



City of Del Mar  
 Department of Planning and Community Development  
 1050 Camino del Mar  
 Del Mar, CA 92014

Phone: 858-755-9313 Fax: 858-755-2794  
 Hours: M-TH 1:00 pm – 5:30 pm  
 FRI 1:00 pm – 4:30 pm  
[www.delmar.ca.us](http://www.delmar.ca.us)

**TSVS** - \_\_\_\_\_ - \_\_\_\_\_

Submittal Date: \_\_\_\_\_ Planner: \_\_\_\_\_

Fees: PL: \_\_\_\_\_ GPF: \_\_\_\_\_ Noticing: \_\_\_\_\_

Receipt No.: \_\_\_\_\_

## Trees, Scenic Views and Sunlight Application

### APPLICANT:

Applicant(s):

Mailing Address:

City / State:

Zip:

Phone No(s):

Email:

Signature(s):

### OWNER (if not primary applicant listed above):

Owner:

Mailing Address:

City / State:

Zip:

Phone No(s):

Email:

Signature(s)

(authorizing applicant to submit application):

### APPLICANT'S PROPERTY INFORMATION:

Site Address:

Mailing Address:

Assessor Parcel No.:

### TREE / VEGETATION – OWNER'S PROPERTY INFORMATION:

Owners Name

Site Address:

Mailing Address:

Assessor's Parcel Number:

Zone:

Overlay Zone:

Approximate distance from the applicant's property:

**The applicant shall complete the following information. No application will be deemed complete unless all sections are answered in full. Attach additional pages if necessary.**

1. Describe the **Primary Living Area** of your residence. Describe the scenic view that is being obstructed and the specific tree/vegetation that is causing the obstruction. If the tree/vegetation is obstructing sunlight from reaching the Primary Living Area or solar energy system of the residence, please describe:

2. Explain the steps you have taken to resolve this matter with the tree/vegetation owner. Please provide documentation of these actions. [Note: Early neighbor consultation and attempts to resolve the problem using Mediation Services are required prior to any consideration by the Planning Commission.]

3. The Planning Commission will only consider applications regarding scenic views and/or sunlight access that existed at the time you purchased or occupied the subject property or in the last ten years, whichever is shorter. Please describe all (required) evidence you have submitted to document the date and extent of the unobstructed view or amount of sunlight reaching your Primary Living Area or solar energy system. Also, please provide evidence that documents the date of property purchase or occupation of the residence.

# ? I HAVE ? ? ? QUESTIONS... ?

## Q. What types of disputes can be resolved?

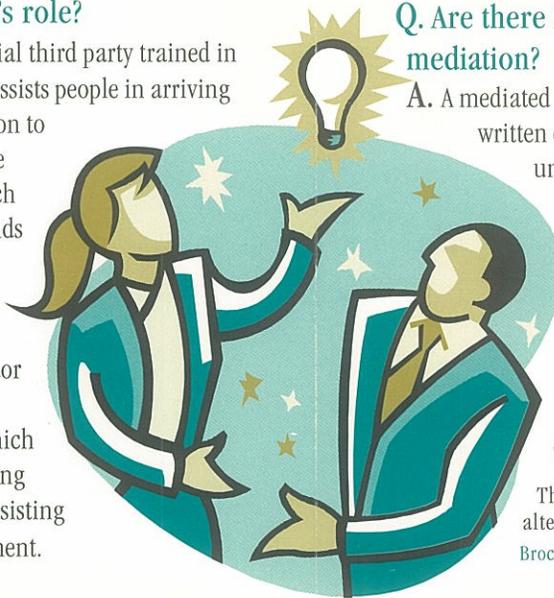
A. Any dispute between two or more individuals or entities can be mediated. Disputes that can be resolved range from noise, barking dogs, trash and parking to planning and land use issues, such as view, tree and vegetation maintenance. Mediation can be especially effective when the issues are complex or when there is a high level of emotion surrounding the dispute.

## Q. What can I expect in a mediation session?

A. All parties participate. Mediation does not determine guilt or innocence. The mediator assists in defining the issues, guides communication, helps participants resolve misunderstandings, explores options and facilitates a satisfactory outcome. Individuals are given the power to voice their expectations and interests and craft a solution which reflects those interests.

## Q. What is the mediator's role?

A. The mediator is an impartial third party trained in conflict resolution skills who assists people in arriving at a mutually agreeable solution to their dispute. In contrast to the traditional adversarial approach where a judge or arbitrator holds an evidentiary hearing, listens to the cases prepared by each party's counsel and makes a judgment, the mediator acts as a catalyst helping to create possible solutions on which the parties can agree, facilitating the parties' negotiations and assisting in developing a written agreement.



## Q. What is the focus of mediation?

A. Although fact-finding to determine the origin of a dispute is an important part of the process, mediation tends to focus on moving forward - resolving the dispute and constructing a foundation for any future relationship between the parties.

## Q. Do I need an attorney?

A. In mediation legal representation is not required. The language used in mediation is normal everyday language. In order to negotiate most effectively, it may be helpful to have an understanding of your legal rights and remedies prior to beginning the mediation session. If you wish to have your attorney attend, you can arrange this through your mediator.

## Q. Does mediation work?

A. Yes. The mediation process recognizes that each dispute is unique. The flexibility of the process allows participants to explore the interests at stake and, where necessary, the underlying sources of conflict. Because decisions are made voluntarily by the participants, they retain control of the process and the mutually agreed-upon outcome. This allows mediation to work to bring a resolution to a dispute.

## Q. Are there legal rules that apply to mediation?

A. A mediated agreement is usually expressed in a written document. For this reason, compliance under mediated agreements is generally high. If the parties choose, they can include a statement making their agreement enforceable at law. In addition, the agreement of the parties may be subject to the approval of a governing body such as the Del Mar Design Review Board, Planning Commission and/or City Council.

The information in this brochure is available in alternate formats upon request.

Brochure Design: Joanne Sharp/A Sharp Design

## Q. How long does mediation take?

A. Many disputes can be resolved in a single session lasting only a few hours. More complex matters may require several sessions. The mediation process can generally be entered into within days or weeks depending on the complexity of the dispute. Telephone mediation may also be available.

## Q. What does it cost?

A. Mediators in private practice usually charge by the hour. The cost is typically shared by the parties in dispute. The cost of mediation is considerably lower than either arbitration or litigation. Volunteer mediators are available. There are funded agencies that can provide mediation on a sliding scale.

## Q. How do I find a mediator?

A. Mediators are trained in conflict resolution. Many local organizations and individuals provide mediation services. A directory of mediators identified by their experience and qualifications is available at:

- The Del Mar Library
- The Del Mar City Hall
- The Powerhouse Park Community Center
- Del Mar Visitors' Center

Mediators can be also be found in the Yellow Pages of the telephone directory listed under "Mediation Services."

There are two tax-supported mediation centers:  
**San Diego Mediation Center (619) 238-2400**  
**North County Lifeline (760) 726-4900**



**Del Mar Community  
Mediation Advisory Committee  
(858) 404-0551**

comprised of interested Del Mar volunteers

Underwriting made possible by grants from the Del Mar Foundation and the City of Del Mar. These entities do not recommend or endorse any specific mediator.

## MEDIATION IS:

**COOPERATIVE** In mediation, the parties to a dispute work together with the assistance of a trained mediator to discuss their dispute and arrive at a mutually agreeable solution. The mediation process promotes communication, cooperation, and the restoration of relationships by negotiating peaceful settlements. In mediation, the participants explore options and choose a solution that meets both their interests and the requirements of any applicable Del Mar regulations or ordinances.

**CONFIDENTIAL** The mediation process protects the parties' interests and legal rights. In order to encourage the free exchange of information, all mediation sessions are confidential.

**EMPOWERING** Mediation allows individuals to maintain control of the decisions that affect their future. Mediation is a voluntary process for people to discuss ways to resolve misunderstandings or conflicts, rather than hold them inside, ignore them, or allow them to escalate beyond the possibility of resolution. Further, the mediation process gives the participants experience with conflict resolution methods that they can use in resolving future disputes.



Del Mar Community  
Mediation Advisory Committee  
P. O. Box 186  
Del Mar, CA 92014

## WHAT IS MEDIATION?



**Me\*di\*a\*tion** n 1: private, voluntary process in which an impartial person facilitates communication between parties to promote settlement;  
2: does not involve a decision by the mediator.

**Me\*di\*a\*tor** n, 1: a neutral ( third person ) selected by the parties to a dispute to assist in the identification of issues, generation of options, and facilitation of a mutually acceptable agreement.

## Chapter 23.51

### TREES, SCENIC VIEWS AND SUNLIGHT

#### 23.51.010 Purpose. [Ord. 747, 780]

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.

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: [Ord. 780]

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. [Ord. 780]

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); or

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.

4. Any Tree planted as a result of required mitigation for the removal of another Protected Tree. [Ord. 729]

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.

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 Section 23.51.030 A of this Chapter; and

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. [Ord. 780]

D. Within ten (10) working days after the application has been deemed filed, City staff shall notify the Subject Tree owner, in writing, and provide the following:[Ord. 780]

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 (10) 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 eleventh (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). [Ord. 780]

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. 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: [Ord. 780]

A. That the Applicant has contacted the Subject Tree owner and has made reasonable efforts to resolve the dispute as set forth in DMMC Section 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: [Ord. 780]

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 a 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.

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: [Ord. 780]

A.

1. The Subject Tree owner shall submit to the Applicant and the City two (2) 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 fifteen (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 section 23.51.040 B2 of this Chapter and the fees shall be refunded to the Applicant.

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. 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.780]

23.51.110 Enforcement. The Subject Tree owner shall comply with any work prescribed by the Planning Commission or Council no later than ninety (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 ninety (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 1.08 and is declared a public nuisance which may be enjoined or abated as provided by law. [Ord. 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.