Proposed changes - Comments regarding 'City Tree,' 'Parkway,' and right-of-way responsibilities

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Planning and City Councilmembers,

Chapter **23.51** addresses obstruction and restoration of Scenic Views and Sunlight, and “Trees” appears in the title only because they are the primary cause of an obstruction (and not because the chapter governs Trees).

The proposed changes to **23.51.020** include adding a definition for “City Tree”, but removing the definition of “Tree”.

(E) **City Tree** shall mean any Tree planted, installed, owned, and/or maintained by the City, which is located in, within or on a City park, Parkway, street, median, or other property owned by the City. For purposes of this Chapter and consistent with Section 23.51.030 of this Chapter, the term “City Tree” does not include any Tree located within the public right-of-way between the improved street edge and the property boundary of a private lot.

~~(S) Tree shall mean any perennial plant growing on public or private property, having a self-supporting woody main stem or trunk with the potential to obstruct Scenic Views or Sunlight, including but not limited to Trees, shrubs, hedges, and bushes or any plant material planted or growing in a dense continuous line so as to form a thicket barrier or naturally grown fence. References to "Tree" shall include the plural.~~

This new definition of “City Tree” effectively places every tree into one of three categories:

1. Private Tree – owned and maintained by the property owner
2. Public Right-of-Way Tree – located on City property inside the public right-of-way, but maintained by the [adjacent] property owner
3. City Tree – located on City property outside the public right-of-way, and maintained by the City

The objective seems to be that the Applicant follows the normal TSVS application process (including associated fees) for both a Private Tree *and* a Public Right-of-Way Tree, but when a City Tree is causing the obstruction, the ordinance aims to streamline the process. By defining Public Right-of-Way Trees as a subset of City Trees, the ordinance calls out that it is the adjacent property owner (and not the City) who is responsible for maintenance when there is an obstruction under 23.51.

In Del Mar, many homeowners maintain their adjacent right-of-way, but others do not. Under this update, if trees in a property owner's adjacent right-of-way cause an obstruction, the owner is responsible whether they maintain the trees or even realize the obligation. This issue was raised at the last City Council meeting regarding properties backing onto Jimmy Durante, with many others likely in similar situations. Once clarified, responsibility for obstructions caused by right-of-way trees will be explicitly assigned, a goal behind these changes.

This raises two important questions: Shouldn't homeowners be formally notified of this new responsibility? And conversely, who is responsible for the public right-of-way when there is no obstruction?

California State Streets and Highways Code section 5610 states that landowners are responsible for maintaining sidewalks in safe and unobstructed condition, even if the sidewalk is publicly owned. This *implies* landscaping in the right-of-way is also the homeowner's responsibility.

Placing the definitions of 'City Tree' and 'Public Right-of-Way Tree' in 23.50 Trees would allow 23.51 to remain focused on obstruction, while making clear that homeowners are responsible for maintaining adjacent rights-of-way. Either way, this represents a significant change for all residents.

I hope this helps.

Janet Wilson
619.733.1428

The term "Public Right-of-Way Tree" is awkward. Many municipal codes use "Street Tree" or "Parkway Tree" to describe trees in the right-of-way maintained by adjacent property owners.

City Council Policy 110 addresses private encroachments into city rights-of-way, stating:

"There are numerous circumstances in Del Mar where an improved (paved) section of a City right-of-way is narrower than the width of the right-of-way itself. This results in an area of unimproved right-of-way adjacent to private property. In many cases, the owner of the adjacent property, or designee, proposes to install landscaping and other landscape-related improvements in the unimproved portion of the right-of-way. This has the beneficial effect of beautifying the area adjacent to the paved roadway, without the City having to bear the costs for installing or maintaining the improvements. These are generally considered to be an appropriate use of a right-of-way but still subject to review under the Encroachment Permit process."

<https://www.delmar.ca.us/DocumentCenter/View/1956/110-Private-Encroachments-Into-City-Rights-of-Way-PDF>

Del Mar Chapter **23.28 – Encroachment Permits**

C. Encroachment shall mean development or use of any portion of a City Right-of-Way or Easement in a manner other than its intended use. Encroachment shall include, but not be limited to, any of the following:

2. Planting of any tree, shrub, grass or other growing thing within a City Right-of-Way or Easement;

https://library.municode.com/ca/del_mar/codes/municipal_code?nodeId=TIT23BUCO_CH23.28ENPE

Cut-and-paste definitions are maintenance-intensive. Therefore, if 23.51 does require a definition of City Tree, it should be

(E) **City Tree** - see 23.50.020 City Tree

2. Mediation — Determination of “Good Faith”

The revised ordinance should define the standard and identify the decision-making body for determining whether a party has engaged in “good faith” mediation. Without a clear standard, determinations risk being subjective, potentially encouraging strategic behavior that undermines the intent of the cost allocation provisions.

3. Existing Decisions - Ongoing Maintenance

Existing decisions have placed an unfair burden on Applicants to pay for the ongoing maintenance of the Tree Owner’s property. This is inequitable and should be eliminated. Landscaping owners must be responsible for the upkeep of their own property. In the case of Del Mar Woods, Applicants have paid approximately \$70,000 over the past 10 years to maintain the Tree Owners’ landscaping.

4. Omission

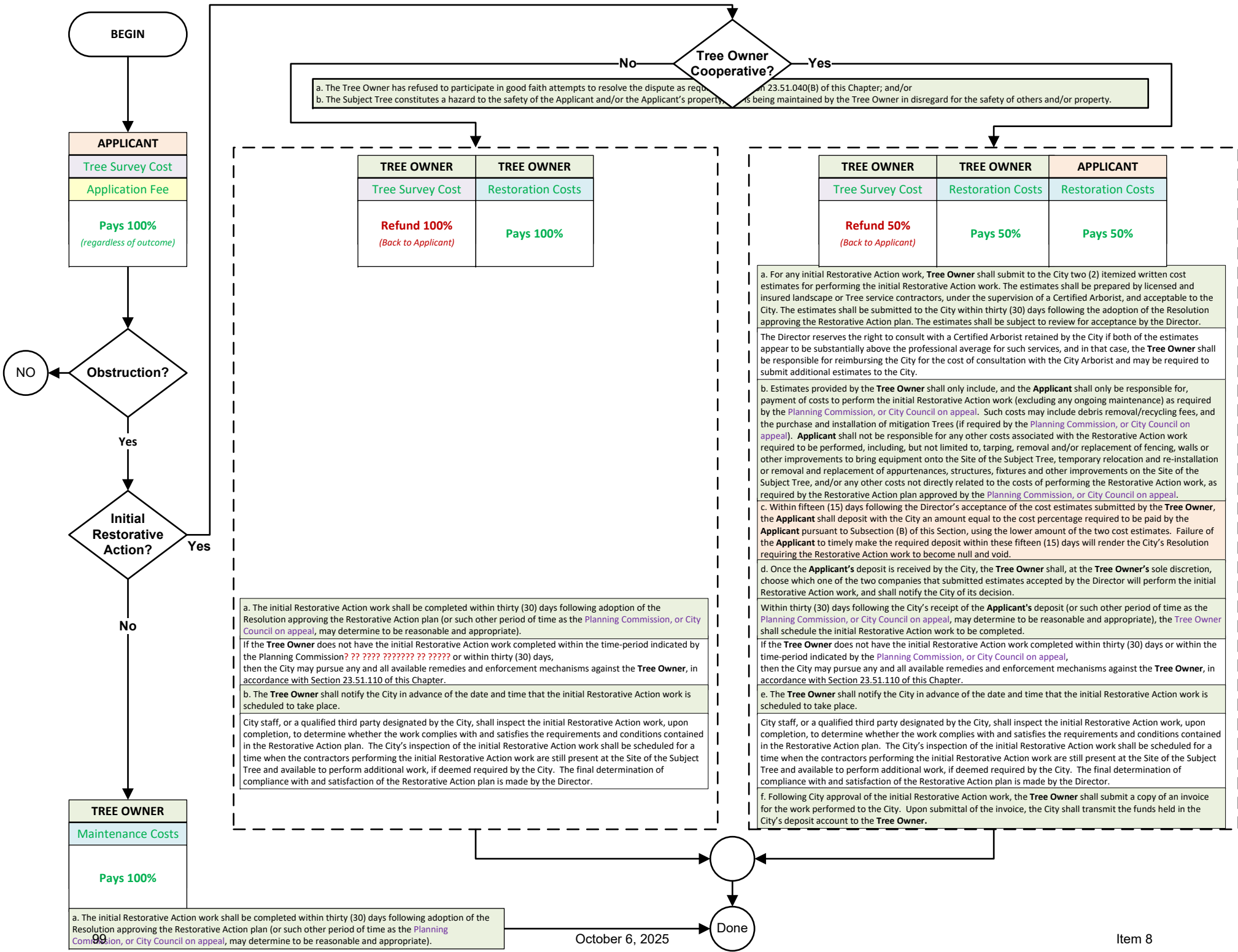
In Section 23.51.090(D)(2)(a), the second sentence omits “, or City Council on appeal.”

5. Excessive Language

- a. Section 23.51.090 has expanded from about a half a page (550 words) to three pages (1,660 words) due to the incorporation of what I term the "nitty-gritty" what-if-then-else scenarios. Would it be more effective if the cost allocation structure were placed in the ordinance and the implementation details in a supporting Policy or Guidelines document?
- b. Consider defining "Reviewing Authority" in Section 23.51.020 as "Planning Commission, or City Council on appeal" and using the term consistently to improve clarity and readability.
- 3.

Thank you again for your time and effort on this important rewrite. I hope this input is useful.

Janet Wilson
619.733.1428



a. The Tree Owner has refused to participate in good faith attempts to resolve the dispute as required by Section 23.51.040(B) of this Chapter; and/or
 b. The Subject Tree constitutes a hazard to the safety of the Applicant and/or the Applicant's property, and the safety of the Subject Tree is being maintained by the Tree Owner in disregard for the safety of others and/or property.

TREE OWNER	TREE OWNER
Tree Survey Cost	Restoration Costs
Refund 100% (Back to Applicant)	Pays 100%

TREE OWNER	TREE OWNER	APPLICANT
Tree Survey Cost	Restoration Costs	Restoration Costs
Refund 50% (Back to Applicant)	Pays 50%	Pays 50%

a. The initial Restorative Action work shall be completed within thirty (30) days following adoption of the Resolution approving the Restorative Action plan (or such other period of time as the **Planning Commission, or City Council on appeal**, may determine to be reasonable and appropriate).
 If the **Tree Owner** does not have the initial Restorative Action work completed within the time-period indicated by the **Planning Commission, or City Council on appeal**, or within thirty (30) days, then the City may pursue any and all available remedies and enforcement mechanisms against the **Tree Owner**, in accordance with Section 23.51.110 of this Chapter.
 b. The **Tree Owner** shall notify the City in advance of the date and time that the initial Restorative Action work is scheduled to take place.
 City staff, or a qualified third party designated by the City, shall inspect the initial Restorative Action work, upon completion, to determine whether the work complies with and satisfies the requirements and conditions contained in the Restorative Action plan. The City's inspection of the initial Restorative Action work shall be scheduled for a time when the contractors performing the initial Restorative Action work are still present at the Site of the Subject Tree and available to perform additional work, if deemed required by the City. The final determination of compliance with and satisfaction of the Restorative Action plan is made by the Director.

a. For any initial Restorative Action work, **Tree Owner** shall submit to the City two (2) itemized written cost estimates for performing the initial Restorative Action work. The estimates shall be prepared by licensed and insured landscape or Tree service contractors, under the supervision of a Certified Arborist, and acceptable to the City. The estimates shall be submitted to the City within thirty (30) days following the adoption of the Resolution approving the Restorative Action plan. The estimates shall be subject to review for acceptance by the Director.
 The Director reserves the right to consult with a Certified Arborist retained by the City if both of the estimates appear to be substantially above the professional average for such services, and in that case, the **Tree Owner** shall be responsible for reimbursing the City for the cost of consultation with the City Arborist and may be required to submit additional estimates to the City.
 b. Estimates provided by the **Tree Owner** shall only include, and the **Applicant** shall only be responsible for, payment of costs to perform the initial Restorative Action work (excluding any ongoing maintenance) as required by the **Planning Commission, or City Council on appeal**. Such costs may include debris removal/recycling fees, and the purchase and installation of mitigation Trees (if required by the **Planning Commission, or City Council on appeal**). **Applicant** shall not be responsible for any other costs associated with the Restorative Action work required to be performed, including, but not limited to, tarping, removal and/or replacement of fencing, walls or other improvements to bring equipment onto the Site of the Subject Tree, temporary relocation and re-installation or removal and replacement of appurtenances, structures, fixtures and other improvements on the Site of the Subject Tree, and/or any other costs not directly related to the costs of performing the Restorative Action work, as required by the Restorative Action plan approved by the **Planning Commission, or City Council on appeal**.
 c. Within fifteen (15) days following the Director's acceptance of the cost estimates submitted by the **Tree Owner**, the **Applicant** shall deposit with the City an amount equal to the cost percentage required to be paid by the **Applicant** pursuant to Subsection (B) of this Section, using the lower amount of the two cost estimates. Failure of the **Applicant** to timely make the required deposit within these fifteen (15) days will render the City's Resolution requiring the Restorative Action work to become null and void.
 d. Once the **Applicant's** deposit is received by the City, the **Tree Owner** shall, at the **Tree Owner's** sole discretion, choose which one of the two companies that submitted estimates accepted by the Director will perform the initial Restorative Action work, and shall notify the City of its decision.
 Within thirty (30) days following the City's receipt of the **Applicant's** deposit (or such other period of time as the **Planning Commission, or City Council on appeal**, may determine to be reasonable and appropriate), the **Tree Owner** shall schedule the initial Restorative Action work to be completed.
 If the **Tree Owner** does not have the initial Restorative Action work completed within thirty (30) days or within the time-period indicated by the **Planning Commission, or City Council on appeal**, then the City may pursue any and all available remedies and enforcement mechanisms against the **Tree Owner**, in accordance with Section 23.51.110 of this Chapter.
 e. The **Tree Owner** shall notify the City in advance of the date and time that the initial Restorative Action work is scheduled to take place.
 City staff, or a qualified third party designated by the City, shall inspect the initial Restorative Action work, upon completion, to determine whether the work complies with and satisfies the requirements and conditions contained in the Restorative Action plan. The City's inspection of the initial Restorative Action work shall be scheduled for a time when the contractors performing the initial Restorative Action work are still present at the Site of the Subject Tree and available to perform additional work, if deemed required by the City. The final determination of compliance with and satisfaction of the Restorative Action plan is made by the Director.
 f. Following City approval of the initial Restorative Action work, the **Tree Owner** shall submit a copy of an invoice for the work performed to the City. Upon submittal of the invoice, the City shall transmit the funds held in the City's deposit account to the **Tree Owner**.

a. The initial Restorative Action work shall be completed within thirty (30) days following adoption of the Resolution approving the Restorative Action plan (or such other period of time as the **Planning Commission, or City Council on appeal**, may determine to be reasonable and appropriate).

October 6, 2025

Matt Bator

Subject: FW: Chapter 23.51 - TSVS - Proposed changes - Comments regarding 'City Tree,' 'Parkway,' and right-of-way responsibilities

From: Janet Wilson <janet@silverhook.com>

Sent: Saturday, August 23, 2025 2:20 PM

To: Planning Mail Box <Planning@delmar.ca.us>; Dan Quirk <dquirk@delmar.ca.us>; Terry Gaasterland <tgaasterland@delmar.ca.us>; John Spelich <jspelich@delmar.ca.us>; Tracy Martinez <tmartinez@delmar.ca.us>; Ashley Jones <ajones@delmar.ca.us>

Cc: Janet Wilson <janet@silverhook.com>

Subject: Chapter 23.51 - TSVS - Proposed changes - Comments regarding 'City Tree,' 'Parkway,' and right-of-way responsibilities

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Planning and City Councilmembers,

Chapter **23.51** addresses obstruction and restoration of Scenic Views and Sunlight, and “Trees” appears in the title only because they are the primary cause of an obstruction (and not because the chapter governs Trees).

The proposed changes to **23.51.020** include adding a definition for “City Tree”, but removing the definition of “Tree”.

(E) **City Tree** shall mean any Tree planted, installed, owned, and/or maintained by the City, which is located in, within or on a City park, Parkway, street, median, or other property owned by the City. For purposes of this Chapter and consistent with Section 23.51.030 of this Chapter, the term “City Tree” does not include any Tree located within the public right-of-way between the improved street edge and the property boundary of a private lot.

~~(S) Tree shall mean any perennial plant growing on public or private property, having a self-supporting woody main stem or trunk with the potential to obstruct Scenic Views or Sunlight, including but not limited to Trees, shrubs, hedges, and bushes or any plant material planted or growing in a dense continuous line so as to form a thicket barrier or naturally grown fence. References to "Tree" shall include the plural.~~

This new definition of “City Tree” effectively places every tree into one of three categories:

1. Private Tree – owned and maintained by the property owner
2. Public Right-of-Way Tree – located on City property inside the public right-of-way, but maintained by the [adjacent] property owner
3. City Tree – located on City property outside the public right-of-way, and maintained by the City

The objective seems to be that the Applicant follows the normal TSVS application process (including associated fees) for both a Private Tree *and* a Public Right-of-Way Tree, but when a City Tree is causing the obstruction, the ordinance aims to streamline the process. By defining Public Right-of-Way Trees as a subset of City Trees, the ordinance calls out that it is the adjacent property owner (and not the City) who is responsible for maintenance when there is an obstruction under 23.51.

In Del Mar, many homeowners maintain their adjacent right-of-way, but others do not. Under this update, if trees in a property owner's adjacent right-of-way cause an obstruction, the owner is responsible whether they maintain the trees or even realize the obligation. This issue was raised at the last City Council meeting regarding properties backing onto Jimmy Durante, with many others likely in similar situations. Once clarified, responsibility for obstructions caused by right-of-way trees will be explicitly assigned, a goal behind these changes.

This raises two important questions: Shouldn't homeowners be formally notified of this new responsibility? And conversely, who is responsible for the public right-of-way when there is no obstruction?

California State Streets and Highways Code section 5610 states that landowners are responsible for maintaining sidewalks in safe and unobstructed condition, even if the sidewalk is publicly owned. This *implies* landscaping in the right-of-way is also the homeowner's responsibility.

Placing the definitions of 'City Tree' and 'Public Right-of-Way Tree' in 23.50 Trees would allow 23.51 to remain focused on obstruction, while making clear that homeowners are responsible for maintaining adjacent rights-of-way. Either way, this represents a significant change for all residents.

I hope this helps.

Janet Wilson
619.733.1428

The term "Public Right-of-Way Tree" is awkward. Many municipal codes use "Street Tree" or "Parkway Tree" to describe trees in the right-of-way maintained by adjacent property owners.

City Council Policy 110 addresses private encroachments into city rights-of-way, stating:

"There are numerous circumstances in Del Mar where an improved (paved) section of a City right-of-way is narrower than the width of the right-of-way itself. This results in an area of unimproved right-of-way adjacent to private property. In many cases, the owner of the adjacent property, or designee, proposes to install landscaping and other landscape-related improvements in the unimproved portion of the right-of-way. This has the beneficial effect of beautifying the area adjacent to the paved roadway, without the City having to bear the costs for installing or maintaining the improvements. These are generally considered to be an appropriate use of a right-of-way but still subject to review under the Encroachment Permit process."

<https://www.delmar.ca.us/DocumentCenter/View/1956/110-Private-Encroachments-Into-City-Rights-of-Way-PDF>

Del Mar Chapter **23.28 – Encroachment Permits**

C. Encroachment shall mean development or use of any portion of a City Right-of-Way or Easement in a manner other than its intended use. Encroachment shall include, but not be limited to, any of the following:

2. Planting of any tree, shrub, grass or other growing thing within a City Right-of-Way or Easement;

https://library.municode.com/ca/del_mar/codes/municipal_code?nodeId=TIT23BUCO_CH23.28ENPE

Cut-and-paste definitions are maintenance-intensive. Therefore, if 23.51 does require a definition of City Tree, it should be

(E) **City Tree** - see 23.50.020 City Tree