ATTACHMENT "G"

Other Cities' ordinances and Matrix on how certain provisions are implemented.

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City of Beverly Hills

Article 1. Trousdale Estates View Restoration

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10-8-101: PURPOSE AND INTENT:

The intent of this article is to restore and preserve certain views from substantial disruption by the growth of privately owned trees, vegetation, or a combination thereof while providing for residential privacy and security; maintaining the garden quality of the city; ensuring the safety and stability of the hillsides; and, acknowledging the importance of trees and vegetation in the city as an integral part of a sustainable environment. It is the further intent to establish a process by which residential property owners in Trousdale Estates may seek to restore and preserve certain views, with an emphasis on early neighbor resolution of view restoration issues. It is also the intent of this article to educate residents to consider the potential to block neighbors' views before planting foliage and in maintaining foliage. It is not the intent of this article to create an expectation that any particular view or views would be restored or preserved. (Ord. 11-O-2616, eff. 1-6-2012)

10-8-102: DEFINITIONS:

Unless the context otherwise requires, the definitions set forth in this section shall govern the construction of this article:

ARBORIST: An individual certified as an arborist by the International Society Of Arboriculture (ISA), or an individual who is currently listed as a consulting arborist by the American Society Of Consulting Arborists (ASCA).

CITY ADVISORY OPINION: A nonbinding opinion rendered by the director of community development or his/her designee, to a view owner who requests such an opinion and pays a fee as set by the city council.

DAMAGE: Any action which may cause death or significant injury to a tree, or which places the tree in a hazardous condition or an irreversible state of decline. Such action may be taken by, but is not limited to, cutting, topping, girdling, poisoning, trenching, grading, or excavating within the drip line of the tree.

FOLIAGE: The aggregate of leaves, branches and trunks of one or more plants. Trees and hedges, including hedges that otherwise meet the standards of the zoning code, are included in the definition of foliage.

FOLIAGE OWNER: An owner of real property in Trousdale Estates upon which is located foliage that is subject to an action filed pursuant to this article and which property is within five hundred feet (500') of a view owner's property. "Foliage owner" shall reference one or more owners of the same property.

FORESTER: An individual licensed in California as a registered professional forester (RPF).

HEDGE: Shall have the same meaning as set forth in section 10-3-100 of this title.

LANDSCAPE ARCHITECT: A landscape architect registered by the state of California.

PRIMARY RESIDENTIAL STRUCTURE: The main structure or building on a site zoned for residential use and used or occupied as a private one-family residence.

PROTECTABLE VIEW: A protectable view may include any view of the Los Angeles area basin from a "viewing area" as defined in this section. The view of the Los Angeles area basin may include, but is not limited to, city lights (Beverly Hills and other cities), ocean, and horizon. The term "protectable view" does not mean an unobstructed panorama of all or any of the above. For purposes of this section, a protectable view shall be determined from a point thirty six inches (36") above the finished grade of the viewing area.

PROTECTED VIEW: A protectable view that has been determined by the reviewing authority to merit restoration.

RESTORATIVE ACTION: Any specific steps taken affecting foliage that would result in the restoration or preservation of a protected view.

SAFE HARBOR AREA: The area below a safe harbor plane.

SAFE HARBOR PLANE: A plane defined by points at the edge of view owner's level pad to points measured from grade at the edge of an adjacent downslope foliage owner's principal building area that is farthest from the edge of view owner's level pad located in a line of sight of a protectable view. The points of the plane on foliage owner's property shall be at a height of one foot (1') above the height of the roof of the primary residential structure on foliage owner's property, not to exceed a maximum height of fifteen feet (15') as measured from grade (see illustration in section 10-8-103 of this chapter). If the downslope property is undeveloped, or if the upslope property's view is over the driveway or "pole" portion of a flag lot, then the maximum height of fifteen feet (15') from grade shall apply.

For the purposes of this definition, the height of the roof of the primary residential structure excludes chimneys, stair or elevator shafts, vent pipes, mechanical equipment, parapets, architectural features that extend above the primary roof elevation, antennas, and other rooftop equipment. If the roof height varies, the height of the roof of the primary residential structure shall be the highest point of the roof of the primary structure.

For purposes of this definition, downslope and upslope properties separated by a public street shall be deemed to be adjacent.

If a view owner's level pad is less than one foot (1') above the height of the roof of the primary residential structure on foliage owner's property, then the safe harbor plane shall be defined as a plane above the foliage owner's level pad at a height of one foot (1') above the height of the roof of the primary residential structure on foliage owner's property.

TREE: A woody perennial plant, consisting usually of a single elongated main stem or trunk and many branches.

TREE SURVEY: A tree survey includes the following information for trees alleged to impair a view and all trees within the vicinity of the alleged view impairing trees as determined by a landscape architect, arborist, or forester:

A. Species of each tree, based on scientific name, and the common name;

B. Tree identifying number and location recorded on a map;

C. Physical measurements of the tree such as height and circumference: tree circumference shall be measured on the primary trunk at a height of four feet six inches (4'6") above natural grade;

D. Age of the tree;

E. Report of overall health and structural condition of the tree;

F. Life expectancy and suitability for preservation;

G. Potential restorative actions to address trees alleged to disrupt a view, impact of such restorative actions on trees, and long term maintenance activities to prevent future potential view disruption; and
H. Tree management recommendations.
The survey shall be signed or stamped by a registered landscape architect, arborist or forester.

If a foliage owner does not grant access to his/her property for the purpose of conducting a tree survey, a tree survey report shall be prepared with as much of the above information as possible, using other information sources such as photographs taken from other properties, satellite photographs from commercially available sources, public record permit information for work performed on foliage owner's property, and other similar information sources.
VIEW OWNER: Any owner or owners of real property in Trousdale Estates that has a protectable view and who alleges that the growth of foliage located on a property within five hundred feet (500') of their property is causing substantial disruption of a protectable view. "View owner" shall include one or more owners of the same property.

VIEW RESTORATION GUIDELINES: Guidelines for implementation of the ordinance prepared by the community development department, adopted by the planning commission, and made available to the public.

VIEW RESTORATION PROPERTY SURVEY: A survey completed by a certified professional, such as an ALTA (American Land Title Association) survey, of view owner's site and foliage owner's site that may include calculation of the "safe harbor plane" as defined in this article and any other information or calculations as may be of assistance to a reviewing authority pursuant to this section.

If access to the foliage owner's property is necessary to complete the survey and the foliage owner does not grant access to his/her property for the purpose of conducting the survey, a view restoration property survey report shall be prepared using other information sources such as measurements taken from other properties, photographs taken from other properties, satellite photographs from commercially available sources, public record permit information for work performed on foliage owner's property, and other similar information sources.

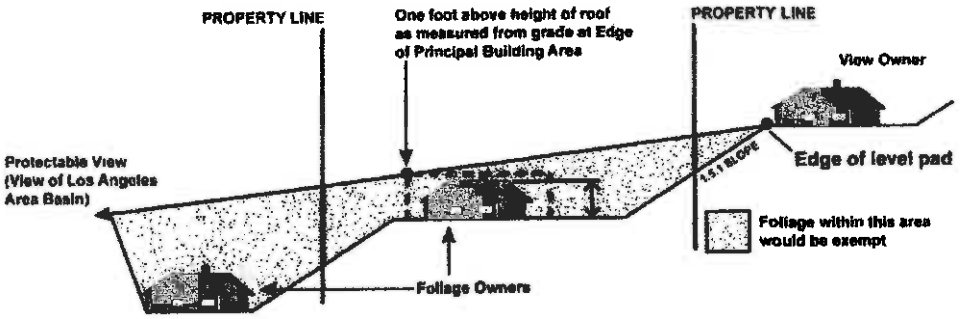
VIEWING AREA: An area from which a protectable view is assessed, located on the level pad that contains the primary residential structure. A viewing area shall be a room of the primary residential structure (excluding hallways, laundry rooms, closets and garages), or a patio, deck or landscaped area adjacent to the primary residential structure that does not extend beyond the level pad. There may be one or more viewing areas on a property. The reviewing authority shall establish the viewing area or areas as part of its finding that the view owner has a protectable view. The reviewing authority may designate a location as a viewing area if, in the opinion of the reviewing authority, an average resident would often observe a protectable view from that area. (Ord. 11-O-2616, eff. 1-6-2012)

10-8-103: EXEMPTION:

The provisions of this article shall not apply to foliage where the highest point of the foliage is below a "safe harbor plane" as defined in this article. The exemption applies to foliage on foliage owner's property. Foliage shall be maintained in accordance with all other requirements of this code, including landscape maintenance standards.

SAFE HARBOR AREA

Safe Harbor Area



Prepared by the Community Development Department

(Ord. 11-O-2616, eff. 1-6-2012)

10-8-104: PROCEDURES:

Except for violations of section 10-3-2616 of this title, complaints received by the city regarding foliage blocking views in Trousdale Estates shall be addressed through the view restoration permit preapplication procedures in this article. The procedures in this article will be augmented by the view restoration guidelines.

The procedures set forth below shall be followed in order for a view owner to pursue remedies available in this article. More than one view owner may pursue remedies simultaneously with one or more foliage owners as determined by the parties involved.

A. Parties' Option To Enter Binding Arbitration; Effect Of Arbitration Decision: Nothing in this article is intended to preclude interested parties from agreeing to resolve the dispute or disputes through binding arbitration, in which case compliance with the procedures set forth in this section shall not be required. View owners who are subject to a binding arbitration decision shall be precluded from applying for a view restoration permit as to any foliage owner who is a party to the binding arbitration decision.

B. Initial Neighbor Outreach:
1. If a view owner wishes to pursue remedies available in this article, the view owner shall notify each foliage owner in writing of concerns regarding disruption of the view owner's protectable view by foliage on foliage owner's property (the "initial neighbor outreach"). This initial neighbor outreach shall be on a form provided by the city in the view restoration guidelines on file in the city, shall be signed by the view owner, and shall include a signed statement from view owner that view owner or the view owner's representative shall offer to meet with each foliage owner. The initial neighbor outreach notification shall clearly identify the remedy sought by view owner and include a good faith estimate of the cost of the remedy, and an offer to pay that amount.
2. Agreement to participate in the initial neighbor outreach by each foliage owner shall be voluntary, but each foliage owner shall have no more than thirty (30) days from service of written request to respond to the view owner, unless foliage owner requests a ten (10) business day extension in writing or the response period is otherwise extended by mutual agreement of the view owner and the foliage owner. Failure to respond shall be considered rejection by the foliage owner. The initial neighbor outreach should be followed by discussions between view owner and each foliage owner to attempt to reach a mutually agreeable solution.
3. If the view owner and a foliage owner are unable to resolve the matter, or if a foliage owner fails to respond to the initial neighbor outreach, the view owner may proceed with a mediation process. To participate in the city sponsored mediation process, the view owner shall submit to the city proof of the initial neighbor outreach in the form of a

certified letter and mailing receipt. If a foliage owner did not respond to the initial neighbor outreach, then the view owner shall also provide an affidavit, signed under penalty of perjury, indicating the nonresponse of foliage owner.
4. If, pursuant to an agreement between the view owner and a foliage owner, the view owner or foliage owner may damage or remove, or cause to be damaged or removed, any "protected tree" as defined in section 10-3-2900 of this title, a tree removal permit must first be obtained in accordance with the requirements of section 10-3-2901 of this title.

C. Mediation:
1. If the parties are unable to reach agreement through the initial neighbor outreach process and the view owner wishes to pursue remedies available in this article, then, as a prerequisite, the view owner shall notify each foliage owner of an offer to mediate. The notice shall be on a form provided by the city in the view restoration guidelines, shall be signed by view owner, and shall include a signed statement from the view owner that the view owner or the view owner's representative shall offer to meet with each potential foliage owner and a mediator. The notice shall clearly identify the remedy sought by the view owner and include a good faith estimate of the cost of the remedy.
2. Acceptance of mediation by each foliage owner shall be voluntary, but each foliage owner shall have no more than thirty (30) days from service of a written request for mediation to accept or reject the offer of mediation, unless the foliage owner requests a ten (10) business day extension in writing or the response period is otherwise extended by mutual agreement of the foliage owner and the view owner. Failure to respond shall be considered rejection. Each mediation session may involve one or more view owners and one or more foliage owners at the discretion of the parties involved.
3. The view owner and each foliage owner shall comply with requirements in the view restoration guidelines regarding submittal of information to the mediator.
4. The mediator shall not have the power to issue binding orders for restorative action but shall strive to enable the parties to resolve their dispute at this stage. If an agreement is reached between the parties as a result of mediation, the mediator will encourage the participants to prepare, and can assist in the preparation of, a private agreement for the parties to sign.
5. If the view owner and a foliage owner are unable to resolve the matter, or if a foliage owner fails to respond to the mediation notice or to participate in the mediation process as prescribed in the view restoration guidelines, then the view owner may proceed to file for a view restoration permit.
6. If, pursuant to an agreement between the view owner and a foliage owner, the view owner or foliage owner may damage or remove, or cause to be damaged or removed, any "protected tree" as defined in section 10-3-2900 of this title, a tree removal permit must first be obtained in accordance with the requirements of section 10-3-2901 of this title.

D. City Advisory Opinion: A view owner may request a nonbinding advisory opinion at any time prior to the view owner filing an application for a view restoration permit in accordance with the requirements of section 10-8-106 of this chapter. If the view owner wishes to pursue the process set forth in section 10-8-106 of this chapter, the view owner must wait twelve (12) months from receipt of the city advisory opinion to file a view restoration permit application. (Ord. 11-O-2616, eff. 1-6-2012)

10-8-105: CONTINUATION OF PROCESS AFTER AGREEMENT:

If the view owner and a foliage owner enter into a private agreement as a result of initial neighbor outreach or mediation before the filing of a view restoration permit application, and that agreement is not adhered to by parties to the agreement, the parties may pursue civil litigation; however, if the view owner wishes to pursue remedies available in this article, then the view owner may continue with the preapplication process at the step after the step at which the agreement was entered into, provided that less than two (2) years have passed since the date of the private agreement. If the view owner wishes to pursue remedies available in this article and more than two (2) years have passed since the date of the private agreement, then the view owner shall begin view restoration procedures with the initial neighbor outreach. (Ord. 11-O-2616, eff. 1-6-2012)

10-8-106: VIEW RESTORATION PERMIT:

A. View Restoration Permit: After exhaustion of the prehearing steps set forth in section 10-8-104 of this chapter, and upon application by a view owner in a form satisfactory to the director of planning and community development, the reviewing authority may issue a view restoration permit to a view owner with a protectable view as defined in this article where the protectable view from a viewing area is substantially disrupted by "foliage" as defined in this article and the reviewing authority makes all of the findings as set forth in this section.

B. Reviewing Authority: The reviewing authority for a view restoration permit application shall be the planning commission. If a view restoration permit application includes review of a "protected tree" or trees as defined in section 10-3-2900 of this title, then the reviewing authority may order the removal of the tree or trees pursuant to section 10-3-2902 of this title as part of the restorative action required by a view restoration permit.

C. Application: Application for a view restoration permit shall be in writing on a form prescribed by the director of community development and shall include, but not be limited to, the following information:
1. Proof that view owner has attempted or completed the following procedures as required in this section:
a. Initial neighbor outreach; and
b. Mediation.
2. Identification of the specific remedy sought by view owner and an estimate of cost.
3. A view restoration property survey documenting that the subject foliage is on foliage owner's property, that the foliage owner's property is within five hundred feet (500') of view owner's property, and the foliage is above the safe harbor plane.
4. A tree survey.

If an applicant does not submit the necessary information and the application remains incomplete for six (6) months after the city, in writing, deems the application incomplete, the director of community development shall deny the application without prejudice, and shall provide notice to the applicant of that determination.

Once a complete application has been received, the city shall send a formal notice of the application to the foliage owner including a copy of the application, a copy of the view restoration guidelines and a request for an invitation to staff and the reviewing authority to visit foliage owner's property with foliage owner's authorization.

D. Verification Of Information: All applicants for a view restoration permit shall submit an affidavit, signed under penalty of perjury, that the information provided in the application and other submitted documents is complete, true, and accurate based on the applicants' knowledge and reasonable investigation.

E. Public Hearing Notice: The reviewing authority shall hold a public hearing concerning each application for a view restoration permit.

Notice of any hearing held pursuant to this section shall be mailed at least thirty (30) days prior to such hearing by United States mail, postage paid to the applicant and all owners and residential occupants of property within five hundred feet (500') of the view owner's and foliage owner's properties, as shown on the latest equalized assessment roll.

F. Public Hearing: The director of community development or the reviewing authority may, at its discretion, require the review or additional review of any view restoration case by a qualified soils engineer, landscape architect, arborist, or other appropriate professional, based on the specific conditions of foliage owner's property. Foliage owner authorization shall be required prior to accessing the foliage owner's property. If foliage owner does not permit access to foliage owner's property, the reviewing authority shall review the case using other information as may be available, including information provided by the view owner.

G. Restrictions And Conditions: In approving a view restoration permit, the reviewing authority may impose such restrictions or conditions, including restorative action, as it deems necessary or proper to restore a protected view;

protect the foliage owner's reasonable enjoyment of its property; protect the public health, safety and welfare; or any combination thereof.

H. Appeals; Effective Date: Any decision of the planning commission made pursuant to this section may be appealed to the city council by view owner or foliage owner pursuant to the provisions set forth in title 1, chapter 4, article 1 of this code. The appeal period shall commence at the date of mailing of the notice of decision.

Any decision of the planning commission made pursuant to this section takes effect fourteen (14) days from the issuance of a notice of decision unless an appeal is filed. If appealed, then the effective day is the date on which the city council acts.

I. Findings:
1. The reviewing authority may issue a view restoration permit to remove or alter foliage on any lot that is all or partly within five hundred feet (500') of a view owner's property if it makes all of the following findings:
a. The view owner has a protectable view. The reviewing authority shall determine the viewing area or areas in order to make this finding.
b. The view owner has substantially complied with the initial neighbor outreach and mediation procedures of this article.
c. The view owner's protectable view is substantially disrupted by foliage on foliage owner's property that is not exempt under section 10-8-103 of this chapter. The following criteria shall be considered in determining whether or not a protectable view is substantially disrupted:
(1) Foliage Position Within A Protectable View: Foliage located in the center of a protectable view is more likely to be found to substantially disrupt a view than foliage located on the protectable view's periphery.
(2) Foliage Size And Density: Foliage that by virtue of its size and density obstructs a large portion of a protectable view is more likely to be found to substantially disrupt the view than is foliage that obstructs only a small portion of the protectable view. Trees located in close proximity to each other and maintained in such a way as to collectively form an uninterrupted "green barrier" are more likely to be found to substantially disrupt a view than are individual trees.
(3) View Diminished By Other Factors: The extent to which the view has been or is diminished by other factors such that removal of the foliage at issue will not substantially restore the protectable view. Other factors that may be considered include, but are not limited to, permitted structures, and foliage that is not on a private property within five hundred feet (500') of the view owner's property.
d. With respect to any tree protected pursuant to section 10-3-2902 of this title, removal of the tree will not:
(1) Adversely affect the neighboring properties or the general welfare or safety of the surrounding area; or
(2) Adversely affect the garden quality of the city.
2. The reviewing authority may allow foliage to substantially disrupt a protectable view if the reviewing authority makes one or more of the following findings:
a. The foliage is important to the integrity of an existing landscape plan.
b. Alteration of the foliage will unreasonably impact the privacy and security of the foliage owner.
c. Alteration of the foliage will have a substantial adverse impact on stability of a hillside, drainage, or erosion control.
d. Restoration of the protectable view would not substantially enhance a reasonable person's enjoyment of the view owner's property taken as a whole.

J. Restorative Action: The reviewing authority may, through issuance of a view restoration permit, require restorative action on foliage owner's property. All restorative action must be performed by a licensed and bonded tree or landscape service unless mutually agreed upon by the view owner and the foliage owner. Restorative action may include, but is not limited to, the following:
1. Trimming, culling, lacing, or reducing foliage to a height or width to be determined by the reviewing authority but not below the safe harbor plane.
2. Requiring the complete removal of the foliage when the reviewing authority finds that the trimming, culling, lacing, or reduction of the foliage is likely to kill the foliage, threaten the public health, safety, or public welfare, or

will destroy the aesthetic value of the foliage that is to be pruned or reduced. Removal of a healthy tree not on a list of nuisance trees maintained by the city is to be avoided unless the reviewing authority determines such removal is necessary to avoid substantial disruption of a protected view.
3. Requiring replacement foliage when the reviewing authority finds that removal without replacement will cause a substantial adverse impact on one or more of: a) the public health, safety and welfare; b) the privacy of the property owner; c) shade provided to the dwelling or property; d) the energy efficiency of the dwelling; e) the stability of the hillside; f) the health or viability of the remaining landscaping; or g) the integrity of the landscape plan.

K. Notice Of Decision:
1. Written Decision Required: The action taken by the reviewing authority shall be set forth in writing.
2. Notice Of Decision: Within five (5) days after the issuance of a decision by the reviewing authority, the director of community development shall cause a copy of the decision to be mailed through the United States mail, postage prepaid, to each of the following persons:
a. The view owner, using the mailing address set forth in the application;
b. Each foliage owner that is named on the application, as listed on a current tax assessor's roll and to the occupant of the foliage owner's property if the foliage owner's address is different than the property on which the foliage is located.

The failure of the person addressed to receive a copy of the decision shall not affect the validity or effectiveness of any decision.

L. Indemnification: View owner shall defend, indemnify and hold harmless the city, its agents, officers, attorneys and employees from any claim, action or proceeding (collectively "action") against the city or its agents, officers, attorneys or employees to attack, set aside, void or annul the entitlements that may be granted by the city through issuance of a view restoration permit, and for any and all costs incurred in enforcing the view restoration permit, except for those costs of enforcement as the city may recover from a foliage owner. Indemnitor shall reimburse the city for any court costs and attorney fees that the city may be required by a court to pay as a result of such action. City may, at its sole and absolute discretion: 1) participate in the defense of such action undertaken by view owner, or 2) retain separate counsel whose attorney fees and costs shall be paid by view owner. Such participation in the defense of such action or the retention of separate counsel by the city shall not relieve view owner's obligations under this provision. The city shall promptly notify the view owner of any such action.

View owner shall indemnify the city against any and all claims resulting from the issuance, defense, implementation, or enforcement of the view restoration permit. (Ord. 11-O-2616, eff. 1-6-2012)

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. (Ord. 11-O-2616, eff. 1-6-2012)
10-8-108: PRIVATE RIGHT OF ACTION; SUBSEQUENT ENFORCEMENT BY VIEW OWNER AND ATTORNEY FEES:

The city shall take such action, as appropriate, to ensure initial compliance with a view restoration permit. After an initial determination by the city that a foliage owner has complied with a view restoration permit, any further dispute regarding the foliage owner's compliance with the view restoration permit shall be resolved by a civil action initiated by the view owner.

At any time, before or after an initial determination of compliance with a view restoration permit by the city, any view owner may sue in Los Angeles superior court to enjoin violation of, or compel compliance with, a view

restoration permit. The prevailing party in any such civil action between a view owner and a foliage owner shall be entitled to recover its reasonable attorney fees and costs incurred in the litigation. (Ord. 11-O-2616, eff. 1-6-2012)

10-8-109: LANDSCAPE STANDARDS:

The view restoration guidelines shall include landscape standards that include a list of nuisance trees that should not be planted in hillside view areas. (Ord. 11-O-2616, eff. 1-6-2012)

10-8-110: APPORTIONMENT OF COSTS:

It is the intent that procedural fees referenced in this section shall reflect the actual cost of administrative activities required of the city to implement this article. Additional clarification of fees and costs may be included in the view restoration guidelines.

A. Initial Neighbor Outreach:
1. Procedural Costs: Any costs associated with obtaining information, mailing the required notice, or preparing an agreement shall be borne by the view owner. The view owner shall pay the cost of a view restoration property survey or tree survey if such a survey is completed.
2. Restorative Action: The cost of restorative action agreed upon by the view owner and the foliage owner shall be borne by the view owner unless otherwise agreed to by the foliage owner.
3. Maintenance Costs: The cost of subsequent maintenance of foliage on the foliage owner's property shall be allocated as agreed upon by the parties.

B. Mediation:
1. Procedural Costs: Any costs associated with obtaining information, mailing the required notice, or preparing an agreement shall be borne by the view owner. The view owner shall pay the cost of a view restoration property survey or tree survey if such a survey is completed.
2. Restorative Action: The cost of restorative action agreed upon by the view owner and the foliage owner shall be borne by the view owner unless otherwise agreed to by the parties.
3. Maintenance Costs: The cost of subsequent maintenance of foliage on the foliage owner's property shall be allocated as agreed upon by the parties.

C. View Restoration Permit With Public Hearing:
1. Procedural Costs: View owner shall bear the cost of application fees and other application costs including the view restoration property survey and tree survey and the cost of any other information requested by the reviewing authority.
2. Restorative Action:
a. The foliage owner shall pay one hundred percent (100%) of the cost of restorative action if the foliage owner did not participate in mediation and the reviewing authority finds restorative action is required.
b. The view owner and foliage owner shall each pay fifty percent (50%) of the cost of restorative action if the foliage owner participated in mediation and the reviewing authority finds restorative action is required.
3. Maintenance After Initial Restorative Action: The foliage owner shall pay for subsequent maintenance of the foliage consistent with the view restoration permit.

D. Appeal To City Council:
1. Procedural Costs: Appellant shall bear the costs of the appeal application including the appeal fee, public notice cost, and any other application costs.
2. Restorative Action: The cost of restorative action resulting from an appeal to the city council shall be apportioned in the same way as the cost of restorative action pursuant to a decision by the planning commission.
3. Maintenance After Initial Restorative Action: The foliage owner shall pay for subsequent maintenance of the foliage consistent with the view restoration permit. (Ord. 11-O-2616, eff. 1-6-2012)

City of Laguna Beach

Chapter 12.16 VIEW PRESERVATION
http://www.qcode.us/codes/lagunabeach/view.php?topic=12-12_16&showAll=1&frames=on - startContent

Note

* **Prior ordinance history:** Ords. 1335 and 1344.

12.16.010 Findings and declarations.

The city council finds and declares as follows:

(1) Both views and trees/vegetation contribute to the aesthetic value, quality of life, ambiance and economic value of properties within the city. Similarly, access to sunlight across property lines contributes to the health and well being of community members, enhances property values and provides an opportunity to utilize solar energy. Utilization of passive solar energy reduces air pollution, visual blight and ill health.

(2) Views, whether of the Pacific Ocean, islands, the surrounding hillsides and canyons or other natural and manmade landmarks produce a variety of significant and tangible benefits for both residents and visitors. Views contribute to the aesthetic visual environment of the community by providing scenic vistas and inspiring distinctive architectural design. Views contribute to property values.

(3) Trees and vegetation produce a wide variety of significant psychological and tangible benefits for both residents and visitors to the community. Trees and vegetation provide privacy, modify temperatures, screen winds, replenish oxygen to the atmosphere, maintain soil moisture, mitigate soil erosion and provide wildlife habitat. Trees and vegetation contribute to the visual environment and aesthetics by blending, buffering and reducing the scale and mass of architecture. Trees and vegetation within the city provide botanical variety and a sense of history. Trees and vegetation also create shade and visual screens and provide a buffer between different land uses. Trees contribute to property values.

(4) The benefits derived from views, trees/vegetation and sunlight may come into conflict. The planting of trees and other vegetation and their subsequent growth, particularly when such trees are not properly maintained, can produce unintended harmful effects both on the property on which they are planted and/or on neighboring properties. It is, therefore, in the interest of the public health, safety and welfare to:

(a) Recognize that every real property owner in the city is entitled to a process to resolve conflicts that negatively impact view equity, in order to preserve a reasonable amount of the view and/or sunlight benefiting such real property which exist after either the property acquisition date or the effective date of the ordinance codified in this chapter, whichever is later; and

(b) Establish procedures and evaluation criteria for the resolution of view and/or sunlight claims so as to provide a reasonable balance between trees/vegetation, privacy and views and/or sunlight related values. (Ord. 1430 § 1 (part), 2003).

12.16.020 Intent and purpose.

The intent and purpose of this chapter is to:

(1) Recognize and establish a process by which real property owners may preserve view equity and/or sunlight access within the immediate vicinity of their property as set forth in Section 12.16.040;

(2) Establish procedures and evaluation criteria by which real property owners may seek resolution of such view equity and/or sunlight access disputes;

(3) Discourage ill-considered damage to trees/ vegetation and promote proper landscaping establishment and maintenance.

It is not the intent and purpose of this chapter for the city to create either a covenant running with the land (for example, CC&R's or deed restriction) or an equitable servitude (for example, easement or license). (Ord. 1430 § 1 (part), 2003).

12.16.030 Definitions.

For the purpose of this chapter, the meaning and construction of words and phrases hereinafter set forth shall apply:

"Alter" means to take action that changes the tree or vegetation, including but not limited to extensive pruning of the canopy area, topping, cutting, girdling, interfering with the water supply, applying chemicals or re-grading around the feeder root zone of the tree or vegetation.

"Arbitration" means a voluntary legal procedure for settling disputes and leading to a final and binding determination of rights of parties, usually consisting of a hearing before an arbitrator where all relevant evidence may be freely admitted as set forth in California Code of Civil Procedure Section 1280 et seq.

"Arbitrator" means a mutually agreed upon neutral third party professional intermediary who conducts a hearing process, and who hears testimony, considers evidence and makes binding decisions for the disputing parties. The arbitrator may be chosen from a list available from the city of qualified and professionally trained (arbitrators/mediators), including but not limited to members of the American Association of Arbitrators and professionals associated with the Orange County Judicial Arbitration and Mediation Service.

"Arborist, certified" means a person who has passed a series of tests by the International Society of Arboriculture (ISA), is governed by ISA's professional code of ethics and possesses the technical competence through experience and related training to provide for or supervise the management of trees and other woody plants.

"Authorized agent" means a person, as defined herein, who has been designated and approved in writing by the property owner of record to act on his/her behalf in matters pertaining to the processing of a view equity and/or sunlight claim as outlined in this chapter.

"Canopy" means the umbrella-like structure created by the over-head leaves and branches of a tree which create a sheltered area below.

"City" means the city of Laguna Beach.

"City maintained trees" means trees which are specifically designated for maintenance by the city council. "City maintained trees" include heritage trees which are located in the unimproved portion of a dedicated and accepted street right-of-way easement and for which the real property owner has requested and given written permission for the city to maintain.

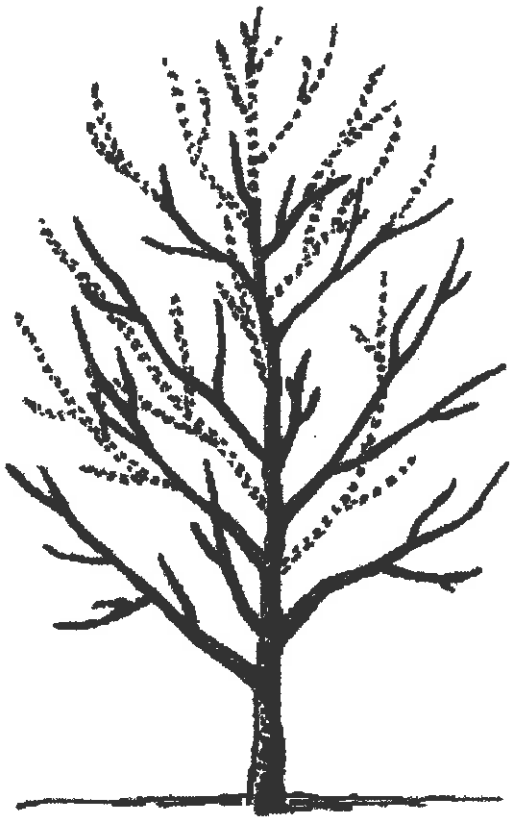
"City property" means any real property of which the city is the fee simple owner of record.

"Claim, view equity and/or sunlight" means documentation, as set forth in Section 12.16.050, that outlines the basis of view equity and/or sunlight access diminishment and the specific restoration action that is being sought.

"Complainant" means any property owner, group of property owners or authorized agent who allege that tree(s)/vegetation located within the immediate vicinity of their property as set forth in Section 12.16.040 is causing unreasonable obstruction of the view and/or sunlight access benefiting such real property.

"Crown" means the rounded top of the tree.

"Crown reduction/shaping" means a method of comprehensive pruning that reduces a tree's height and/or spread. Crown reduction entails the reduction of the top, sides or individual limbs by means of removal of leaders or the longest portion of limbs to a lateral large enough to assume the terminal. The diagram that follows is illustrative of "crown reduction/shaping" within the meaning of this chapter.

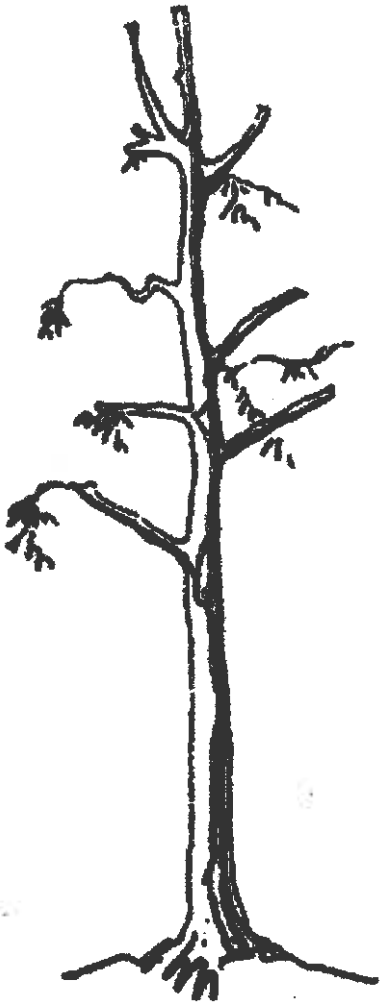


Crown Reduction/Shaping

"Destroy" means to kill or take action that endangers the health or vigor of a tree or vegetation, including, but not limited to, cutting, girdling, interfering with the water supply, applying chemicals or re-grading around the base of the trunk.

"Director" means the director of the city community development department.

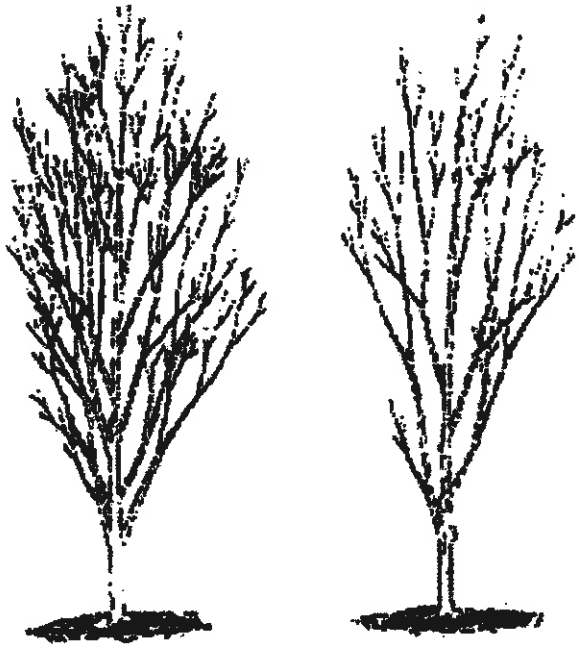
"Heading back" means the overall reduction of the mass of a tree by modification to major limbs. The diagram that follows is illustrative of "heading back" within the meaning of this chapter.



Heading Back

"Heritage tree" means any tree or stand of trees that have been placed on the heritage tree list by the city council, pursuant to Chapter 12.08 of this code.

"Lacing" means a comprehensive method of pruning that systematically and sensitively removes excess foliage and improves the structure of the tree. The diagram that follows is illustrative of "lacing" within the meaning of this chapter.



Before and After
Lacing

"Landscape consultant" means a landscape professional hired by the city to provide advice and information regarding landscape plans, view equity and/or sunlight claims, and landscaping techniques and maintenance procedures.

"Maintenance pruning" means pruning with the primary objective of maintaining or improving tree health and structure; includes "crown reduction/shaping" or "lacing," but not ordinarily "topping" or "heading back."

"Mediator" means a neutral, objective third party professional negotiator/facilitator to help disputing parties reach a mutually satisfactory solution regarding a view equity and/or sunlight claim. The mediator shall be chosen from a list available from the city of qualified and professionally trained (arbitrators/mediators), including but not limited to members of the American Association of Arbitrators and professionals associated with the Orange County Judicial Arbitration and Mediation Service.

"Obstruction" means the blocking or diminishment of a view and/or sunlight access attributable to growth, improper maintenance or location of trees and/or vegetation.

"Person" means any individual, individuals, corporation, partnership, firm or other legal entity.

"Preservation action" means any specific steps taken affecting trees or vegetation that would result in the preservation of view equity and/or sunlight access across property lines.

"Pruning" means the removal of plant material from a tree/vegetation.

"Real property" means rights or interests of ownership of land and all appurtenances to the land including buildings, fixtures, vegetation and improvements erected upon, planted or affixed to the land.

"Severe pruning" means 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 or natural shape 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.

"Stand thinning" means the selective removal of a portion of trees from a grove of trees.

"Street" means the portion of a right-of-way easement used for public purposes, such as roadway improvements, curbs, gutters and sidewalks, dedicated to the city, and formally accepted by the city into the city public street system for maintenance purposes.

"Sunlight" means the availability or access to light from the sun across property lines.

"Topping" means eliminating the upper portion of the trunk or main leader of a tree.

"Tree" means any woody perennial vegetation that generally has a single trunk and reaches a height of at least eight feet at maturity.

"Tree/vegetation owner" means any person owning real property in the city whereon tree(s) and/or vegetation is located.

"Vegetation" means all types of plants, bushes, hedges and shrubs, including trees.

"View" means a vista of features, including but not limited to bodies of water, beaches, coastline, islands, skylines, ridges, hillside terrain, canyons, geologic features and landmarks. The term "view" does not mean an unobstructed panorama of these features.

"View equity" means achievement of a fair, reasonable, and balanced accommodation of views and competing obstructions (such as structures, trees and/or vegetation), privacy and the use and enjoyment of property. When reasonably possible and feasible, development, including its landscaping, shall be designed to preserve views from and sunlight to neighboring properties without denying the subject property the reasonable opportunity to develop as described and illustrated in the city's design guidelines.

"Vista pruning" means the selective thinning of framework limbs or specific areas of the crown of a tree to allow a view from a specific point. (Ord. 1430 § 1 (part), 2003).

12.16.040 View equity and/or sunlight claim limitations.

Subject to the other provisions of this chapter, a real property owner in the city may initiate the claim resolution process as outlined in Section 12.16.060. However, a claim for preserving view equity and/or sunlight access may only be made regarding any tree/vegetation located on real property, as defined herein, which is within five hundred feet from the complainant's real property boundary, and if a claim has not been initiated against that real property by the complainant or any other real property owner within the last two years.

Requests for view equity and/or sunlight preservation action with regard to any tree and/or vegetation located on city property, parks and for city maintained trees may only be initiated as outlined in Section 12.04.070 of this code.

Requests for view equity and/or sunlight preservation action with regard to any heritage tree not maintained by the city, may only be initiated as outlined in Section 12.08.070 of this code. (Ord. 1430 § 1 (part), 2003).

12.16.050 View and/or sunlight claim.

A claim to preserve view equity and/or sunlight shall consist of all of the following:

(1) A description of the nature and extent of the alleged obstruction, including pertinent and corroborating evidence. Evidence may include, but is not limited to, documented and dated photographic prints, negatives, slides and written testimony from residents living in the area. Such evidence must show the extent to which the view and/or sunlight access has been diminished by trees and/or vegetation;

(2) The location of all trees and/or vegetation alleged to cause the obstruction, the address of the property upon which the trees and/or vegetation are located, and the present tree/vegetation owner's name and address;

(3) Specific view equity and/or sunlight preservation actions proposed by the complainant to resolve the allegedly unreasonable obstruction;

(4) Evidence that initial discussion as described in Section 12.16.070 has been made and has failed. Evidence may include, but is not limited to, copies of receipts for certified or registered mail correspondence;

(5) Evidence confirming the ownership and the date of acquisition of the complainant's property. (Ord. 1430 § 1 (part), 2003).

12.16.060 View equity and/or sunlight claim resolution process.

The complainant shall follow the process established by this chapter in seeking preservation of view equity and/or sunlight access. First, the complainant must complete the "initial discussion" process described in Section 12.16.070. Second, if that process does not yield a result mutually satisfactory to the complainant and the tree/vegetation owner, then the complainant may file a view equity and/or sunlight claim with the city and request mediation, as described in Section 12.16.080. If the tree/vegetation owner does not participate in mediation or if mediation is unsuccessful in resolving the claim, then the complainant may pursue resolution by arbitration, as set

forth in Sections 12.16.090. If arbitration is not chosen by the complainant, accepted by the tree/vegetation owner or is unsuccessful in resolving the claim, the complainant may initiate litigation as described in Section 12.16.100. (Ord. 1430 § 1 (part), 2003).

12.16.070 Initial discussion.

A complainant who believes that a tree or vegetation which has grown on another person's property has caused unreasonable obstruction of view equity and/or sunlight access from the complainant's property, shall first notify the tree/vegetation owner of such concerns. The notification shall request personal discussions to enable the complainant and tree/vegetation owner to attempt to reach a mutually agreeable solution, and shall be followed-up in writing. The notification shall include a copy of the view preservation ordinance (Chapter 12.16 of this code), available from the city. The complainant shall invite the tree/vegetation owner to view the alleged obstruction from the complainant's property, and the tree/vegetation owner is urged to invite the complainant to view the situation from his/her property. Failure of the tree/vegetation owner to respond to the written request for initial discussion within forty-five days from the date of delivery shall be deemed formal refusal by the tree/vegetation owner.

If the parties do not agree as to the existence and nature of the complainant's obstruction and to the appropriate preservation action or initial discussion is refused, the complainant may proceed with the subsequent claim resolution process outlined in Section 12.16.060. (Ord. 1430 § 1 (part), 2003).

12.16.080 Mediation.

If the initial discussion, as outlined in Section 12.16.070 fails to achieve agreement between the tree/vegetation owner and the complainant, the complainant may file a written view equity and/or sunlight claim with the city requesting mediation. Upon receiving the written claim and processing fee, in the amount established by resolution of the city council, city staff shall prepare and send by certified mail to the tree/vegetation owner, a copy of the written claim and a notice requesting that the tree/vegetation owner accept participation in a mediation process to attempt to resolve the claim for preservation of view equity and/or sunlight access. Acceptance of mediation by the tree/vegetation owner shall be voluntary. However, the failure of the tree/vegetation owner to participate in mediation shall result in the burden of proof being shifted from the complainant to the tree/vegetation owner in the event of subsequent arbitration and/or litigation. The notice shall inform the tree-vegetation owner of this consequence of non-participation. The notice shall also inform the tree/vegetation owner that a failure to respond to the notice requesting mediation within forty-five days from the date of delivery shall be deemed formal refusal of the mediation process by the tree/vegetation owner.

If the tree/vegetation owner agrees to participate in a mediation process, the complainant shall then pay the fee established by resolution of the city council for the mediation process, including review by a certified arborist. In the event that the parties are unable to choose a mediator from an approved list of professional mediators, city staff shall randomly select a mediator from the list. The city staff, in consultation with the mediator, shall establish a date for mediation, and a written notice of the mediation hearing date shall be sent to each party by certified mail.

The mediator shall be guided by the provisions of this chapter, including the claim evaluation criteria and the hierarchy of preservation actions set forth in Sections 12.16.120 and 12.16.130, respectively, in attempting to resolve the view equity and/or sunlight claim. The mediator shall also consider recommendations of the city's landscape consultant and/or certified arborist regarding landscape techniques and/or maintenance procedures.

The role of the mediator shall be advisory in nature and shall not be binding in establishing the preservation of view equity and/or sunlight access. Any agreement reached between the two parties as a result of the mediation process described herein shall be reduced to writing and signed by the mediator and all of the parties, and two copies shall be submitted to the director of community development. The cost of mediation, including review by a certified arborist, shall be paid initially by the complainant, provided, however, that the ultimate responsibility for such cost may subsequently be modified either by mutual agreement of the parties or by a determination of the mediator as to a just and reasonable allocation of the responsibility. (Ord. 1430 § 1 (part), 2003).

12.16.090 Arbitration.

If the initial discussion under Section 12.16.070 and mediation under Section 12.16.080 fail to achieve agreement between the tree/vegetation owner and the complainant, the complainant may send to the tree/vegetation owner a request to participate in a binding arbitration process. Acceptance of arbitration by the tree/vegetation

owner shall be voluntary. However, the failure of the tree/vegetation owner to participate in the binding arbitration process shall result in the burden of proof being shifted from the complainant to the tree/vegetation owner in the event of subsequent litigation. The notice shall inform the tree/vegetation owner of this consequence of non-participation. The tree/vegetation owner shall have forty-five days from delivery of the notice to either accept or decline arbitration. Failure to respond within forty-five days shall be deemed formal refusal of arbitration. If accepted, the parties shall agree in writing to the selection of an individual arbitrator, which may be chosen from a list of professional arbitrators available from the city, within thirty days of such acceptance. If the parties do not agree on a specific arbitrator within thirty days, either party may petition a court of competent jurisdiction to appoint an arbitrator.

The arbitrator shall be guided by the provisions of this chapter, including the claim evaluation criteria and the hierarchy of preservation actions set forth in Sections 12.16.120 and 12.16.130, respectively, in attempting to help resolve the view equity and/or sunlight claim, and shall submit a complete written decision to the complainant and the tree/vegetation owner. Any decision of the arbitrator shall be enforceable pursuant to the provisions of California Code of Civil Procedure Section 1285 et seq., and two copies of the decision shall be submitted to the director of community development.

The costs of arbitration shall be paid initially by the complainant, provided, however, that the ultimate responsibility for such costs may subsequently be modified either by mutual agreement of the parties or by a determination of the arbitrator as to a just and reasonable allocation of the responsibility. (Ord. 1430 § 1 (part), 2003).

12.16.100 Litigation.

If a complainant has been unsuccessful in attempting to obtain agreement under Section 12.16.070 and afterwards by Sections 12.16.080 and 12.16.090, the complainant may initiate civil action in a court of competent jurisdiction for resolution of his/her view equity and/or sunlight claim under the provisions of this chapter. In such event, the complainant shall provide two copies of the filed complaint to the director of community development. (Ord. 1430 § 1 (part), 2003).

12.16.110 Preservation action limitations.

Except as otherwise authorized by law, no tree and/or vegetation on real property owned or controlled by another person may be removed, destroyed or altered unless the complainant either enters into a written agreement with the tree/vegetation owner or obtains an arbitration award or judicial decision specifying, in detail, the nature and timing of the preservation action and the parties responsible for performing such action. (Ord. 1430 § 1 (part), 2003).

12.16.120 View equity and/or sunlight claim evaluation criteria.

In evaluating a view equity and/or sunlight claim, the following unranked criteria shall be considered:

(1) The vantage point(s) from which the view and/or sunlight is obtained or received;

(2) The extent of the view and/or sunlight obstruction;

(3) The quality of the view and/or sunlight access, including the existence of landmarks or other unique view features, and/or the extent to which these views and/or sunlight access are blocked by tree(s) and/or vegetation;

(4) The extent to which the view and/or sunlight access is diminished by factors other than tree(s) and/or vegetation;

(5) The extent to which the tree(s) and/or vegetation have grown to obscure the enjoyment of view and/or sunlight access from the complainant's property;

(6) The number of existing trees or amount of vegetation in the area, the number of healthy trees that a given parcel of land will support, and the current effects of the tree(s) and their removal on the neighboring vegetation;

(7) The extent to which the tree(s) and/or vegetation provide:

(a) Screening or privacy,

(b) Energy conservation and/or climate control,

(c) Soil stability, as measured by soil structure, degree of slope and extent of the tree's root system when a tree is proposed to be removed,

(d) Aesthetics,

(e) Community/neighborhood quality, value or significance,

(f) Shade,

(g) Historical context due to the age of the tree/vegetation,

(h) Rare and interesting botanical species,

(i) Habitat value for wildlife, and

(j) Blending, buffering or reduction in the scale and mass of architecture.

(8) The date the claimant purchased his/her property;

(9) The date the tree/vegetation owner purchased his/her property. (Ord. 1430 § 1 (part), 2003).

12.16.130 Hierarchy of preservation actions.

View equity and/or sunlight preservation actions must be consistent with all other provisions of this chapter. The practices of tree/vegetation establishment and maintenance outlined in the city's landscape and scenic highways resource document shall be referred to in establishing preservation actions. Severe pruning should be avoided due to the damage such practice causes to the tree's form and health. Preservation actions may include, but are not limited to the following, in order of preference:

(1) Lacing. Lacing is the most preferable pruning technique that removes excess foliage and can improve the structure of the tree.

(2) Vista Pruning. Vista pruning of branches 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 vista pruning.

(3) Crown Reduction. Crown reduction 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(s) in question.

(4) Stand Thinning. The removal of a portion of the total number of trees from a grove of trees, without any replacement plantings.

(5) Topping. Eliminating the upper portion of a tree's trunk or main leader. Topping is only to be permitted for trees specifically planted and maintained as a hedge, espalier, bonsai or in pollard form and if restoration actions (1) through (4) of this section will not accomplish the determined restoration and the subsequent growth characteristics will not create a future obstruction of greater proportions.

(6) Heading Back. Eliminating the outer extent of the major branches throughout the tree. Heading back is only to be permitted for trees specifically planted and maintained as a hedge, espalier, bonsai or in pollard form and if restoration actions (1) through (5) of this section will not accomplish the determined restoration and the subsequent growth characteristics will not create a future obstruction of greater proportions.

(7) Tree/Vegetation Removal. Tree and/or vegetation removal, which may be considered when the above-mentioned restoration actions are judged to be ineffective and may be accompanied by replacement plantings or appropriate plant materials to restore the maximum level of benefits lost due to tree removal. (Ord. 1430 § 1 (part), 2003).

12.16.140 Responsibility for preservation action and subsequent maintenance.

The complainant shall be responsible for paying the cost of any determined preservation action unless the parties agree to share the costs in some other manner. Subsequent maintenance shall be determined either by agreement between the tree/vegetation owner and the complainant, or as required pursuant to any final arbitration decision or court order. (Ord. 1430 § 1 (part), 2003).

12.16.150 Liability.

(1) The city shall not be liable for any damages, injury, costs or expenses which are the result of any determinations resulting from mediation, arbitration or litigation, concerning view equity and/or sunlight claim or a complainant's assertions pertaining to views and/or sunlight access granted or conferred herein.

(2) Under no circumstances shall the city have any responsibility or liability to enforce or seek any legal redress, civil or criminal, for any decision that any other person or entity makes concerning a view equity and/or sunlight claim.

(3) A failure to comply with the provisions of this chapter is not a misdemeanor, and the enforcement of this chapter shall be only by the affected and interested private parties. (Ord. 1430 § 1 (part), 2003).

12.16.160 Severability.

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

The city council hereby declares that it would have adopted this and each section, subsection, phrase or clause of this chapter irrespective of the fact that any one or more sections, subsections, phrases or clauses be declared invalid or unconstitutional on their face or as applied. (Ord. 1430 § 1 (part), 2003).

subsections (1) and (2) of this section, provided that each space meets the minimum dimensions specified in subsection (5) of this section.

17.02.035 - Application requirement.

Applications that involve the construction of a new single-family residence shall include a geology report determining that the project is geologically feasible. The city geologist shall review and approve said report prior to the application for said project being deemed complete for processing.

17.02.040 - View preservation and restoration.

The residents of the city of Rancho Palos Verdes, by the adoption of this section, have made a finding that the peace, health, safety and welfare of the community will be served by the adoption of this section and by the regulations prescribed herein.

A. Definitions. When not inconsistent with the context, the words used in the present tense include the future; words in the singular number include the plural; and those in the plural number include the singular. In carrying out the intent of this section, words, phrases and terms shall be deemed to have the following meanings ascribed to them:

1. "City" means the city of Rancho Palos Verdes and its employees and staff and those designated by the city council to act on behalf of the city.
2. "City council" means the duly elected legislative body of the city of Rancho Palos Verdes.
3. "Director" means the director of the planning, building and code enforcement department of the city of Rancho Palos Verdes.
4. "Foliage" means natural growth of trees, shrubs and other plant life.
5. "Lot coverage" means that portion of a lot or building site which is occupied by any building or structure, including trellises; decks over thirty inches in height (as measured from existing adjacent grade); parking areas; driveways; or impervious surfaces (impervious surfaces less than five feet in width and/or one patio area less than five hundred square feet in area shall be excluded from the lot coverage calculation).
6. "Neighborhood character" means the existing characteristics in terms of the following:
   a. Scale of surrounding residences;
   b. Architectural styles and materials; and
   c. Front, side and rear yard setbacks.
7. "Planning commission" means the planning commission of the city of Rancho Palos Verdes as defined in Chapter 2.20 (Planning Commission) of this Municipal Code.
8. "Privacy" means reasonable protection from intrusive visual observation.
9. "Scale" means the total square footage and lot coverage of a residence and all ancillary structures.
10. "Setback" means the minimum horizontal distance as prescribed by this Code, between any property line or private easement boundary used for vehicular and/or pedestrian access and the closest point on any building or structure, below or above ground level, on the property. In cases where there is no structure on a lot, setback shall mean the minimum horizontal distance between the property line or easement boundary line and a line parallel to the property line or easement boundary line. Please refer to Chapter 17.48 (Lots, Setbacks, Open Space Area and Building Height) for setback regulations.
11. Shall and May. "Shall" is mandatory and "may" is permissive.
12. "Structure" means anything constructed or built, any edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner, which is located on or on top of the ground on a parcel of land utilized for residential purposes, excluding antennas, skylights, solar panels and similar structures not involving the construction of habitable area.

13. "Style" means design elements which consist of, but are not limited to:
    a. Facade treatment;
    b. Height of structure;
    c. Open space between structures;
    d. Roof design;
    e. The apparent bulk or mass of the structure; and
    f. The number of stories.
14. View. On the Palos Verdes peninsula, it is quite common to have a near view and a far view because of the nature of many of the hills on the peninsula. Therefore, a "view" which is protected by this section is as follows:
    a. A "near view" which is defined as a scene located on the peninsula including, but not limited to, a valley, ravine, equestrian trail, pastoral environment or any natural setting; and/or
    b. A "far view" which is defined as a scene located off the peninsula including, but not limited to, the ocean, Los Angeles basin, city lights at night, harbor, Vincent Thomas Bridge, shoreline or offshore islands.

    A "view" which is protected by this section shall not include vacant land that is developable under this Code, distant mountain area not normally visible, nor the sky, either above distant mountain areas or above the height of offshore islands. A view may extend in any horizontal direction (three hundred sixty degrees of horizontal arc) and shall be considered as a single view, even if broken into segments by foliage, structures or other interference.

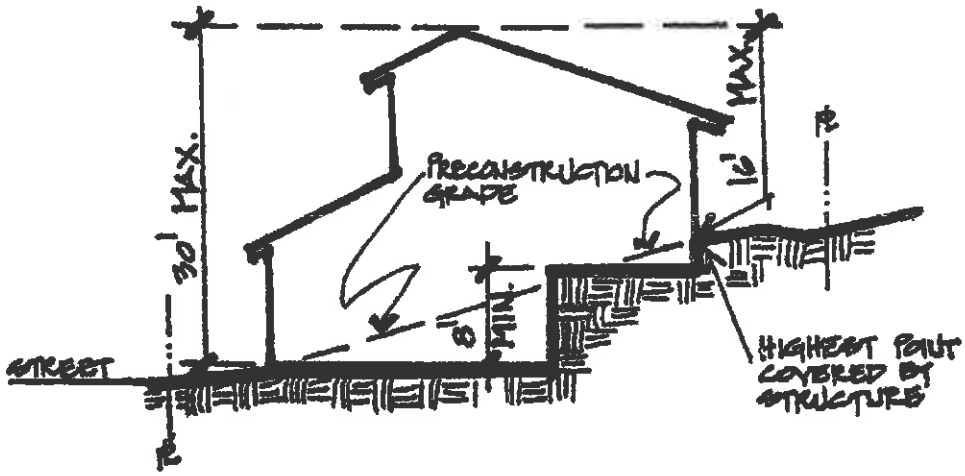
15. "Viewing area" means that area of a structure (excluding bathrooms, hallways, garages or closets) or that area of a lot (excluding the setback areas) where the owner and city determine the best and most important view exists. In structures, the finished floor elevation of any viewing area must be at or above existing grade adjacent to the exterior wall of the part of the building nearest to said viewing area.
16. The "view restoration commission" means the planning commission of the city of Rancho Palos Verdes.

B. Regulations.

1. Building Height. Any individual or persons desiring to build a new structure or an addition to an existing structure shall be permitted to build up to sixteen feet in height pursuant to subsection B of this section provided there is no grading, as defined in Section 17.76.040 of this title, to be performed in connection with the proposed construction, and further provided that no height variation is required, and all applicable residential development standards are or will be met. In cases where an existing structure is voluntarily demolished or is demolished as a result of an involuntary event, a height variation application will not be required to exceed sixteen feet in height, provided that the replacement structure will have the same or less square footage and building height as the existing structure and will be reconstructed within the building envelope and footprint of the pre-existing structure. Approval for proposed structures or additions to existing structures exceeding sixteen feet in height, may be sought through application for a height variation permit, which, if granted pursuant to the procedures contained herein, will permit the individual to build a structure not exceeding twenty-six feet in height, except as provided in subsection (B)(1)(d) of this section, or such lower height as approved by the city, measured as follows:
    a. For sloping lots which slope uphill from the street of access or in the same direction as the street of access and for which no building pad exists, the height shall be measured from the preconstruction (existing) grade at the highest point on the lot to be covered by the structure to the ridgeline or the highest point of the structure, as illustrated in Figure 1 below.

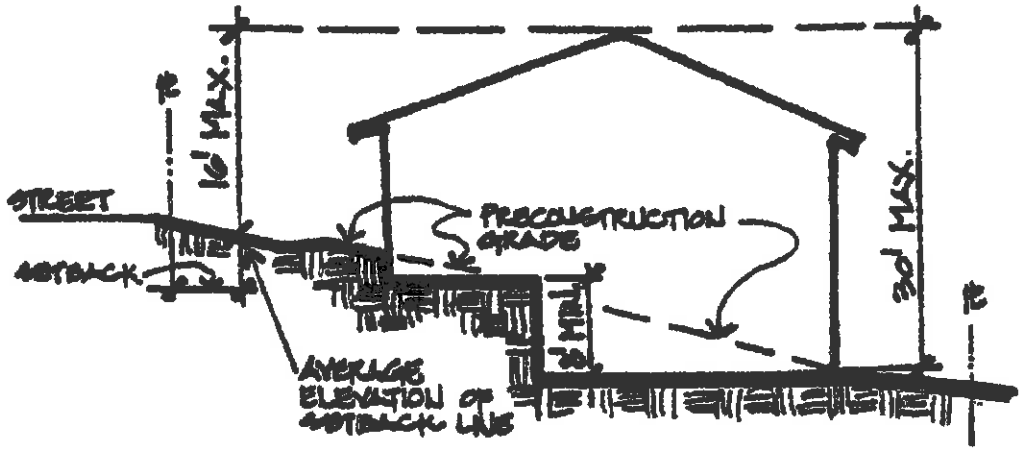
FIGURE 1

167



b. For sloping lots which slope downhill from the street of access and for which no building pad exists, the height shall be measured from the average elevation of the setback line abutting the street of access to the ridgeline or the highest point of the structure, as illustrated in Figure 2 below.

FIGURE 2



c. For lots with a "building pad" at street level or at a different level than the street or lot configurations not previously discussed, the height shall be measured from the preconstruction (existing) grade at the highest elevation of the existing building pad area covered by the structure to the ridgeline or highest point of the structure, as illustrated in Figure 3 below. Portions of a structure which extend beyond the "building pad" area of a lot shall not qualify as the highest elevation covered by the structure, for the purposes of determining maximum building height. Structures allowed pursuant to this subsection shall not exceed twenty feet in height, as measured from the point where the lowest foundation or slab meets finished grade, to the ridgeline or highest point of the structure. Otherwise, a height variation permit shall be required.

FIGURE 3

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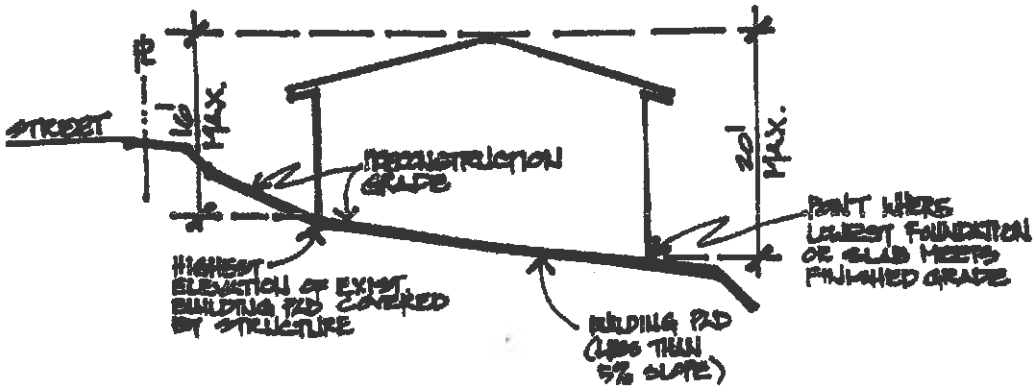
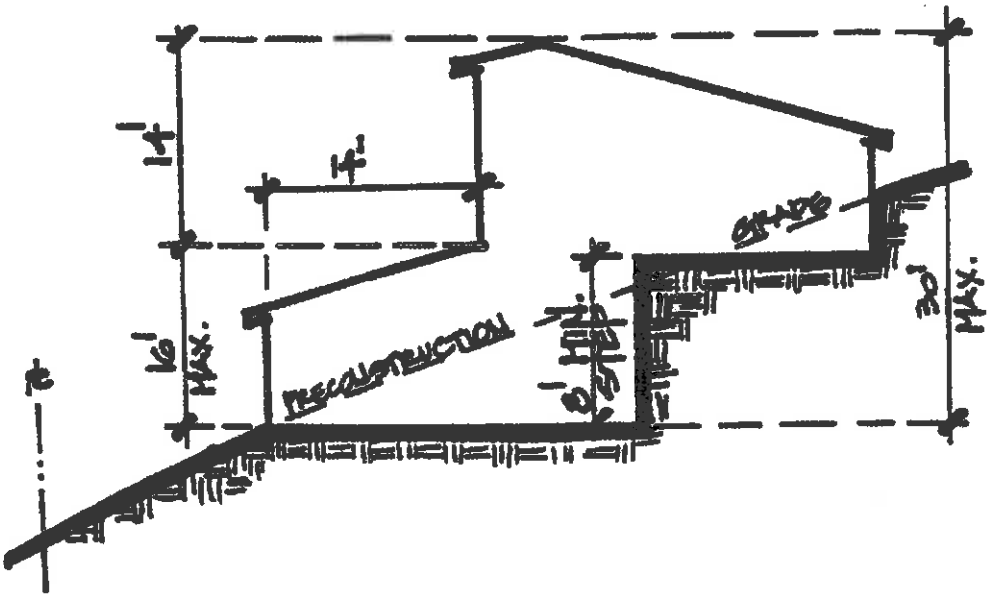


d. On sloping lots described in Sections 17.02.040(B)(1)(a) and 17.02.040(B)(1)(b) of this chapter, the foundation of the structure shall contain a minimum eight foot step with the slope of the lot, as illustrated in Figure 4 below. However, no portion of the structure shall exceed thirty feet in height, when measured from the point where the lowest foundation or slab meets finished grade to the ridge line or highest point of the structure. The thirty foot height shall not exceed a horizontally projected sixteen foot height line (from the high point of the uphill step of the structure).

2. Setbacks for Sloping Lots. On lots which slope uphill from the street of access and where the height of a structure is in excess of sixteen feet above the point where the lowest foundation or slab meets the ground, areas in excess of the sixteen foot height limit shall be set back one foot from the exterior building facade of the first story, most parallel and closest to the front property line, for every foot of height in excess of sixteen feet, as measured from the point where the lowest foundation or slab meets the ground, as illustrated in Figure 4 below.

FIGURE 4



3. Foliage Obstruction. No person shall significantly impair a view from a viewing area of a lot by permitting foliage to grow to a height exceeding:
   a. The height determined by the view restoration commission through issuance of a view restoration permit under Section 17.02.040(C)(2) of this chapter; or
   b. If no view restoration permit has been issued by the view restoration commission, a height which is the lesser of:
      i. The ridge line of the primary structure on the property; or
      ii. Sixteen feet.

   If foliage on the property already exceeds the provisions of subdivisions (i) and (ii) of

Section 17.02.040(B)(3) of this chapter on the effective date of this section, as approved by the voters on November 7, 1989, and significantly impairs a view from a viewing area of a lot, then notwithstanding whether any person has sought or obtained issuance of a view restoration permit, the foliage owner shall not let the foliage exceed the foliage height existing on the effective date of this section (November 17, 1989). The purpose of this paragraph is to ensure that owners of foliage which violates the provisions of this paragraph on the effective date of this section shall not allow the foliage to increase in height. This paragraph does not "grandfather" or otherwise permit such foliage to continue to block a view.

4. Removal of Foliage as Condition of Permit Issuance. The city shall issue no conditional use permit, variance, height variation, building permit or other entitlement to construct a structure, or to add livable area to a structure on a parcel utilized for residential purposes, unless the owner removes that part of the foliage on the lot exceeding sixteen feet in height or the ridge line of the primary structure, whichever is lower, that significantly impairs a view from the viewing area of another parcel. The owner of the property is responsible for maintaining the foliage so that the views remain unimpaired. This requirement shall not apply where removal of the foliage would constitute an unreasonable invasion of the privacy of the occupants of the property on which the foliage exists and there is no method by which the property owner can create such privacy through some other means allowed within the development code that does not significantly impair a view from a viewing area of another property. The initial decision on the amount of foliage removal required or the reasonable degree of privacy to be maintained shall be made by the director, the planning commission or the city council, as appropriate for the entitlement in question. If the permit issuance involves property located within the Miraleste recreation and park district, the findings of Section 17.02.040(C)(2)(c)(vi) of this chapter shall apply. A decision by the director on either of these matters may be appealed to the planning commission, and any decision of the planning commission may be appealed to the city council.

5. Determination of Viewing Area.
   a. The determination of a viewing area shall be made by balancing the nature of the view to be protected and the importance of the area of the structure or lot from where the view is taken. Once finally determined for a particular application, the viewing area may not be changed for any subsequent application. In the event the city and owner cannot agree on the viewing area, the decision of the city shall control. A property owner may appeal the city's determination of viewing area. In such event, the decision on the viewing area will be made by the body making the final decision on the application. A property owner may preserve his or her right to dispute the decision on the viewing area for a subsequent application, without disputing the decision on a pending application, by filing a statement to that effect and indicating the viewing area the property owner believes to be more appropriate. The statement shall be filed with the city prior to consideration of the pending application by the city.

C. Procedures and Requirements.
   1. Preservation of Views Where Structures are Involved.
      a. Any person proposing to construct a structure above sixteen feet shall submit a height variation permit application to the city. A determination on the application shall be made by the director in accordance with the findings described in Section 17.02.040(C)(1)(e) of this chapter. The director shall refer a height variation application directly to the planning commission for consideration under the same findings, as part of a public hearing, if any of the following is proposed:
         i. Any portion of a structure which exceeds sixteen feet in height extends closer than twenty-five feet from the front or street-side property line; or
         ii. The area of the structure which exceeds sixteen feet in height (the second story footprint) exceeds seventy-five percent of the first story footprint area (residence and attached garage);
         iii. Sixty percent or more of a garage footprint is covered by a structure which exceeds sixteen feet in height (a second story);

iv. The portion of the structure which exceeds sixteen feet in height is being developed as part of a new single-family residence; or

v. Based on an initial site visit, the director determines that any portion of a structure which is proposed to exceed sixteen feet in height may significantly impair a view as defined in this chapter.

b. The applicant shall take reasonable steps established by the city council to consult with owners of property located within five hundred feet of the applicant's property. The applicant shall obtain and submit with the application the signatures of the persons with whom the applicant consulted. Where a homeowners' association existing in the neighborhood affected has provided written notice to the director of its desire to be notified of height variation applications, the applicant shall mail a letter to the association requesting its position on the application. A copy of this letter and the response of the association, if any, shall be submitted with the application. A fee shall be charged for the application as established by resolution of the city council.

c. The director shall, by written notice, notify property owners within a five-hundred-foot radius of the subject property and the affected homeowners' association, if any, of the application and inform them that any objections to the proposed construction must be submitted to the director within thirty calendar days of the date of the notice.

d. The applicant shall construct on the site at the applicant's expense, as a visual aid, a temporary frame of the proposed structure.

e. A height variation application to build a new structure or an addition to an existing structure, either of which exceeds sixteen feet in height up to the maximum height permitted in subsection (B)(1) of this section, may be granted with or without conditions if the following findings can be made:

i. The applicant has complied with the early neighbor consultation process established by the city;

ii. The proposed new structure that is above sixteen feet in height or addition to an existing structure that is above sixteen feet in height does not significantly impair a view from public property (parks, major thoroughfares, bike ways, walkways or equestrian trails) which has been identified in the city's general plan or coastal specific plan, as city-designated viewing areas;

iii. The proposed new structure is not located on a ridge or a promontory;

iv. The area of a proposed new structure that is above sixteen feet in height or addition to an existing structure that is above sixteen feet in height, as defined in subsection B of this section, when considered exclusive of existing foliage, does not significantly impair a view from the viewing area of another parcel. If the viewing area is located in a structure, the viewing area shall be located in a portion of a structure which was constructed without a height variation permit or variance, or which would not have required a height variation or variance when originally constructed had this section, as approved by the voters on November 7, 1989, been in effect at the time the structure was constructed, unless the viewing area located in the portion of the existing structure which required a height variation permit or variance constitutes the primary living area (living room, family room, dining room or kitchen) of the residence;

v. If view impairment exists from the viewing area of another parcel but it is determined not to be significant, as described in subsection (C)(1)(e)(vi) of this section, the proposed new structure that is above sixteen feet in height or addition to an existing structure that is above sixteen feet in height is designed and situated in such a manner as to reasonably

the application. Cumulative view impairment shall be determined by: (a) considering the amount of view impairment that would be caused by the proposed new structure that is above sixteen feet in height or addition to a structure that is above sixteen feet in height; and (b) considering the

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amount of view impairment that would be caused by the construction on other parcels of similar new structures or additions that exceed sixteen feet in height;

vii. The proposed structure complies with all other code requirements;

viii. The proposed structure is compatible with the immediate neighborhood character;

ix. The proposed new structure that is above sixteen feet in height or addition to an existing structure that is above sixteen feet in height does not result in an unreasonable infringement of the privacy of the occupants of abutting residences.

f. Written notice of the director's or planning commission's decision shall be sent to the applicant, his/her representative and to all parties who responded to the original notice.

g. The decision of the director may be appealed to the planning commission by the applicant or any person who responded in writing to the director prior to the director's decision; provided, the appeal is filed in writing within fifteen calendar days after the date of the director's decision. The appellant shall pay an appeal fee as established by resolution of the city council.

h. Notice of the public hearing for an initial determination of a height variation application by the planning commission or an appeal to the planning commission and/or city council shall be mailed thirty calendar days prior to the hearing, to property owners within five hundred feet of the applicant's property, as well as any additional property owners previously determined by the city to be affected by the proposal.

i. In hearing an appeal of the director's decision, the planning commission shall grant the application and cause a permit to be issued, only if it finds that all of the requirements of subsection (C)(1)(e) of this section have been met.

j. A decision of the planning commission may be appealed to the city council by the applicant or any person who commented orally or in writing to the planning commission; provided, the appeal is filed in writing within fifteen calendar days after the date of the planning commission's decision. The appellant shall pay an appeal fee as established by resolution of the city council. In order to grant a permit, the city council must determine that all of the requirements listed in subsection (C)(1)(e) of this section have been met.

2. Restoration of Views Where Foliage is a Factor.

a. Any resident owning a residential structure with a view may file an application with the city for a view restoration permit. The applicant shall file with the application proof that the applicant consulted, or attempted to consult, with the property owner whose foliage is in question. The applicant shall pay a fee for the view restoration permit as established by resolution of the city council.

b. The application shall be submitted to the view restoration commission. Written notice of the time and place for the hearing on the application shall be sent to the applicant and the property owner(s) of the foliage involved at least thirty calendar days prior to the meeting of the commission. Commission members shall inspect the site prior to the public hearing. Only view restoration commission members who make a site inspection may participate in the public hearing.

c. In order for a view restoration notice to be issued, the commission must find:

i. The applicant has complied with the early neighbor consultation process and has shown proof of cooperation on his/her part to resolve conflicts;

ii. Foliage exceeding sixteen feet or the ridge line of the primary structure, whichever is lower, significantly impairs a view from the applicant's viewing area, whether such foliage is located totally on one property, or when combined with foliage located on more than one property;

iii. The foliage to be removed is located on property, any part of which is less than one thousand feet from the applicant's property line(s);

iv. The foliage significantly impairing the view did not exist, as view impairing vegetation, when the lot from which the view is taken was created;

v. Removal or trimming of the foliage will not cause an unreasonable

infringement of the privacy of the occupants of the property upon which the foliage is located;

vi. For property located within the boundaries of the Miraleste recreation and park district, the commission shall also find the removal or trimming of the foliage strikes a reasonable balance between meeting the purposes of this section, as set forth in the ordinance approved by the voters on November 7, 1989, and preserving the historical developments of the Miraleste recreation and park district area with a large number of trees.

d. Should the commission make findings requiring issuance of a view restoration permit, the director shall send a notice to the property owner to trim, cull, lace or otherwise cause the foliage to be reduced to sixteen feet or the ridgeline of the primary structure, whichever is lower, or such limit above that height which will restore the view. The property owner will have ninety calendar days to have the foliage removed. The applicant shall be responsible for the expense of the foliage removal and/or replacement ordered pursuant to this subsection only to the extent of the lowest bid amount provided by contractors licensed to do such work in the city of Rancho Palos Verdes and selected by the applicant. After the initial trimming, culling, lacing or removal of the foliage, the owner, at the owner's expense, shall be responsible for maintaining the foliage so that the view restoration required by the view restoration permit is maintained.

e. To the extent legally permissible, trees or foliage on property owned by any governmental entity, except the city and the Miraleste recreation and park district, shall be subject to view restoration control, as per the provisions of this section; except, that the foliage shall be trimmed or removed thirty calendar days following issuance of the notice. Trees and/or foliage located on city property, or in the public right-of-way, as defined in Chapter 17.96 (Definitions), shall be subject to view restoration control, as per the provisions of this section, pursuant to the city tree review permit procedure contained in Section 17.76.100 (City tree review permit.)

f. The view restoration commission may impose such reasonable conditions or restrictions on the approval of a view restoration permit as may be found to be appropriate or necessary to protect the public health, safety or welfare or the foliage owner's reasonable enjoyment of his or her property. Such conditions or restrictions may include, but are not limited to: (1) requiring the complete removal of the subject foliage when the commission finds that the trimming, culling, lacing or reducing of that foliage to sixteen feet or the ridge line is likely to kill the foliage, threaten the public health, safety and welfare, or will destroy the aesthetic value of the foliage that is to be pruned or reduced in height, provided that the property owner consents to the removal; and (2) requiring replacement of such foliage when the commission finds that removal without replacement will cause a significant adverse impact on: (a) the public health, safety and welfare, (b) the privacy of the property owner, (c) shade provided to the dwelling or the property, (d) the energy-efficiency of the dwelling, (e) the health or viability of the remaining landscaping, or (f) the integrity of the landscape plan, provided that the property owner consents to the replacement.

g. The applicant, the owner of the property where the foliage is located, or any other interested person may appeal the decision of the view restoration commission to the city council by filing with the city clerk a written notice of appeal, including the grounds for the appeal, and any specific action being requested by the appellant, together with the appeal fee established by resolution of the city council, within fifteen calendar days after the view restoration commission adopts the resolution setting forth its decision. The decision of the view restoration commission is final if no appeal is filed within fifteen calendar days. If such an appeal is timely and properly filed, a copy of the findings of the view restoration commission and all materials on file with the director shall be transmitted to the city council, which shall be part of the appeal hearing record, together with the notice of appeal and any other written materials submitted by interested parties. Additional written materials shall be submitted to the city clerk at least seven calendar days prior to the date that the appeal will be heard by the city council.

infringement of the privacy of the occupants of the property upon which the foliage is located;

vi. For property located within the boundaries of the Miraleste recreation and park district, the commission shall also find the removal or trimming of the foliage strikes a reasonable balance between meeting the purposes of this section, as set forth in the ordinance approved by the voters on November 7, 1989, and preserving the historical developments of the Miraleste recreation and park district area with a large number of trees.

d. Should the commission make findings requiring issuance of a view restoration permit, the director shall send a notice to the property owner to trim, cull, lace or otherwise cause the foliage to be reduced to sixteen feet or the ridgeline of the primary structure, whichever is lower, or such limit above that height which will restore the view. The property owner will have ninety calendar days to have the foliage removed. The applicant shall be responsible for the expense of the foliage removal and/or replacement ordered pursuant to this subsection only to the extent of the lowest bid amount provided by contractors licensed to do such work in the city of Rancho Palos Verdes and selected by the applicant. After the initial trimming, culling, lacing or removal of the foliage, the owner, at the owner's expense, shall be responsible for maintaining the foliage so that the view restoration required by the view restoration permit is maintained.

e. To the extent legally permissible, trees or foliage on property owned by any governmental entity, except the city and the Miraleste recreation and park district, shall be subject to view restoration control, as per the provisions of this section; except, that the foliage shall be trimmed or removed thirty calendar days following issuance of the notice. Trees and/or foliage located on city property, or in the public right-of-way, as defined in Chapter 17.96 (Definitions), shall be subject to view restoration control, as per the provisions of this section, pursuant to the city tree review permit procedure contained in Section 17.76.100 (City tree review permit.)

f. The view restoration commission may impose such reasonable conditions or restrictions on the approval of a view restoration permit as may be found to be appropriate or necessary to protect the public health, safety or welfare or the foliage owner's reasonable enjoyment of his or her property. Such conditions or restrictions may include, but are not limited to: (1) requiring the complete removal of the subject foliage when the commission finds that the trimming, culling, lacing or reducing of that foliage to sixteen feet or the ridge line is likely to kill the foliage, threaten the public health, safety and welfare, or will destroy the aesthetic value of the foliage that is to be pruned or reduced in height, provided that the property owner consents to the removal; and (2) requiring replacement of such foliage when the commission finds that removal without replacement will cause a significant adverse impact on: (a) the public health, safety and welfare, (b) the privacy of the property owner, (c) shade provided to the dwelling or the property, (d) the energy-efficiency of the dwelling, (e) the health or viability of the remaining landscaping, or (f) the integrity of the landscape plan, provided that the property owner consents to the replacement.

g. The applicant, the owner of the property where the foliage is located, or any other interested person may appeal the decision of the view restoration commission to the city council by filing with the city clerk a written notice of appeal, including the grounds for the appeal, and any specific action being requested by the appellant, together with the appeal fee established by resolution of the city council, within fifteen calendar days after the view restoration commission adopts the resolution setting forth its decision. The decision of the view restoration commission is final if no appeal is filed within fifteen calendar days. If such an appeal is timely and properly filed, a copy of the findings of the view restoration commission and all materials on file with the director shall be transmitted to the city council, which shall be part of the appeal hearing record, together with the notice of appeal and any other written materials submitted by interested parties. Additional written materials shall be submitted to the city clerk at least seven calendar days prior to the date that the appeal will be heard by the city council.

Upon receiving the notice of appeal, the city clerk shall schedule the matter for review at a forthcoming meeting of the city council. At the city council meeting, oral testimony shall be limited to five minutes in length for each of the parties whose properties are affected by the decision and two minutes per person for other individuals. Oral testimony shall be limited to the issues raised in the written appeal. At the conclusion of the oral presentation, the city council may do one of the following:

i. Affirm the decision of the view restoration commission and approve the application upon finding that all applicable findings have been correctly made and all provisions of subsection (C)(2) of this section are complied with;

ii. Approve the application but impose additional or different conditions as the city council deems necessary to fulfill the purposes of subsection (C)(2) of this section;

iii. Disapprove the application upon finding that all applicable findings cannot be made or all provisions of subsection (C)(2) of this section have not been complied with; or

iv. Refer the matter back to the view restoration commission to conduct further proceedings. The remanded proceedings may include the presentation of significant new evidence which was raised in conjunction with the appeal. The city council shall state the ground(s) for the remand and shall give instructions to the view restoration commission concerning any error found by the city council in the commission's prior determination.

h. If, after ninety calendar days, the foliage has not been removed or trimmed in accordance with the requirements of a view restoration or view preservation permit, the city of Rancho Palos Verdes will authorize a bonded tree service to trim, cull, lace or remove the identified foliage at the owner's expense. In the event that the city is required to perform the work, the foliage owner will be billed for all city expenses incurred in enforcing the view restoration or preservation permit (including reasonable attorney's fees). If the property owner does not pay the city for the amount set forth on the invoice, the city may record a lien or assessment against the foliage owner's property, pursuant to Chapter 8.24 of this Code.

TABLE 02-A: SINGLE-FAMILY RESIDENTIAL DEVELOPMENT STANDARDS

For exceptions and explanatory descriptions of these standards and for other development standards that apply to single-family residential areas, see Articles VI and VII of this title. The number which follows an "RS-" designation indicates the maximum number of lots per acre permitted in the zone; the "RS-A" number indicates the minimum number of acres per lot permitted.

DISTRICT	LOT DIMENSIONS[1]			MINIMUM SETBACKS[3, 6] FOR CITY CREATED LOTS					MINIMUM SETBACKS[2, 3, 6] FOR LOTS CREATED PRIOR TO INCORPORATION/ANNEXATION				MAXIMUM LOT COVERAGE 8	MAXIMUM HEIGHT[3, 4, 7]	PARKING REQUIREMENT 5
	AREA	WIDTH	DEPTH	FRONT	INTERIOR SIDE		STREET SIDE	REAR	FRONT	INTERIOR SIDE	STREET SIDE	REAR			less than 5,000 s.f. of habitable space = 2 enclosed garage spaces
					TTL BOTH SIDES	ONE SIDE									
RS-A-5	5 acres	200	300	20	30	10	20	20	20	5	10	15	6	16	5,000 s.f. or more of habitable space = 3 enclosed garage spaces
RS-1	1 acre	100	150	20	25	10	20	20	20	5	10	15	25%	16	
RS-2	20,000	90	120	20	20	10	20	20	20	5	10	15	40%	16	

CITY OF RANCHO PALOS VERDES

COMMUNITY DEVELOPMENT DEPARTMENT

View Restoration, View Preservation, and City Tree Review Permits

In November 1989 the voters in the City of Ranch Palos Verdes passed Proposition M, a View Preservation and Restoration Ordinance (herein the "Ordinance"). The Ordinance establishes two view recovery procedures; one to "Preserve" views which existed at the time or since the Ordinance became effective (November 17, 1989) and the other procedure, to "Restore" a view that existed at the time the affected view lot was legally created. The Ordinance was codified as RPV Municipal Code Section 17.02.040.

The City tree policy was not originally part of the Proposition M. However, in consideration of the Ordinance, the City Council adopted Resolution 89-119 in 1989. This resolution made the City accountable to the spirit of the view restoration process by implementing the City Tree Review Permit policy as a procedure to be used by residents to have view-impairing City trees trimmed or removed. The City Tree Review Permit policy was codified into the RPV Municipal Code as Section 17.76.100.

Foliage on Private Property exceeding 16 feet in height and/or the ridgeline of the foliage owner's residence
(RPV Municipal Code Section 17.02.040)

View Restoration Permit (VRP): Approved and issued by the Planning Commission (PC) in cases where the view was already impaired at the time the Ordinance went into effect but was not impaired when the applicant's lot was created. There are six criteria, which constitute the basis for a decision by the PC. If a VRP is approved, the applicant (not the foliage owner) pays for the cost of performing the necessary work. Once the initial trimming and/or removal work is completed, then the foliage owner is required to maintain the foliage at his or her own expense. In order to initiate the application, the City asks that you make an attempt to work out the issue with the foliage owner. Written proof of your attempt will be asked by the City before you submit any application to the City. If you cannot work out a solution with your neighbor on an informal basis, you may then submit a completed "Notice of Intent to File An Application For View Restoration" form to the City. After your application is received, a pre-application/mediation meeting will be scheduled with all parties involved in order to attempt to resolve the issues between the parties. If no resolution can be made, a "View Restoration Permit Application" may be submitted to the City so that the Planning Commission could review and deliberate on the application request. A non-refundable flat fee of $5106 is due at the time of submittal. If the permit request is approved by the Planning Commission, then the applicant will be required to pay the costs of performing the required trimming, removal and/or planting replacement foliage.

View Preservation Application (VPP): Pursuant to the Ordinance, foliage owners are required to maintain their foliage at the same height that it was in November 1989 or thereafter so as not to cause a significant impairment of a view. In order to enforce this provision of the Code, the burden of proof rests on the property owners whose views have become significantly impaired. Burden of proof is usually in the form of a photograph documenting an unobstructed view taken on November 17, 1989 or sometime thereafter from the affected property's viewing

30940 HAWTHORNE BLVD / RANCHO PALOS VERDES, CA 90275-5391
PLANNING & COMMUNITY DEVELOPMENT DIVISION (310) 544-5228 / BUILDING & SAFETY DIVISION (310) 203-7800 / DIRECT FAX (310) 544-5293
E-MAIL PLANNING@RPV.COM / WWW.PALOSVERDES.COM/RPV

area. You may initiate the View Preservation process by submitting a completed "Documentation of Existing View or Foliage" form accompanied by color or black and white photographs. Staff will then complete a site visit to verify that the submitted photographs accurately depict an unobstructed view from the property owner's viewing area. Any Staff-verified photographs will be kept on file in the Community Development Department and can be used if you wish to continue with the View Preservation process.

In order to initiate a View Preservation application, the City asks that you make an attempt to work out the issue with the foliage owner. Written proof of your attempt will be asked by the City before you submit any application to the City. If you cannot work out a solution with your neighbor on an informal basis, you may then submit a completed "Notice of Intent to File An Application For View Preservation" form to the City. There are no City fees involved to initiate this type of a request. After your application is received by the City, City Staff will visit your residence and determine whether the subject foliage creates a significant view impairment. If it is determined there is a significant view impairment, then the City will issue a written notice to the foliage owner informing him/her that of the view impairment and such notice shall request that the foliage owner trim the offending foliage to the condition shown in the applicant-submitted documented view photograph within a 30 day period. If the foliage owner voluntarily performs the necessary work within 30 days of receiving notice, then no further permit processing shall be required.

If no work is performed within 30 days of receiving the notice, then you may file a formal application. Once a formal View Preservation Permit application has been submitted, the Director of Community Development shall make a determination on the request. If the View Preservation Permit application is approved by the Director a "Notice of the Director's Determination" will be issued, giving the foliage owner 90 days to perform the necessary work.

Foliage on Public Property
(RPV Municipal Code Section 17.76.100)

City Tree Review Permit (CTRP): If the foliage that is significantly impairing your view is located on public property, then you may submit a completed "City Tree Review Permit Application For View Restoration" form to the City. A non-refundable flat processing fee of $688 is due at the time of the application submittal. Pursuant to Section 17.76.100 of the City's Development Code, you should also be aware that the Director of Community Development shall only grant the city tree review permit if it is determined that trees and/or foliage the City-owned foliage significantly impairs a view from a City Code defined viewing area. If the permit application is approved by the Director of Community Development, then the City shall pay for the tree removal costs.

See the View Restoration Guidelines and Procedures for more information. The Guidelines, forms and applications are available at the Community Development Department and on the City's website: http://www.palosverdes.com/rpv/planning/vrestoration/index.cfm

Please contact the City's View Restoration Staff at (310) 544-5228 or email at planning@rpv.com if you have any questions.

CITY OF ROLLING HILLS ESTATES

LOS ANGELES COUNTY, CALIFORNIA

ORDINANCE NO. 661

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ROLLING HILLS ESTATES ADDING CHAPTER 17.55 ENTITLED VIEW PRESERVATION TO TITLE 17 OF THE MUNICIPAL CODE OF THE CITY OF ROLLING HILLS ESTATES.

WHEREAS, both views and trees/vegetation contribute to the aesthetic value, quality of life, ambiance and economic value of properties within the city. Similarly, access to sunlight across property lines contributes to the health and well being of community members, enhances property values and provides an opportunity to utilize solar energy. Utilization of passive solar energy reduces air pollution, visual blight and ill health; and

WHEREAS, views, whether of the Pacific Ocean, the surrounding hillsides and canyons or other natural and manmade landmarks produce a variety of significant and tangible benefits for both residents and visitors. Views contribute to the aesthetic visual environment of the community by providing scenic vistas and inspiring distinctive architectural design. Views contribute to property values; and

WHEREAS, residents and property owners cherish their outward views from the Palos Verdes Peninsula. Outward views contribute greatly to the quality of life in the city and promote the general welfare of the entire community; and

WHEREAS, trees and vegetation produce a wide variety of significant psychological and tangible benefits for both residents and visitors to the community. Trees and vegetation provide privacy, modify temperatures, screen winds, replenish oxygen to the atmosphere, maintain soil moisture, mitigate soil erosion and provide wildlife habitat. Trees and vegetation contribute to the visual environment and aesthetics by blending, buffering and reducing the scale and mass of architecture. Trees and vegetation within the city provide botanical variety and a sense of history. Trees and vegetation also create shade and visual screens and provide a buffer between different land uses. Trees contribute to property values. Absent an unreasonable obstruction of the view of a neighboring property, the city encourages and supports the growth and maintenance of trees and vegetation; and

WHEREAS, owners and residents should maintain trees on their property in a healthy condition for both safety reasons and for preservation of outward views. Before planting trees, owners and residents should consider view blockage potential, both currently and at tree maturity, and should not plant, maintain or permit to grow any tree or vegetation which unreasonably obstructs the view from a neighboring property; and

WHEREAS, the benefits derived from views and trees/vegetation may come into conflict. The planting of trees and other vegetation and their subsequent growth, particularly when such trees are not properly maintained, can produce unintended harmful effects both on the property on which they are planted and/or on neighboring properties; and

WHEREAS, it is in the interest of the public health, safety and welfare to:

(a) Establish the right of real property owners in the city to preserve and/or restore views which existed from unreasonable obstruction by the growth of trees and other vegetation. Such a right shall accrue, and shall protect views that existed, on the date the property was acquired or fifteen years prior to the effective date of the ordinance codified in this chapter, whichever is later;

(b) Recognize that every real property owner in the city is entitled to a process to resolve conflicts that negatively impact view equity, in order to preserve a reasonable amount of the view benefiting such real property;

(c) Establish a process and evaluation criteria by which property owners may seek restoration of views when unreasonably obstructed by the growth of trees or other vegetation; and

WHEREAS, the City Council finds that this ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to the following sections of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3: i) Section 15061(b)(3) (CEQA only applies to activities which have the potential for having a significant effect on the environment), ii) 15060(c)(3) (the activity is not a project as defined in Section 15378), and iii) 15175 (the Master Environmental Impact Report for the city's General Plan certified on September 22, 1992 has addressed mitigating environmental measures for all proposed amendments to be made to the Municipal Code); and

WHEREAS, the original version of Ordinance No. 661 has been posted on the city's website for public review since March 4, 2010, and has been the subject of significant public input and commentary; and

WHEREAS, the city council, upon giving the required Notice, did on the 11th day of May, the 13th day of July, the 10th day of August, the 28th day of September, and the 12th day of October 2010, conduct Public Hearings, at which time all interested parties were given full opportunity to be heard and present evidence.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF ROLLING HILLS ESTATES DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1 Chapter 17.55, entitled View Preservation, is hereby added to Title 17 of the Rolling Hills Estates Municipal Code.

CHAPTER 17.55 - - VIEW PRESERVATION

SEC. 17.55.010 Findings and declarations.

The city council finds and declares as follows:

(1) Both views and trees/vegetation contribute to the aesthetic value, quality of life, ambiance and economic value of properties within the city. Similarly, access to sunlight across property lines contributes to the health and well being of community members, enhances property values and provides an opportunity to utilize solar energy. Utilization of passive solar energy reduces air pollution, visual blight and ill health.

(2) Views, whether of the Pacific Ocean, the surrounding hillsides and canyons or other natural and manmade landmarks produce a variety of significant and tangible benefits for both residents and visitors. Views contribute to the aesthetic visual environment of the community by providing scenic vistas and inspiring distinctive architectural design. Views contribute to property values.

(3) Residents and property owners cherish their outward views from the Palos Verdes Peninsula. Outward views contribute greatly to the quality of life in the city and promote the general welfare of the entire community.

(4) Trees and vegetation produce a wide variety of significant psychological and tangible benefits for both residents and visitors to the community. Trees and vegetation provide privacy, modify temperatures, screen winds, replenish oxygen to the atmosphere, maintain soil moisture, mitigate soil erosion and provide wildlife habitat. Trees and vegetation contribute to the visual environment and aesthetics by blending, buffering and reducing the scale and mass of architecture. Trees and vegetation within the city provide botanical variety and a sense of history. Trees and vegetation also create shade and visual screens and provide a buffer between different land uses. Trees contribute to property values. Absent an unreasonable obstruction of the view of a neighboring property, the city encourages and supports the growth and maintenance of trees and vegetation.

(5) Owners and residents should maintain trees on their property in a healthy condition for both safety reasons and for preservation of outward views. Before planting trees, owners and residents should consider view blockage potential, both currently and at tree maturity, and should not plant, maintain or permit to grow any tree or vegetation which unreasonably obstructs the view from a neighboring property.

(6) The benefits derived from views and trees/vegetation may come into conflict. The planting of trees and other vegetation and their subsequent growth, particularly when such trees are not properly maintained, can produce unintended harmful effects both on the property on which they are planted and/or on neighboring properties. It is, therefore, in the interest of the public health, safety and welfare to:

(a) Establish the right of real property owners in the city to preserve and/or restore views which existed from unreasonable obstruction by the growth of trees and other vegetation. Property owners shall have the right to preserve views that existed on the date the property was acquired or fifteen years prior to the effective date of the ordinance codified in this chapter, whichever is later;

(b) Recognize that every real property owner in the city is entitled to a process to resolve conflicts that negatively impact view equity, in order to preserve a reasonable amount of the view benefiting such real property; and

(c) Establish a process and evaluation criteria by which property owners may seek restoration of views when unreasonably obstructed by the growth of trees or other vegetation.

(7) When a dispute arises concerning the impairment or obstruction of a view, the parties should act reasonably to resolve the dispute through friendly communication, thoughtful negotiation, compromise, and other traditional means, such as discussions with the appropriate neighborhood or homeowner association. Those disputes which are not resolved through such means shall follow the procedure established herein. (Ord. 661 § 1 (part), 2010).

SEC. 17.55.020 Intent and purpose.

The intent and purpose of this chapter is to:

(1) Recognize and establish a process by which real property owners may preserve or restore view equity within the immediate vicinity of their property as set forth in Section 17.55.040;

(2) Establish procedures and evaluation criteria by which real property owners may seek resolution of view equity disputes;

(3) Discourage duplicative, repetitive or serial claims for view equity; and

(4) Discourage ill-considered damage to trees/vegetation and promote proper landscaping establishment and maintenance.

It is not the intent of the city to encourage clear-cutting or substantial denuding of any property of its trees by overzealous application of provisions of this chapter. 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&R's 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, 17.55.90 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. (Ord. 661 § 1 (part), 2010).

SEC. 17.55.030 Definitions.

For the purpose of this chapter, the meaning and construction of words and phrases hereinafter set forth shall apply:

"Alter" means to take action that changes the tree or vegetation, including but not limited to, extensive pruning of the canopy area, cutting, girdling, interfering with the water supply, applying chemicals or re-grading around the feeder root zone of the tree or vegetation.

"Arbitration" means a voluntary legal procedure for settling disputes and leading to a final and binding determination of rights of parties, usually consisting of a hearing before an arbitrator where all relevant evidence may be freely admitted as set forth in California Code of Civil Procedure Section 1280 et seq.

"Arbitrator" means a mutually agreed upon neutral third party professional intermediary who conducts a hearing process, and who hears testimony, considers evidence and makes binding decisions for the disputing parties. The arbitrator of a view equity dispute shall be chosen from a list available from the city of qualified and professionally trained arbitrators/mediators, including but not limited to, members of the American Arbitration Association.

"Arborist, certified" means a person who has passed a series of tests by the International Society of Arboriculture (ISA), is governed by ISA's professional code of ethics and possesses the technical competence through experience and related training to provide for or supervise the management of trees and other woody plants. The arborist utilized in mediation of a view equity dispute shall be the city's certified arborist.

"Authorized agent" means a person, as defined herein, who has been designated and approved in writing by the property owner of record to act on his/her behalf in matters pertaining to the processing of a view equity claim as outlined in this chapter.

"Canopy" means the umbrella-like structure created by the over-head leaves and branches of a tree which create a sheltered area below.

"City" means the City of Rolling Hills Estates.

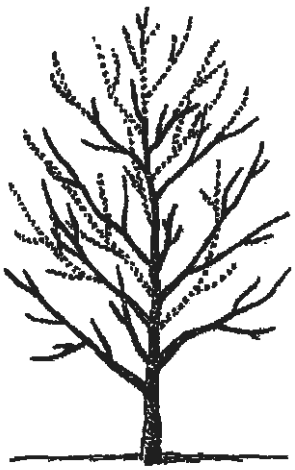
"City maintained trees" means trees which are specifically designated for maintenance by the city council. "City maintained trees" include heritage trees which are located in the unimproved portion of a dedicated and accepted street right-of-way easement and for which the real property owner has requested and given the city written permission to maintain.

"City property" means any real property of which the city is the fee simple owner of record.

"Claim, view equity" means documentation, as set forth in Section 17.55.050, that outlines the basis of view equity diminishment and the specific preservation action that is being sought.

"Crown" means the rounded top of the tree.

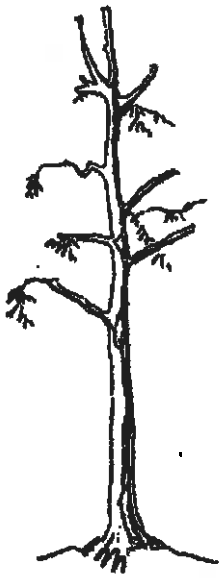
"Crown reduction/shaping" means a method of comprehensive pruning that reduces a tree's height and/or spread. Crown reduction entails the reduction of the top, sides or individual limbs by means of removal of leaders or the longest portion of limbs to a lateral large enough to assume the terminal. The diagram that follows is illustrative of "crown reduction/shaping" within the meaning of this chapter.



Crown Reduction/Shaping

"Destroy" means to kill or take action that endangers the health or vigor of a tree or vegetation, including, but not limited to, cutting, girdling, interfering with the water supply, applying chemicals or re-grading around the base of the trunk.

"Heading back" means the overall reduction of the mass of a tree by modification to major limbs. The diagram that follows is illustrative of "heading back" within the meaning of this chapter.



Heading Back

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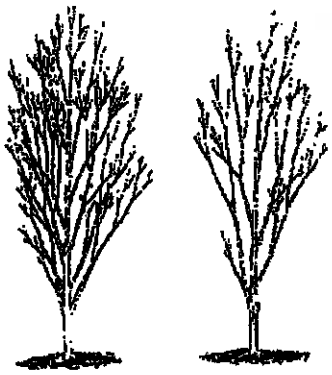
"Lacing" means a comprehensive method of pruning that systematically and sensitively removes excess foliage and improves the structure of the tree. The diagram that follows is illustrative of "lacing" within the meaning of this chapter.



Before and After

Lacing

"Maintenance pruning" means pruning with the primary objective of maintaining or improving tree health and structure; includes "crown reduction/shaping" or "lacing," but not ordinarily "heading back."

"Mediator" means a neutral, objective third party professional negotiator/facilitator to help disputing parties reach a mutually satisfactory solution regarding a view equity claim. The mediator shall be chosen from a list available from the city of qualified and professionally trained arbitrators/mediators, including but not limited to, members of the American Arbitration Association.

"Obstruction" means the blocking or diminishment of a view attributable to growth, improper maintenance or location of trees and/or vegetation.

"Person" means any individual, individuals, corporation, partnership, firm or other legal entity.

"Preservation action" means any specific steps taken affecting trees or vegetation that would result in the preservation or restoration of view equity across property lines.

"Pruning" means the removal of plant material from a tree/vegetation.

"Real property" means rights or interests of ownership of land and all appurtenances to the land including buildings, fixtures, vegetation and improvements erected upon, planted or affixed to the land.

"Severe pruning" means 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 or natural shape 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. "Heading back" as defined herein is considered to be severe pruning.

"Stand thinning" means the selective removal of a portion of trees from a grove of trees.

"Street" means the portion of a right-of-way easement used for public purposes, such as roadway improvements, curbs, gutters and sidewalks, dedicated to the city, and formally accepted by the city into the city public street system for maintenance purposes.

"Sunlight" means the availability or access to light from the sun across property lines.

"Tree" means any woody perennial vegetation that generally has a single trunk and reaches a height of at least eight feet at maturity.

"Tree/vegetation owner" means any person who owns real property in the city on which tree(s) and/or vegetation is located.

"Vegetation" means all types of plants, bushes, hedges and shrubs, including trees.

"View" means a vista of features, including but not limited to, bodies of water, beaches, coastline, islands, skylines, mountains, city lights, ridges, hillside terrain, canyons, geologic features and landmarks. The term "view" does not mean an unobstructed panorama of these features.

"View equity" means achievement of a fair, reasonable, and balanced accommodation of views and competing obstructions (such as structures, trees and/or vegetation), privacy and the use and enjoyment of property. Development, including its landscaping, shall be designed to preserve views from neighboring properties. No person shall plant, maintain, or permit to grow any trees or vegetation which unreasonably obstructs the view from a neighboring property.

"View Seeker" means any real property owner in the city or authorized agent of such property owner who alleges that tree(s)/vegetation located within the immediate vicinity of the property as set forth in Section 17.55.040 is causing unreasonable obstruction of the view benefiting such real property

"Vista pruning" means the selective thinning of framework limbs or specific areas of the crown of a tree to allow a view from a specific point. (Ord. 661 § 1 (part), 2010).

SEC. 17.55.040 View equity claim limitations.

Subject to the other provisions of this chapter, a real property owner in the city may initiate the claim resolution process as outlined in Section 17.55.060. However, a claim for preserving or restoring view equity may only be made i) regarding any tree/vegetation located on real property, as defined herein, which is within five hundred feet from the view seeker's real property boundary, and ii) if a claim has not been initiated against that real property by the view seeker or any other real property owner in the city within the last two years, unless the subsequent claim is made within 45 days of notice of the original claim as provided in Section 17.55.080 of this chapter. In addition, a view seeker may only seek to preserve or restore a view from one common interior or exterior space used by the view seeker, including but not limited to, the living, family, and dining rooms, rooms that have features such as picture windows, sliding glass doors, and French doors, and common exterior areas such as patios, balconies, decks, pool areas, and gazebos designed to take advantage of views. Properties which have more than one unique or different view shall be permitted to apply for preservation or restoration of one additional view.

Requests for view equity with regard to any tree and/or vegetation located on city property or in city parks, or with respect to city maintained trees, may only be initiated as outlined in Section 17.55.070 of this code. (Ord. 661 § 1 (part), 2010).

SEC. 17.55.050 View equity claim.

A claim to preserve or restore view equity shall consist of all of the following:

(1) A description of the nature and extent of the alleged obstruction, including pertinent and corroborating evidence. Evidence may include, but is not limited to, documented and dated photographic prints, negatives, slides and written testimony from residents living in the area. Such evidence must show the extent to which the view has been diminished by trees and/or vegetation;

(2) The location of all trees and/or vegetation alleged to cause the obstruction, the address of the property upon which the trees and/or vegetation are located, and the present tree/vegetation owner's name and address;

(3) Specific view equity preservation actions proposed by the view seeker to resolve the allegedly unreasonable obstruction;

(4) Evidence that initial discussion as described in Section 17.55.070 has been made and has failed. Evidence may include, but is not limited to, copies of receipts for certified or registered mail correspondence; and

(5) Evidence confirming the ownership and the date of acquisition of the view seeker's property. (Ord. 661 § 1 (part), 2010).

SEC. 17.55.060 View equity claim resolution process.

The view seeker shall follow the process established by this chapter in seeking preservation or restoration of view equity. First, the view seeker must complete the "initial discussion" process described in Section 17.55.070. Second, if that process does not yield a result mutually satisfactory to the view seeker and the tree/vegetation owner, then the view seeker may file a view equity claim with the city and request mediation, as described in Section 17.55.080. Third, if the tree/vegetation owner does not participate in mediation or if mediation is unsuccessful in resolving the claim, the view seeker may next pursue resolution by arbitration, as set forth in Section 17.55.090. Fourth, if arbitration is not accepted by the tree/vegetation owner, the view seeker may next request that the city's planning director issue an advisory opinion on the view equity claim pursuant to Section 17.55.100. If all of these steps are taken and processes are exhausted by the view seeker but no resolution is reached, the view seeker may then initiate litigation as described in Section 17.55.110. (Ord. 661 § 1 (part), 2010).

SEC. 17.55.070 Initial discussion.

A view seeker who believes that one or more trees or vegetation which has grown on another person's property in the city has caused unreasonable obstruction of view equity from the view seeker's property, shall first notify the tree/vegetation owner of such concerns. The notification shall request personal discussions to enable the view seeker and tree/vegetation owner to attempt to reach a mutually agreeable solution, and shall be followed-up in writing. The notification shall include a copy of the view preservation ordinance (chapter 17.55 of this code), available from the city. The view seeker shall invite the tree/vegetation owner to view the alleged obstruction from the view seeker's property, and the tree/vegetation owner is urged to invite the view seeker to view the situation from his/her property. Failure of the tree/vegetation owner to respond to the written request for initial discussion within forty-five days from the date of delivery shall be deemed formal refusal by the tree/vegetation owner to participate in the initial discussion.

If the initial discussion is refused, or if the parties do not agree as to the existence and nature of the view seeker's obstruction and the appropriate preservation action, the view seeker may proceed with the subsequent claim resolution process outlined in Section 17.55.060. (Ord. 661 § 1 (part), 2010).

SEC. 17.55.080 Mediation.

If the initial discussion outlined in Section 17.55.070 does not result in an agreement between the tree/vegetation owner and the view seeker, the view seeker may file a written view equity claim with the city requesting mediation. Upon receiving the written claim and processing fee, in the amount established by resolution of the city council, city staff shall prepare and send by certified mail to the tree/vegetation owner, a copy of the written claim and a notice requesting that the tree/vegetation owner agree to participate in a mediation process to attempt to resolve the view equity claim. In addition, city staff shall notify all property owners within 500 feet of the tree/vegetation owner's property of the pending view equity claim, their right to file a view equity claim on their own behalves within 45 days of city staff's mailing of notice of the original view equity claim, and the fact that their view equity claim will be subject

to the two-year time limit set forth in Section 17.55.040 if it is not filed within 45 days of staff's mailing of notice of the original claim. Any view equity claim(s) submitted by surrounding property owners after being advised by staff of the pending view equity claim shall, to the extent possible, be combined with the existing view equity claim for purposes of mediation and arbitration.

The tree/vegetation owner shall have 45 days from delivery of the request for mediation to either accept or decline mediation. The notice sent to the tree/vegetation owner shall inform the tree/vegetation owner that a failure to respond to the request for mediation within forty-five days from the date of delivery of the notice shall be deemed formal refusal of the mediation process by the tree/vegetation owner.

If the tree/vegetation owner agrees to participate in a mediation process, the view seeker shall then pay the fee established by resolution of the city council for the mediation process, including review by the city's certified arborist. The mediator shall be chosen by the parties from the list of professional mediators maintained by the city. In the event the parties are unable to choose a mediator from the approved list, city staff shall randomly select a mediator from the list. City staff, in consultation with the mediator, shall establish a date for mediation, and a written notice of the mediation hearing date shall be sent to each party by certified mail.

The mediator shall be guided by the provisions of this chapter, including the evaluation criteria set forth in Sections 17.55.130 and 17.55.140, and the hierarchy of preservation actions set forth in Section 17.55.150, respectively, in attempting to resolve the view equity claim. The mediator shall also consider recommendations of the certified arborist regarding landscape techniques and/or maintenance procedures.

The role of the mediator shall be advisory in nature and shall not be binding in establishing the preservation or restoration of view equity. Any agreement reached between the two parties as a result of the mediation process described herein shall be reduced to writing and signed by the mediator and all of the parties, and two copies shall be submitted to the city clerk. The cost of mediation, including review by a certified arborist, shall be paid initially by the view seeker, provided, however, that the ultimate responsibility for such cost may subsequently be modified by mutual agreement of the parties. The mediator is encouraged to suggest a just and reasonable allocation of responsibility for the cost of mediation as part of the mediation process. (Ord. 661 § 1 (part), 2010).

SEC. 17.55.090 Arbitration.

If the initial discussion under Section 17.55.070 and mediation under Section 17.55.080 fail to achieve agreement between the tree/vegetation owner and the view seeker, the view seeker may send to the tree/vegetation owner a request to participate in a binding arbitration process. The tree/vegetation owner shall have forty-five days from delivery of the request for arbitration to either accept or decline arbitration. Failure to respond within forty-five days shall be deemed formal refusal of arbitration. If arbitration is accepted, the parties shall agree in writing to the selection of an individual arbitrator, who shall be chosen from a list of professional arbitrators available from the city within thirty days of such acceptance. If the parties are unable to agree on a specific arbitrator within thirty days, they may jointly request that city staff randomly select an arbitrator from the list maintained by the city. In addition, either party may petition a court of competent jurisdiction to appoint an arbitrator from the list maintained by the city.

The arbitrator shall be guided by the provisions of this chapter, including the evaluation criteria set forth in Sections 17.55.130 and 17.55.140, and the hierarchy of preservation actions set forth in Section 17.55.150, respectively, in attempting to resolve the view equity claim, and shall submit a complete written decision to the view seeker and the tree/vegetation owner. Any decision of the arbitrator shall be enforceable pursuant to the provisions of California Code of Civil Procedure Section 1285 et seq., and two copies of the decision shall be submitted to the city clerk.

The costs of arbitration shall be paid initially by the view seeker, provided, however, that the ultimate responsibility for such costs may subsequently be modified either by mutual

agreement of the parties or by a determination of the arbitrator as to a just and reasonable allocation of responsibility. (Ord. 661 § 1 (part), 2010).

SEC. 17.55.100 Advisory Opinion.

If the initial discussion and mediation processes fail to result in a resolution or agreement, and if the view seeker requests but the tree/vegetation owner declines to participate in arbitration, the view seeker may request that the city's planning director assess and issue an advisory opinion on the view equity claim. Such requests must be made to the planning director in writing within thirty days after arbitration is refused or deemed refused pursuant to Section 17.55.090. The planning director may, but is not required to, assist the parties in resolving the view equity dispute. It is the intention of this section that the advisory opinion be admissible as evidence in any civil action brought pursuant to Section 17.55.110 of this chapter.

SEC. 17.55.110 Litigation.

If a view seeker has attempted to obtain but has been unsuccessful in attaining agreement or resolution under Sections 17.55.070, 17.55.080, and 17.55.090, the view seeker may initiate civil action in a court of competent jurisdiction for resolution of his/her view equity claim under the provisions of this chapter. It is the intent of this chapter that the evaluation criteria set forth herein be utilized in adjudicating view equity claims in civil litigation. In the event of civil litigation, the view seeker shall provide two copies of the filed complaint to the city clerk.

The prevailing party in any civil action brought pursuant to this chapter shall be entitled to recover its reasonable costs and attorneys' fees incurred in the litigation, subject to the following exception: a tree/vegetation owner who prevails in litigation shall not be entitled to recover attorneys' fees and costs if the tree/vegetation owner has declined to participate in the initial discussion, mediation, or arbitration processes set forth in Sections 17.55.070, 17.55.080 and 17.55.090, respectively. The notice of the view equity claim and request for mediation provided by the city in accordance with Section 17.55.080 shall inform the tree/vegetation owner of this provision and the consequences of non-participation in the initial discussion, mediation, and/or arbitration processes. (Ord. 661 § 1 (part), 2010).

SEC. 17.55.120 Preservation action limitations.

Except as otherwise authorized by law, no tree and/or vegetation on real property owned or controlled by another person may be removed, destroyed or altered unless the view seeker either enters into a written agreement with the tree/vegetation owner or obtains an arbitration award or judicial decision specifying, in detail, the nature and timing of the preservation action and the parties responsible for performing such action. (Ord. 661 § 1 (part), 2010).

SEC. 17.55.130 Criteria for determining unreasonable obstruction.

The following criteria are to be considered (but are not exclusive) in determining whether unreasonable obstruction of a view has occurred:

(1) The vantage point(s) from which the view is observed;

(2) The extent of the view obstruction, both currently and at tree/vegetation maturity;

(3) The quality of the view, including the existence of landmarks, vistas, or other unique view features;

(4) The extent to which the tree(s) and/or vegetation have grown to obscure the enjoyment of the view from the view seeker's property since the view seeker's acquisition of his or her property;

(5) The extent to which the view has been or is diminished by factors other than tree(s) and/or vegetation. (Ord. 661 § 1 (part), 2010).

SEC. 17.55.140 Criteria for determining appropriate preservation action.

When it has been determined that unreasonable obstruction has occurred, then the following unweighed factors shall be considered in determining appropriate preservation action:

(1) The number of existing trees or amount of vegetation in the area and the current effects of the tree(s) and their removal on the neighboring vegetation;

(2) The extent to which the tree(s) and/or vegetation provide:

(a) Screening or privacy,

(b) Energy conservation and/or climate control,

(c) Soil stability, as measured by soil structure, degree of slope and extent of the tree's root system when a tree is proposed to be removed,

(d) Aesthetics,

(e) Community/neighborhood quality, value or significance,

(f) Shade,

(g) Historical context due to the age of the tree/vegetation,

(h) Rare and interesting botanical species,

(i) Habitat value for wildlife,

(j) Blending, buffering or reduction in the scale and mass of architecture.

(3) Any hazards posed by the tree(s) or vegetation including, but not limited to, fire danger or the danger of falling limbs or trees;

(4) The age, projected rate of growth, and maintenance requirements of the tree(s) or vegetation;

(5) The date the view seeker purchased his/her property; and

(6) The date the tree/vegetation owner purchased his/her property. (Ord. 661 § 1 (part), 2010).

SEC. 17.55.150 Hierarchy of preservation actions.

View equity actions must be consistent with all other provisions of this Title. Severe pruning should be avoided due to the damage such practice causes to the tree's form and health. Preservation actions may include, but are not limited to the following, in order of preference, assuming no countervailing health or safety interest(s) exist:

(1) Lacing. Lacing is the most preferable pruning technique that removes excess foliage and can improve the structure of the tree.

(2) Vista Pruning. Vista pruning of branches may be utilized where possible, if it does not adversely affect the tree's growth pattern or health.

(3) Crown Reduction. Crown reduction is preferable to 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(s) in question.

(4) Stand Thinning. The removal of a portion of the total number of trees from a grove of trees, without any replacement plantings.

(5) Heading Back. Eliminating the outer extent of the major branches throughout the tree. Heading back is only to be permitted for trees specifically planted and maintained as a hedge, espalier, bonsai or in pollard form and if restoration actions (1) through (4) of this section will not accomplish the determined preservation action and the subsequent growth characteristics will not create a future obstruction of greater proportions.

(6) Tree/Vegetation Removal. Tree and/or vegetation removal, which may be considered when the above-mentioned preservation actions are judged to be ineffective and may be accompanied by replacement plantings or appropriate plant materials to restore the maximum level of benefits lost due to tree removal. (Ord. 661 § 1 (part), 2010).

SEC. 17.55.160 Responsibility for preservation action and subsequent maintenance.

The view seeker shall be responsible for paying the cost of any determined preservation action unless the parties agree to share the costs in some other manner. Subsequent maintenance shall be the responsibility of the tree/vegetation owner, unless otherwise agreed to by the parties or required pursuant to any final arbitration decision or court order. It is the intent of this chapter that a tree/vegetation owner who sells his or her property notify the purchaser of any agreement, decision, or court order requiring subsequent maintenance of trees or vegetation. (Ord. 661 § 1 (part), 2010).

SEC. 17.55.170 Liability.

(1) The city shall not be liable for any damages, injuries, costs or expenses which are the result of an advisory opinion issued by a city employee or official or any agreements or determinations resulting from mediation, arbitration or litigation concerning view equity claims or a view seeker's assertions pertaining to views granted or conferred herein. Nor shall the city have any liability because a particular neighborhood is granted or denied an exemption pursuant to Section 17.55.180 of this chapter.

(2) Under no circumstances shall the city have any responsibility or liability to enforce or seek any legal redress, civil or criminal, for any decision that any other person or entity makes concerning a view equity claim.

(3) A failure to comply with the provisions of this chapter is not a misdemeanor, and the enforcement of this chapter shall be only by the affected and interested private parties. (Ord. 661 § 1 (part), 2010).

SEC. 17.55.180 Petition for exemption.

A recognized and established neighborhood in the city may petition the city council for an exemption from this chapter. The factors the city council will consider in determining whether such an exemption should be granted shall include, but not be limited to, whether the neighborhood has unique or historic trees or trees that provide shade or otherwise add to the character of the neighborhood, and whether the properties in the neighborhood have views of unique scenic vistas. A petition for exemption may be submitted by the authorized homeowners' association in the petitioning neighborhood or by a majority of the homeowners in the neighborhood. The procedures governing exemption petitions shall be established by resolution of the city council.

SEC. 17.55.190 Severability.

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

The city council hereby declares that it would have adopted this and each section, subsection, phrase or clause of this chapter irrespective of the fact that any one or more sections, subsections, phrases or clauses be declared invalid or unconstitutional on their face or as applied. (Ord. 661 § 2 (part), 2010).

SECTION 2. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this ordinance or the application thereof to any persons or place, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remainder of this ordinance. The City Council hereby declares that it would have adopted this ordinance, and each any every section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 3. The City Clerk shall certify to the adoption of this Ordinance and cause the same to be published in accordance with law.

ADOPTED this 12th day of 2010

JOHN C. ADDLEMAN, MAYOR

ATTEST:

DOUGLAS R. PRICHARD, CITY CLERK

I HEREBY CERTIFY that the foregoing Ordinance No. 661 was adopted by the City Council of the City of Rolling Hills Estates at a regular meeting held thereof on the 12th day of October, 2010, by the following vote:

AYES:	ADDLEMAN, MITCHELL, SEAMANS, ZERUNYAN, ZUCKERMAN
NOES:	NONE
ABSTAIN:	NONE
ABSENT:	NONE

DOUGLAS R. PRICHARD, CITY CLERK

TREE AND VIEW PRESERVATION ORDINANCE

Chapter 11.12 of the Municipal Code

Sections

11.12.010 - Purpose and Intent
11.12.020 - Definitions
11.12.030 - Protected Trees
11.12.040 - Views
11.12.050 - Enforcement and Penalties

Section 1. Chapter 11.12 of the Sausalito Municipal Code is hereby amended to read as follows:

11.12.010 PURPOSE AND INTENT. The General Plan of the City of Sausalito recognizes the contribution of both trees and views to the character and beauty of the City. The removal of trees without reasonable care would destroy the natural beauty of certain areas, contribute to erosion, increase the cost of drainage systems, reduce protection against wind, and impair residential privacy and quiet. This chapter acknowledges that trees and views, and the benefits derived from each, may come into conflict. This Chapter presents guidelines to resolve such conflicts so as to provide a reasonable balance between trees and views related values. It is the intent of this Chapter to provide an atmosphere in which residents of this community can resolve their differences amongst themselves without City intervention. For these reasons, the City Council enacts these regulations to promote the public health, safety and welfare. All tree work to be performed shall be in accordance to pruning standards of the International Society of Arboriculture Western Chapter. (ISA Copies available at Community Development Department.)

11.12.020 DEFINITIONS. As used in this Chapter, the following terms shall have the meanings set forth in this section unless the context clearly indicates otherwise:

Alterations: Any action which would significantly change or damage the health or appearance of any tree, whether, 1) by cutting of its trunk or branches, or, 2) by filling or surfacing or changing the drainage of the soil around the tree, 3) by the cutting or removal of roots, 4) by removal of the upper portion of the tree's trunk or main leader, or 5) by any other damaging acts.

Arborist: 1) "Certified"Arborist as currently listed by the International Society of Arboriculture, or, 2) "Consulting" Arborist as currently listed as a member of the American Society of Consulting Arborists.

Arborists Report: The report of a Certified or Consulting Arborist on the feasibility and impact of suggested tree work.

C.B.H. (Circumference at Breast Height): The tree trunk's circumference as measured at 4 and 1/2 feet above the ground. For multi-trunked trees, the circumference of the two largest trunks combined. Claimant: Any individuals or group of individuals who files a claim as required by the provisions of this Chapter.

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Feasible Tree Work: Tree work in which the first priority is the health and appearance of the tree.

Hedge: Any plant material, trees, stump growth, or shrubbery planted or growing in a dense continuous line, so as to form a thicket, barrier or living fence.

Meeting "Noticed": A meeting of which adjacent residents and property owners are notified by the City.

Obstruction: Any blocking or diminishment of a view or sunlight attributable to the growth, appearance, maintenance or location of trees.

Pruning: Normal, seasonal maintenance pruning, trimming, shaping or thinning of a tree necessary to its health, growth and view maintenance. Foliage reduction should not exceed one quarter of the total tree foliage.

Restorative Action: Any specific requirement to resolve a view claim.

Routine Pruning: The removal of any dead parts of a tree. Normal, seasonal maintenance pruning, trimming, shaping or thinning of a tree necessary to its health, growth and view maintenance. Foliage reduction should not exceed one quarter of the total tree foliage.

Shrubs or Shrubbery: A woody perennial plant smaller than a tree, usually having permanent stems branching from or near the ground.

Thinning: The selective removal of entire branches from a tree so as to improve visibility through the tree and/or improve the trees structural condition.

Topping: Removal of the upper portion of a tree's trunk or main leader.

Tree: A highly compartmented, perennial, woody, shedding plant that is usually tall, single stemmed, and long-lived. For the purposes of this Ordinance, trees are of the following classes.

Dedicated Tree: A tree that has special significance as provided for by resolution of the City Council.

Desirable Tree: A tree that has been approved for the specific location by the Tree Committee or City Arborist.

Fast Growing Tree: A tree developing three feet or more in height in yearly growth.

Heritage Tree: A tree which has a C.B.H. of 30". No undesirable tree as defined herein is a heritage tree.

Protected Tree: Protected trees are those listed below.

1. On all private property: a) the California or Coastal Live Oak (Quercus agrifolia)measuring 12" C.B.H. or larger; b) heritage trees; and c) dedicated trees.
2. On private undeveloped property, a tree measuring 12" C.B.H. or larger.
3. All trees and shrubs on City-owned property.
4. No undesirable tree is a protected tree.

Undesirable Tree: Is one of the following: 1) Eucalyptus globulus, (Blue Gum Eucalyptus); 2) Pinus radiata, (Monterey Pine); 3) Cupressus macrocarpa, (Monterey Cypress); 4) Sequoia sempervirens, (Coastal Redwood); 5) Acacia melanoxylon, (Blackwood Acacia); 6) Acacia baileyana, (Bailey Acacia); and 7) Acacia decurrens, (Green Wattle).

Tree Committee: The Committee established under Chapter 2.30 of the Sausalito Municipal Code.

Tree Owner: Any individual owning real property in the City upon whose land are trees that form the basis for the filing of a view claim.

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Tree Removal: The destruction of any tree by cutting, girdling, interfering with the water supply, applying chemicals, or regrading around the base of the trunk.

Tree Worker: "Certified" tree worker as currently listed by the International Society of Arboriculture.

Undeveloped Property: Undeveloped property includes:

1. A parcel of private land of which less than ten (10) percent is covered by a structure, including but not limited to residential lots;
2. A parcel of land which can be further divided in accordance with the zoning regulations of the City;
3. A parcel of land on which the structures are about to undergo demolition or relocation.

View: A vista of the San Francisco-Richardson Bay, neighboring communities, surrounding hills, or a nearby or distant wooded area from the primary living areas of the home. "Views" include, but are not limited to skylines, bridges, distant cities, geologic features, hillside terrains and wooded canyons or ridges. The term "view" does not mean an unobstructed panorama of all or any of the above.

View Claim: The written basis for arbitration or court action under the provisions of this Chapter, submitted by the claimant.

11.12.030 PROTECTED TREES.

A. Permit Procedures for Removal or Alteration of Protected Trees. It is unlawful for any person to remove or alter any protected tree as defined herein, without a permit issued and posted as provided in this Chapter except for the purpose of routine pruning. No protected tree may be removed or altered on any undeveloped property on Saturday, Sunday or Holidays or at any time except during regular working hours (8:00 a.m.- 5 p.m.), Monday through Friday.

1. **Applicant's Responsibility:**

a. Application. A Tree Removal/Alteration Permit shall be obtained from the Community Development Department in any situation which involves the removal or alteration or possible damage to a protected tree or trees, including issuance of a permit for building, grading or demolition. The permit application must be accompanied by an arborist report stating the need for tree removal or alteration based on the Criteria set forth in subdivision B of this Section, and recommending protective measures for any endangered tree. If the applicant is not the owner of the property on which the tree or trees are located, the applicant shall attach the written permission of the property owner.

b. Posting of Application and Tree Tags. After submission of an application under this section, the applicant shall be issued tree tags, one of which is to be posted on each tree proposed for removal or alteration. Within two (2) working days after making an application for a tree removal or alteration permit, the applicant shall place the tags on the trees and post the application so that it is clearly visible from the street at the front of the lot. The tags and notice shall not be removed for ten working days thereafter.

c. Posting of Permit. Following issuance of a tree removal permit, an applicant shall post a copy in plain view on the site while tree removal or alteration work is underway. d. Filing Fee The applicant shall pay the filling fee established by the City Council for tree removal or alteration permit.

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1. **City's Responsibility:** The Community Development Department shall be responsible for receiving applications for protected tree removal and/or alteration permits, for confirming that the required information has been provided by the applicant, and for issuing tree tags and notices to the applicant. The Community Development Department shall route all tree removal/alteration applications and arborist's reports to:

   a. The Design Review Board (DRB), if the protected tree(s) is to be altered/removed or endangered as the result of a development proposal requiring DRB approval. The DRB must consider the tree removal/alteration application in considering any plans for the property in question.

   b. all other applications to the Trees and Views Committee, if the protected tree or trees are on private, developed property.

   c. The City Arborist if the tree(s) are on public property. Site inspection shall be made by the esponsible reviewing agency and written comments received regarding the application shall be considered. The responsible reviewing agency may require submission by the applicant of a site plan and/or survey or such other information as is deemed necessary by the responsible reviewing agency.

B. Criteria for Grant or Denial of Application for Removal or Alteration of Protected Trees

1. In order to grant a tree removal or alteration permit, it must be determined that removal or alteration is necessary in order to accomplish any one of the following objectives:

   a. To insure the public safety as it relates to the health of the tree, potential hazard to life or property, proximity to existing or proposed structures, and interference with utilities or sewers.
   b. To allow reasonable enjoyment of the property, including sunlight, and the right to develop the property.
   c. To take reasonable advantage of views.
   d. To pursue good, professional practices of forestry or landscape design.

2. In order to grant a tree removal permit, it must be determined that any one of the following conditions is satisfied:

   a. The tree to be removed will be replaced by a desirable tree.
   b. The Tree Committee waives the above requirement based on nformation provided by the applicant/owner.

3. A finding of any one of the following is grounds for denial, regardless of the finding in "1." above:

   a. Removal of a healthy tree of a desired species can be avoided by:

   1. reasonable redesign of the site plan, prior to construction
   2. a) thinning to reduce density; e.g. "open windows"
   2. b) shaping to reduce height or spread, using thinning cuts only (drop crotch)
   2. c) heading or topping - this is the least preferable method,due to the tree's health and appearance and cost of maintenance.

   b. Adequate provisions for drainage, erosion control, land stability, windscreen, visual screening, privacy and for restoration of ground cover and/or other foliage damaged by the tree work have not been made in situations where such problems are anticipated as a result of the removal or alteration.

   c. The tree to be removed is a member of a group of trees in which each tree is dependent upon the others for survival.

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d. The value of the tree to the neighborhood is greater than its inconvenience to the owner. The effects on visual, auditory, and wind screening, privacy and neighboring vegetation must be considered.

e. The need for protection of privacy for the property on which the tree is located and/or for adjacent properties.

C. Conditions of Approval for Protecting Trees During Construction.

Adequate protection shall be provided during the construction period for any protected trees which are to remain standing. Measures deemed necessary by the reviewing agency in consideration of the size, species, condition and location of the protected trees to remain, may include any of the following.

1. Before the start of any clearing, excavation, construction or other work on the site, every protected tree deemed to be endangered by the work shall be securely fenced off at the "protected perimeter", which shall be either the outer limits of the branches of such protected tree (the drip line) or such greater limits as may be established by the reviewing agency. Such fences shall remain in place for the duration of all such work. All protected trees to be removed shall be clearly marked. A plan shall be established for the removal and disposal of logs, brush, earth and other debris which will avoid injury to any protected tree.

2. Where proposed development or other site work is to encroach upon the protected perimeter of any protected tree, special measures shall be incorporated to allow the roots to breathe and obtain water and nutrients. Any excavation, cutting, filling, or compaction of the existing ground surface within the protected perimeter shall be minimized. No asphalt or other paving materials shall be added. No change in existing ground levels shall occur within four feet of the base of any protected tree at anytime. No burning or use of equipment with an open flame shall occur near or within the protected perimeter.

3. No storage or dumping of oil, gas, chemicals or other substances that may be harmful to trees shall occur within the protected perimeter of any protected trees, or any other location on the site from which such substances might enter the protected perimeter. No heavy construction equipment or construction materials shall be operated or stored within the protected perimeter. Wires shall not be attached to any protected tree, except as needed for support of the tree. No sign, other than a tag showing the botanical classification, shall be attached to any protected tree.

4. Periodically during construction, the leaves of the protected trees shall be thoroughly sprayed with water to prevent buildup of dust and other pollution that would inhibit transpiration.

5. If any damage to a protected tree should occur during or as a result of work on the site, the contractor, builder or owner shall promptly notify the City of such damage. If such a protected tree can not be preserved in a healthy state, the reviewing agency shall require replacement of any protected tree removed with another tree or trees on the same site deemed adequate to compensate for the loss of the tree that is removed.

D. Issuance of Permit

Consideration of and action on the Permit Application shall be made by the Board or Official to whom the Permit Application is routed in accordance with subsection 11.12.030(A)(2), above and that Board or Official shall either approve, conditionally approve or deny the permit with reason for such action stated. If an application for tree removal/alteration is approved, a permit shall be issued to the applicant by the Community Development Department in conjunction with any other permit related to the work in question. However, no tree

removal/alteration permit will be issued until all related building permits are approved.

E. Liabilities

1. The issuance and exercise of a permit pursuant to this chapter shall not be deemed to establish any public use or access not already in existence with regard to the property to which the permit applies.

2. The issuance of a permit pursuant to this Chapter shall not create any liability of the City with regard to the work to be performed, and the applicant for such permit shall hold harmless the City and its officers and employees from any damage or injury that may occur in connection with, or resulting from, such work.

F. Emergency Tree Removal or Alteration

If personal injury or property damage is imminently threatened, the Fire Chief, the Chief of Police or the City Arborist may authorize the removal or alteration of a protected tree without compliance with other provisions of this Chapter. The removal or alteration of a protected tree under emergency conditions shall be reported to the Community Development Department on the first business day following the emergency tree work.

G. Public Utilities Pruning

A yearly tree removal permit shall be required for removal or alteration of protected trees as defined in this Chapter by any public utility, emergencies excepted. This permit may be revoked at any time if the following conditions are not met:

1. The Community Development Department must be informed of all pruning, detailing street addresses, tree types and extent of work, two weeks in advance of the work date.

2. A weekly work location must be provided to the City Arborist for each crew so that the work can be supervised.

3. All work must be under the daily supervision of an Arborist and the work actually performed by either an Arborist or a Certified Tree Worker; and

4. Defined pruning methods must be used for all utility pruning work; a copy is available at the Community Development Department.

H. Appeal of Denied Permit Applications

The decision of the Design Review Board and the Trees and Views Committee is final with regards to Applications subject to the jurisdiction of those Boards. With regard to applications subject to the jurisdiction of the City Arborist, the decision of the City Arborist may be appealed as follows:

The Community Development Department shall maintain a list of three Consulting Arborists qualified to make determinations required of this section. Those on the list shall be Consulting Arborists who have established through reputation in the community the ability to be fair and impartial in making determinations required in this section and who have agreed to serve as arbiters for purpose of implementing this section. A party aggrieved by the decision of the City Arborist may request that the City select one of the three listed arbiter/arborists to reconsider the application (so long as the selected arbiter/arborist has had no prior involvement with the instant application). The aggrieved party will be required to pay the fee of the arbiter/arborist in advance and the City shall then select the arbiter from the list on a rotational basis. The arbiter/arborist will consider the merits of the application

pursuant to the provisions of this section, and will render a decision in writing either approving the application, conditionally approving the application, or denying the application. The decision of the arbiter/arborist will be final.

There is no City Council appeal of the decision of any board, official or arbiter/arborist of any Tree Removal application made pursuant to this section.

11.12.040 VIEWS.

A. Unreasonable Obstruction of View or Sunlight Prohibited

A tree, shrub, hedge or other vegetation shall not be maintained in such manner as to unreasonably obstruct the view from or the sunlight reaching other property.

B. Procedure: Private Tree

1. Initial Reconciliation: Any claimant who believes in good faith that the growth, maintenance and/or location of trees, shrubs, hedges or other vegetation situated on the property of another unreasonably diminishes the beneficial use, economic value, sunlight or enjoyment of the view from the claimant's property shall notify the tree owner in writing of these concerns. The claimant should consult an Arborist and obtain a report for a feasible solution to the view problem. The notification to the tree owner should include the arborist's report, and should also be accompanied by personal discussions, if possible, to enable the claimant and the tree owner to attempt to reach a mutually agreeable solution, both long term and short term, to the alleged unreasonable obstruction. If any tree involved is a protected tree, a tree removal/alteration permit must be obtained prior to work being done.

2. Mediation: If the initial reconciliation attempt is unsuccessful, and all parcels involved are private property, the complaining party shall propose mediation. Acceptance of mediation shall be voluntary, but the tree owner shall have no more than 30 days from service of a written request for mediation to accept or reject the offer of mediation, unless otherwise extended by complainant. If mediation is accepted, the parties shall mutually agree upon a Mediator within 10 days.

   It is recommended that the services of a professionally trained mediator or mediation service be employed. The City shall provide, upon request, for review and consideration for selection by the parties a list of mediators and mediation services accompanied by the qualifications provided by such individuals or entities. The fee for mediation services will be determined by the mediator and the parties. The mediator shall not have the power to issue binding orders for restorative action but shall strive to enable the parties to resolve their dispute at this stage in order to eliminate the need for binding arbitration, fact finding and advisory decision, or litigation. If any tree involved is a protected tree, a tree removal/alteration permit must be obtained prior to work being done.

3. Arbitration: In those cases where the parties are unable to reach agreement through the Initial Reconciliation process or with the assistance of a mediator, either the claimant or the tree owner may offer in writing to the other party to submit the dispute to binding arbitration. The initiating party shall serve on the other party by personal service or certified mail, return receipt requested, an agreement executed by the initiating party to submit the dispute to binding arbitration. If the non-initiating party concurs, he/she shall execute the agreement within 30 days from service. Failure to execute the agreement shall be deemed a rejection of binding arbitration.

   If the agreement is accepted, the initiating party shall submit a view claim to the City of Sausalito's Community Development Department. The filing fee for such a claim shall be established by the City Council. The Trees and Views Committee serves as a board of arbitration at a noticed public meeting

which shall be held within forty five (45) from the date of the filing of the view claim. The arbitration proceeding shall be based on available evidence and testimony. Either party to the action may either be represented by an Arborist or present an arborist's written report to the Trees and Views Committee fifteen (15) days prior to the meeting date. The Trees and Views Committee may recommend the services of other experts to either or all parties. Each party shall have the right to present witnesses and to question witnesses presented by any other party. The Trees and View Committee shall reasonably attempt, as a group, to inspect the premises of both the claimant and the tree owner(s) prior to the arbitration meeting.

The Trees and Views Committee shall submit a written decision to the parties. The decision shall include the Trees and Views Committee's findings with respect to the Standards listed in subsection C-3 and 4 of this Section and required restorative actions. All mandated restorative actions shall be initiated within thirty (30) days of the rendition of the arbitration report, unless the health of the growth involved mandates a later date. The written decision of the Trees and Views Committee mandating restorative action shall constitute the tree removal/alteration permit required for the specified work. The decision of the Trees and Views Committee shall be final and binding and enforceable pursuant to the provisions of Code of Civil Procedure Section 1280 et seq.

4. Fact Finding and Advisory Decision: In those cases where the parties are unable to reach agreement through the Initial Reconciliation process or with the assistance of a mediator or agree to binding arbitration, the claimant or the tree owner may elect Fact Finding and an Advisory Decision of the Trees and Views Committee. The applicant shall submit a view claim to the City of Sausalito's Community Development Department. The filing fee for such a claim shall be established by the City Council. The Trees and Views Committee serves as the Fact Finding Board and shall render an Advisory Decision to the parties. A noticed public meeting shall be held within forty five (45) days from the date of the filing of the view claim. The proceeding shall be based on available evidence and testimony. Either party to the action may either be represented by an Arborist or present an arborist's written report to the Trees and Views Committee fifteen (15) days prior to the meeting date. The Trees and Views Committee may recommend the services of other experts to either or all parties. The Trees and Views Committee shall reasonably attempt as a group to inspect the premises of both the claimant and the tree owner(s) prior to the arbitration meeting.

The proceeding need not be postponed if any party refuses permission to inspect the premises or refuses to participate in the proceeding and produce evidence.

The Trees and Views Committee shall submit a written Advisory Decision to the parties. The Decision shall include the Trees and Views Committee's findings with respect to the Standards listed in subsection C-3 and 4 of this Section and recommended restorative actions as well recommending allocation of costs for the same. In the event litigation is required to enforce the decision of the Trees and Views Committee, there shall be a rebuttable presumption in favor of the Trees and Views Committee's decision. The party bringing any private civil action under this Ordinance must promptly notify the City of Sausalito's Community Development Department in writing of such action. Such notification shall be placed in the property file of the properties where the trees are located.

C. Arbitration of View Claim

1. **Responsibility of Claimant in Arbitration**
   The claim shall submit a view claim on a form prescribed by the City. The report of an Arborist shall be submitted with the view claim. If the claimant is not the owner of the property to be benefited by the claim, the claimant shall attach the written permission of the affected property owner.

2. **Responsibilities of Tree Committee in Arbitration**
   The Trees and Views Committee:

a. Shall conduct a site visit as a group to properties involved.
b. May request additional data.
c. Shall conduct a public hearing on the view claim. At least ten (10) days prior to the hearing, notice thereof shall be mailed to the affected parties and to the owners of the property within a radius of one hundred (100) feet of the boundaries of the property upon which the trees are located. Notice of the hearing shall also be published and posted at City Hall at least ten (10) days prior to the hearing.
~~d. Shall record in the County Recorder's office any final decision of the Tree Committee which provides~~ for limitations on the property of a tree owner.

3. **Standards for Resolution of Claims in Arbitration**
The Tree Committee shall, as a group, inspect the premises of both claimant(s) and tree owner(s) to verify the nature and extent of the alleged view obstruction. For purposes of this section, the Tree Committee and/or any involved Arborist may enter upon the property of either or both parties. The Tree Committee shall evaluate the Standards set forth below based on the site visit, the property file on record at City Hall, the submitted data and the public meeting.

a. The character of the view:

1) The vantage point from which the view is sought.
2) The extent to which the view might be diminished by factors other than growth involved in the claim.
3) The extent of the view that existed at the time claimant(s) purchased the property. (Is the party attempting to create, enhance or restore a view?)

b. The character of the view obstruction:

1) The extent of the alleged view obstruction as a percentage of the total view (estimate).
2) The impact on the beneficial use, economic value and enjoyment of the claimant's property caused by the growth.

c. The extent of benefits and/or burdens derived from the growth in question:

1) The visual quality, including but not limited to species, size, growth, form and vigor.
2) Location with respect to overall appearance, design and/or use of the tree owner's property.
3) Visual, auditory, wind screening and privacy provided by the growth to the owner and the neighbors.
4) Effects on neighboring vegetation provided by the growth.
5) The impact of the beneficial use, economic value and enjoyment of the tree owner's property caused by the growth

d. Restorative actions shall be limited to the following:

1) No action.
2) Thinning to reduce density e.g., open windows.
3) Shaping to reduce height or spread, using thinning cuts only (drop crotch).
4) Heading or topping.
5) Tree removal with necessary replacement planting.

e. Each type of restorative action shall be evaluated based on the above findings and with consideration given the following factors:

1) The effectiveness of the restorative action in restoring the view.

2) Any adverse impact of the restorative action on the benefits derived from the growth in question.
3) The cost of the restorative action as obtained from the view claim. The Tree Committee may determine that additional estimates are required.
4) The effects upon the privacy of the tree owner. Values of quiet and privacy should receive equal consideration with values of view and sunlight.

f. All restorative actions shall be undertaken with consideration given to the following factors:

1) All restorative actions must be consistent with subsection C-3, subparagraphs "d" and "e" of this Section.
2) Restorative actions shall be limited to shaping, thinning, and/or heading of branches where possible.
3) When shaping and/or thinning of branches is not a feasible solution, heading or topping shall be preferable to tree removal if it is determined that the impact of topping 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 (arborist's advice required).
4) Tree removal shall only be considered when all other restorative actions are judged to be ineffective. Replacement planting can be required on the property of the parties.
5) An arborist's report is required in determining the nature and cost of replacement plant materials, installation of such plant materials, and time required for such plant materials to become well established.
6) In those cases where tree removal eliminates or significantly reduces the tree owner's benefits of visual screening, windscreening or privacy, replacement screen plantings shall, at the tree owner's option, be established prior to tree removal;
notwithstanding the provisions of sub-paragraph "e" above, the tree owner may elect tree removal with replacement planting as an alternative to shaping, thinning, heading or topping.
7) All shaping, thinning, heading, topping and tree removal required under this Chapter must be performed under the daily supervision of an Arborist.

4. **Implementation of Decision**
Within thirty (30) days of the arbitration decision, the tree owner will obtain at least three bids for the prescribed work from Arborists and shall present all bids to claimant. Within fifteen (15) days after presentation of the bids, the claimant shall deposit with the tree owner an amount equal to the percentage of the lowest bid deemed appropriate by the Tree Committee. The tree owner shall, at his sole discretion, choose the company by which he wishes the work done and shall order the work done within fifteen (15) days after receiving the claimant's deposit. The tree owner shall pay the difference between the deposit amount and the bid amount of the company he has chosen. The authorized work of correction shall be done by an Arborist under the sole direction and control of the tree owner.

5. **Allocation of Costs in Arbitration**
To be determined by the Arbitration Committee according to the standards set forth under Section C, sec. 3-4.of this section, and the individual circumstances brought before the Committee.

D. Procedure - City Trees

The Trees and Views Committee does not have jurisdiction over claims concerning trees on public property. The procedures for handling claims concerning trees on public property are as set forth in this subsection.

1. Filing of View Claim: A claimant who believes in good faith that the growth, maintenance, or location of trees situated on City property diminishes the beneficial use, economic value, sunlight, or enjoyment of views naturally accruing to the claimant's property may apply to the City on a form approved by the City Arborist. The application form shall be accompanied by a filing fee as established by the City

Council. If the claimant is not the owner of the property that is proposed to benefit from this claim, the claimant shall attach the written permission of the property owner.

2. Investigation: Upon receipt of a view claim, the City Arborist shall investigate the claim and shall consider the public interest in maintaining the public environment created by the existing trees and landscaping; additionally, the Arborist may take into consideration the Standards set forth in subsection C-3 of this Section and shall issue his or her decision to the claimant within thirty (30) days ~~of receiving the view claim. The decision of the City Arborist shall be in writing but no findings are~~ required. Appeal of the decision of the City Arborist shall be as set forth in Section 11.12.030 H.

3. Public Posting and Input: All City trees affected by a view claim shall be individually tagged by the City within five (5) working days of receipt of a view claim. Such notices shall be posted in clear view of passersby, and shall contain the phone number which citizens can call to obtain information regarding the view claim. All written public input received by the City shall be considered.

4. Restorative Action: All view claims found by the City to be valid shall be subject to restorative action in accordance with subsection C-3, subparagraphs "d" of this Section. Restorative action shall be as recommended by and performed under the daily supervision of an Arborist selected by the City and under City supervision. The restorative action including the costs of the Arborist services shall be paid by the claimant.

11.12.050 ENFORCEMENT AND PENALTIES

~~A. The first violation of any of the provisions of this Chapter shall be chargeable as an infraction, punishable by a fine not exceeding one hundred dollars ($100). Subsequent violations by the same person shall be chargeable as a misdemeanor. Every violation determined to be a misdemeanor is punishable by a fine not exceeding one thousand dollars ($1,000) for each offense.~~

~~B. The City Manager or any employee designated by the City Manager is authorized and directed to issue a stop work order to any person found to be removing or altering a protected tree without the authority required by this Chapter.~~

(Ordinance history: Ords. 812, 912, 1050, 1107, 1114, 1122)

SEE ORDINANCE NO. 1146
FOR AMENDED WORDING
OF SECTION 11.12.050

ORDINANCE NO. 1146

AN ORDINANCE OF THE CITY OF SAUSALITO AMENDING CHAPTER 11.12 OF THE SAUSALITO MUNICIPAL CODE PERTAINING TO ENFORCEMENT AND PENALTIES FOR THE TREES AND VIEWS ORDINANCE

The City Council of the City of Sausalito does hereby ordain as follows:

Section 1. Findings and Purpose.

a. This Ordinance is enacted pursuant to the authority granted by Government Code Section 53069.4, which provides in pertinent part: "The legislative body of a local agency . . . may by ordinance make any violation of any ordinance enacted by the local agency subject to an administrative fine or penalty. The local agency shall set forth by ordinance the administrative procedures that shall govern the imposition, enforcement, collection, and administrative review by the local agency of those administrative fines or penalties."

b. The City Council finds and determines that effective enforcement of the Sausalito Trees and Views Ordinance is essential to achieving its objectives. In recent years, the City has encountered situations where private property owners illegally remove or alter protected trees, to the detriment of the Sausalito community. The City's current enforcement mechanisms have proven to be an insufficient deterrent to such unauthorized activities, which if allowed to continue would threaten to adversely affect the character and scenic beauty of the City and increase the risk of erosion, earth movement and drainage problems.

Section 2. Section 11.12.050, entitled "Enforcement," of Chapter 11.12, entitled "Preservation of Trees and Views," of the Sausalito Municipal Code is hereby amended, to read in full as follows:

A. Stop Work Order.

The enforcement officer is authorized to issue a stop work order to any person found to be removing or altering a protected tree without proper authorization pursuant to Chapter 11.12..

B. Administrative Fines and Remedial Orders.

In addition to all other civil and criminal remedies available to the City to address violations of this Chapter, the City may impose an administrative fine and/or a remedial order upon any person who is found to have committed a violation of any provision of Section 11.12.030 pursuant to the administrative procedures set forth in this Section. The determination whether to impose an administrative fine and/or remedial order shall be at the sole discretion of the City and shall not preclude the City from pursuing other available legal remedies.

1. Definitions. As used in this Section, the following terms shall have the meanings set forth below, unless the context clearly indicates otherwise:

Person: Any individual or entity found to be responsible for a violation, including but not limited to the owner or lessee of the property upon which the violation takes place, as well as any contractor or employee who is hired to perform alteration or removal of any tree.

Enforcement Officer: Any employee or agent of the City with the authority to enforce any provision of this Chapter, as designated by Section 1.05.060B or by the City Manager.

2. Administrative Citations. When an enforcement officer determines that there has been an unauthorized removal or alteration of a protected tree in violation of any provision of Section 11.12.030, the enforcement officer is authorized to issue an administrative citation to the person responsible for the violation.

3. Documentation. To the extent feasible, the enforcement officer issuing the citation shall document the circumstances surrounding the violation and assemble relevant information such as photographic evidence, witness statements, and notes regarding the enforcement officer's observations.

4. Contents of Citation. The administrative citation shall contain the following information:

(i) The date of the violation;

(ii) The address or other description of the location where the violation occurred;

(iii) A brief description of the administrative citation process as set forth in this subsection, including a statement informing the violator of the potential penalties and that a decision regarding the citation will be made by either the Trees and Views Committee or the Planning Commission, subject to appeal to the City Council;

(iv) A statement that judicial review of a final decision following an administrative appeal regarding the citation must occur within the twenty-day time frame set forth in Government Code Section 53069.4(b); and

(v) The name and signature of the enforcement officer.

5. Scheduling of Public Hearing; Notice; Dismissal of Citation. The enforcement officer shall schedule a public hearing to take place not earlier than twenty-one (21) and not later than sixty (60) days after the date of the citation. If the citation concerns activities on private property and the owner of the affected property has a development application pending before the City, the Planning Commission or City Council shall conduct the public hearing depending to

whom the development application is before. If not, the Trees and Views Committee shall conduct the public hearing. The person cited with the violation shall be given at least twenty-one (21) days prior notice of the public hearing. If the person cited for the violation fails to appear at the hearing, an administrative fine and/or order to perform remedial work may be imposed in the person's absence.

6. Method of Service. All notices required pursuant to this Section shall be served as follows:

a. Notice shall be served by personal service or by certified mail, return receipt requested. Notice shall be effective upon mailing.

b If personal service or service by certified mail is unsuccessful, notice shall be provided by posting at the property where the violation occurred. Notice shall be effective upon posting.

7. Conduct of Public Hearing. During the hearing, relevant evidence regarding the unauthorized tree alteration or removal and the tree's value may be presented by the person cited with the violation, the enforcement officer, a certified arborist, and any other persons with knowledge or information regarding the violation or the tree's value. The tree's value may be determined with reference to standards established by the International Society of Arborists. The appropriate decision-making body, as determined pursuant to Section 11.12.050(B)(5), shall hear the evidence and determine whether the violation occurred. If it is determined that a violation occurred, the decision-making body may impose an appropriate administrative fine and/or issue an order to perform remedial work.

8. Imposition of Administrative Fine; Remedial Order.

a The decision-making body may impose an administrative fine for the violation of any provision of Section 11.12.030, in an amount not to exceed a maximum of one thousand dollars ($1,000) for each illegal removal or alteration.

b. The decision-making body may order the violator to perform appropriate remedial work to mitigate the impact of the violation on the Sausalito community and affected property owners. Such remedial work may include installation of one or more trees or shrubs to replace those illegally altered or removed. The remedial work shall include installation and maintenance of trees of such size and number necessary to substantially restore the loss of privacy, environmental degradation and other damages which resulted from the unauthorized alteration or removal. The decision-making body may fashion an appropriate remedial order setting forth the location, number, size and species of replacement trees or shrubs, a schedule for completion of remedial work, and such other matters determined to be necessary and appropriate to mitigate the impact of the violation. A performance bond issued by a surety admitted in California shall be required at the violator's sole expense and shall serve as security for the benefit of the City in an amount equal to 100 percent of the estimated cost of the remedial work. A maintenance bond issued by a surety admitted in California shall be required at the violator's sole expense upon completion of the remedial work and shall serve as security for the benefit of the City for the violator's obligation to maintain the remedial work for a period of ten (10) years. The bond shall

be in an amount equal to 15 percent of the actual cost of the remedial work. The City may also require a maintenance agreement between the violator and the City to set forth the terms of maintaining the remedial work.

c In determining the amount of an administrative fine and the scope and contents of a remedial order, the decision-making body may take any or all of the following factors into consideration:

(i) The seriousness of the violation, including the value of the tree;

(ii) The impact of the violation on the Sausalito community, environment and affected property owners;

(iii) The duration of the violation;

(iv) The frequency, recurrence and number of violations by the same violator;

(v) The economic impact of the fine and/or remedial order on the violator;

(vi) The good faith efforts of the violator to come into compliance, if applicable; and

(vii) Such other factors as fairness and justice may dictate.

d. The decision-making body shall have the authority to impose an administrative fine, remedial order, or both, as determined appropriate after considering the factors set forth in Section 11.12.050B(8)(c).

e. If the violation concerns activities on private property and while the owner of the affected property has a development application pending before the City, the Planning Commission, or the City Council as the case may be, may suspend processing of the development application to the extent permitted under Government Code Section 65950 *et seq.* and other state law governing the processing of development applications, and defer any final decision on the merits of the application until the violating party agrees to pay any administrative fine and comply with any remedial order issued by the Planning Commission or City Council. If the development application requires review by the Planning Commission or City Council, they may also attach conditions of approval as determined necessary to ensure compliance.

f. The decision of the Planning Commission or the Trees and Views Committee regarding whether a violation has occurred and the imposition of any administrative fine and/or remedial order shall be appealable to the City Council by any interested person. Any such appeal shall be in writing and shall be filed with the City Clerk no later than ten (10) days following the date of the decision, stating the reasons for the appeal and providing the appeal fee as established by the City.

9. <u>Collection of Administrative Fines; Enforcement of Compliance Orders</u>.

a. Unless otherwise specified by the decision-making body or by the City Council on appeal, an administrative fine shall be due and payable thirty (30) days following the date of the final administrative decision. Unpaid amounts shall accrue interest at the rate of ten percent (10%) per annum from that date forward. The amount of the administrative fine shall be deemed to be increased by the amount of accrued interest and any recoverable administrative costs, as specified in Section 11.12.050(B)(10). All monies collected shall be deposited in a separate account to be designated for tree purposes by the City Council.

b. The City shall collect administrative fines and enforce remedial orders by utilizing any and all available legal remedies, including but not limited to the following:

(i) Administrative fines are a debt owed to the City and are enforceable as a personal obligation of the violator.

(ii) If the violator is a property owner, the City may invoke the lien procedures specified in Section 11.12.050(C)(11) against the property on which the violation occurred.

(iii) The City may pursue any available legal action to enforce compliance with a remedial order or fine including without limitation seeking declaratory and/or injunctive relief.

10. Administrative Costs. The City may collect its administrative costs from any violator who fails to pay all administrative fines when due or fails to comply with any provision contained in a remedial order. The administrative costs shall include all expenses reasonably incurred in the City's efforts to collect administrative fines and/or enforce a remedial order, including but not limited to staff time, legal fees, and out-of-pocket costs.

11. Lien Procedures.

a. Whenever the amount of any administrative fine, together with accrued interest and administrative costs, has not been satisfied in full within ninety (90) days after following the date of the final administrative decision and has not been successfully challenged by a timely writ of mandate, the unpaid amount shall constitute a lien against the real property on which the violation occurred. The lien provided herein shall have no force and effect until recorded with the office of the Marin County Recorder.

b. Prior to recording a lien, the Community Development Director shall file with the City Clerk a report stating the amounts due and owing. The City Clerk shall fix a time, date and place for hearing the report and any protests or objections thereto before the City Council. The property owner shall be given at least ten (10) days prior notice of the public hearing. Notice shall be served as provided in Section 11.12.050(B)(6). The notice shall, at a minimum, set forth the record owner or possessor of the property, the last known address of the record owner or possessor, the date upon which the lien was created, a description of the property subject to the lien and the amount of the lien. The property owner may protest the imposition of the lien either in writing or orally. After the hearing, the City Council shall adopt a resolution order confirming, discharging or modifying the amount of the lien.

c. A City Council resolution confirming or modifying the amount of a lien shall be filed in the office of the Marin County Recorder and shall have the same force and effect as a judgment lien pursuant to Section 697.340 of the Code of Civil Procedure. Upon receipt of payment in full pursuant to the lien, a notice of satisfaction of the lien shall either recorded by the City or provided to the property owner to record. The notice of satisfaction shall cancel the City's lien.

12. Judicial Review. Any person aggrieved by a decision imposing an administrative fine may obtain judicial review pursuant to the procedures set forth in Section 53069.4(b) of the Government Code. Any person aggrieved by a decision imposing a remedial order may obtain judicial review by filing a petition for writ of administrative mandate within the time limits set forth in Section 1094.6 of the Code of Civil Procedure.

Section 3. Severability Clause. The City Council declares that each section, subsection, paragraph, subparagraph, sentence, clause and phrase of this Ordinance is severable and independent of every other section, subsection, paragraph, subparagraph, sentence, clause or phrase of this Ordinance. If any section, subsection, paragraph, subparagraph, sentence, clause or phrase of this Ordinance is held invalid, the City Council declares that it would have adopted the remaining provisions irrespective of the portion held invalid and further declares its express intent that the remaining portions of this Ordinance should remain in effect after the invalid portion has been eliminated.

Section 4. Publication and Effective Date. Pursuant to Government Code 36937, this Ordinance shall take effect thirty (30) days after its adoption. Within fifteen (15) days after its adoption, this Ordinance shall be published in a newspaper of general circulation, published and circulated in the City of Sausalito.

The foregoing Ordinance was duly introduced with reading waived at a meeting of the City Council of the City of Sausalito held on the 2nd day of May, 2000, and thereafter was adopted at a regular meeting of the City Council held on the 16th day of May, 2000, by the following vote:

AYES:	Councilmembers:	Albritton, Belser, Roberts, Stratigos, Mayor Bushmaker
NOES:	Councilmembers:	None
ABSENT:	Councilmembers:	None
ABSTAIN:	Councilmembers:	None

/s/ Sandra J. Bushmaker
MAYOR OF THE CITY OF SAUSALITO

ATTEST:
/s/ Debbie Pagliaro
DEPUTY CITY CLERK

Tiburon, California, Code of Ordinances >> TITLE IV - LAND IMPROVEMENT AND USE >> Chapter 15 - VIEW AND SUNLIGHT OBSTRUCTION FROM TREES >>

Chapter 15 - VIEW AND SUNLIGHT OBSTRUCTION FROM TREES

Sections:

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15-3 - Rights established.
15-4 - Unreasonable obstruction prohibited.
15-5 - Criteria for determining unreasonable obstruction.
15-6 - Criteria for determining appropriate restorative action.
15-7 - Types of restorative action.
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15-9 - Process for resolution of obstruction disputes.
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15-13 - Apportionment of costs.
15-14 - Liabilities.
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15-16 - Trees on town-owned property.

15-1 - Purpose and principles.

(a) The purposes of this chapter are to:

(1) Establish the right of persons to preserve views or sunlight which existed at any time since they purchased or occupied a property from unreasonable obstruction by the growth of trees.

(2) Establish a process by which persons may seek restoration of such views or sunlight when unreasonably obstructed by the growth of trees or other vegetation (see definition of "Tree").

(b) The rights and the restorative process are based upon the following general principles:

(1) The town recognizes that residents, property owners and businesses cherish their outward views from the Tiburon Peninsula, and that they also cherish the benefits of plentiful sunlight reaching their buildings and yards. The town recognizes that both outward views and plentiful sunlight reaching property contribute greatly to the quality of life in Tiburon, and promote the general welfare of the entire community.

(2) The town also recognizes the desire of many of its residents, property owners and businesses for beautiful and plentiful landscaping, including trees. The town realizes that this desire may sometimes conflict with the preservation of views and sunlight, and that disputes related to view or sunlight obstruction are inevitable.

(3) Owners and residents should maintain trees on their property in a healthy condition

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for both safety reasons and for preservation of sunlight and outward views. Before planting trees, owners and residents should consider view and sunlight blockage potential, both currently and at tree maturity. Persons have the right to seek civil remedies when threatened by dangerous tree growth.

(4) The town shall establish a process by which persons may seek to preserve and restore views or sunlight which existed at any time since they purchased or occupied property from unreasonable obstruction by the growth of trees. The town shall also establish a list of factors to be considered in determining appropriate actions to restore views or sunlight.

(5) When a view or sunlight obstruction dispute arises, the parties should act reasonably to resolve the dispute through friendly communication, thoughtful negotiation, compromise and other traditional means, such as discussions with the appropriate neighborhood or homeowner association. Those disputes which are not resolved through such means shall follow the procedure established herein.

(6) It is the intent of the town that the provisions of this chapter receive thoughtful and reasonable application. It is not the intent of the town to encourage clear-cutting or substantial denuding of any property of its trees by overzealous application of provisions of this chapter.

(Ord. No. 379 N.S., § 3 (part))

15-2 - Definitions.

For the purpose of this chapter, the meaning and construction of words and phrases is as follows:

"Active use area" means the most frequently occupied portion or portions of a commercial building from which views are available.

"Arbitrator" means a neutral person who will conduct a process similar to a trial, and who will hear testimony, consider evidence, and make a binding decision for the disputing parties.

"Binding arbitration" means a legal procedure as set forth in section 1280 et seq. of the Code of Civil Procedure.

"Complaining party" means any property owner (or legal occupant with written permission of the property owner) who alleges that trees located on the property of another person are causing unreasonable obstruction of his or her pre-existing views or sunlight.

"Mediator" means a neutral, objective third person who assists people in finding mutually satisfactory solutions to their problem.

"Person" means any individual, corporation, partnership, firm or other legal entity, excluding the Town of Tiburon.

"Primary living area" means the portion or portions of a residence from which a view is observed most often by the occupants relative to other portions of the residence. The determination of primary living area is to be made on a case-by-case basis.

"Protected tree" means any of the following:

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"Heritage tree," meaning any tree which has a trunk with a circumference exceeding sixty inches, measured twenty-four inches above the ground level.

"Oak tree," including coast live oak, blue oak, California black oak, interior live oak, canyon live oak, Engelmann oak or valley oak tree.

"Dedicated tree," meaning a tree of special significance so designated by resolution of the town council.

"Removal" means the elimination of any tree from its present location.

"Restorative action" means any specific requirement to resolve a tree dispute.

"Stump growth" means new growth from the remaining portion of the tree trunk, the main portion of which has been cut off.

"Sunlight" means the availability of direct or indirect sunlight to the primary living area of a residence.

"Thinning" means 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.

"Topping" means elimination of the upper portion of a tree's trunk or main leader.

"Tree" means any woody plant with the potential to obstruct views or sunlight, including but not limited to trees, shrubs, hedges, and bushes. References to "tree" shall include the plural.

"Tree claim" means the written basis for arbitration or court action under the provisions of this chapter.

"Tree owner" means any person owning real property in Tiburon upon whose land is located a tree or trees alleged by a complaining party to cause an unreasonable obstruction.

"Trimming" means the selective removal of portions of branches from a tree so as to modify the tree(s) shape or profile or alter the tree's appearance.

"View" means a scene from the primary living area of a residence or the active use areas of a nonresidential building. The term "view" includes both upslope and downslope scenes, but is generally medium or long range in nature, as opposed to short range. Views include but are not limited to skylines, bridges, landmarks, distant cities, distinctive geologic features, hillside terrains, wooded canyons, ridges and bodies of water.

Some additional examples are:

(1) San Francisco Bay (including San Pablo Bay, Richardson Bay, and islands therein);
(2) The San Francisco-Oakland Bay Bridge;
(3) The Golden Gate Bridge;
(4) The Richmond-San Rafael Bridge;
(5) Mount Tamalpais;
(6) The Tiburon Peninsula or surrounding communities (including the city of San Francisco).

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"Windowing" means a form of thinning by which openings or "windows" are created to restore views and or sunlight.

(Ord. No. 379 N.S., § 3 (part))

15-3 - Rights established.

(a) Persons shall have the right to preserve and seek restoration of views or sunlight which existed at any time since they purchased or occupied a property, when such views or sunlight are from the primary living area or active use area and have subsequently been unreasonably obstructed by the growth of trees.

(b) In order to establish such rights pursuant to this chapter, the person must follow the process established in this chapter. In addition to the above rights, private parties have the right to seek remedial action for imminent danger caused by trees.

(c) All persons are advised that the alteration, removal, and planting of certain trees requires a permit under chapter 15A of the Tiburon Municipal Code (Trees). The applicability of chapter 15A should be determined prior to any action on trees.

(Ord. No. 379 N.S., § 3 (part))

15-4 - Unreasonable obstruction prohibited.

(a) No person shall plant, maintain or permit to grow any tree which unreasonably obstructs the view from, or sunlight reaching, the primary living area or active use area of any other parcel of property within the Town of Tiburon.

(b) Because the maintenance of views and sunlight benefits the general welfare of the entire town, any unreasonable obstruction of views or sunlight from the primary living area or active use area shall also constitute a public nuisance.

(Ord. No. 379 N.S., § 3 (part))

15-5 - Criteria for determining unreasonable obstruction.

The following criteria are to be considered (but are not exclusive) in determining whether unreasonable obstruction has occurred:

(a) The extent of obstruction of pre-existing views from, or sunlight reaching, the primary living area or active use area of the complaining party, both currently and at tree maturity.

(b) The quality of the pre-existing views being obstructed, including obstruction of landmarks, vistas, or other unique features.

(c) The extent to which the trees interfere with efficient operation of a complaining party's pre-existing solar energy systems.

(d) The extent to which the complaining party's view and/or sunlight has been diminished over time by factors other than tree growth.

(Ord. No. 379 N.S., § 3 (part))

15-6 - Criteria for determining appropriate restorative action.

When it has been determined that unreasonable obstruction has occurred, then the following

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unweighted factors shall be considered in determining appropriate restorative action:

(a) The hazard posed by a tree or trees to persons or structures on the property of the complaining party including, but not limited to, fire danger and the danger of falling limbs or trees;

(b) The variety of tree, its projected rate of growth and maintenance requirements;

(c) Aesthetic quality of the tree(s), including but not limited to species characteristics, size, growth, form and vigor;

(d) Location with respect to overall appearance, design or use of the tree owner's property;

(e) Soil stability provided by the tree(s) considering soil structure, degree of slope and extent of the tree's root system;

(f) Privacy (visual and auditory) and wind screening provided by the tree(s) to the tree owner and to neighbors;

(g) Energy conservation and or climate control provided by the tree(s);

(h) Wildlife habitat provided by the tree(s);

(i) Whether trees are "protected trees," as defined in section 15-2 of this chapter.

(Ord. No. 379 N.S., § 3 (part))

15-7 - Types of restorative action.

(a) Restorative actions include but are not limited to the following:

(1) Trimming;

(2) Thinning or windowing;

(3) Topping;

(4) Removal with replacement plantings;

(5) Removal without replacement plantings.

(b) In all cases, the documentable extent of view or sunlight existing at any time during the tenure of the present owner or legal occupant is the maximum limit of restorative action which may be required.

(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. Where removal is required, replacement by appropriate species should be considered.

(d) 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.

(Ord. No. 379 N.S., § 3 (part))

15-8 - Town guidelines concerning restorative action.

The Town of Tiburon provides the following general guidelines concerning restorative actions:

(a) Undesirable trees. By reason of their tall height at maturity, rapid growth, dense

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foliage, shallow root structure, flammability, breakability or invasiveness, certain types of trees have been deemed "undesirable" by the town, including Blue Gum Eucalyptus, Coast Redwood, Monterey Pine, Monterey Cypress trees, or any other tree which generally grows more than three feet per year in height and is capable of reaching a height of over thirty-five feet at maturity. When considering restorative action for "undesirable" trees, aggressive action is preferred.

(b) Protected trees. The Town of Tiburon has designated certain trees to be "protected trees," defined in section 15-2. Any alteration or removal of protected trees will require a permit from the town's planning director pursuant to chapter 15A of the Tiburon Municipal Code.

(c) Stump growth. Stump growth generally results in the hazard of weak limbs, and its protection is not desirable. When considering restorative action for stump growth, aggressive action is preferred. Restorative action which will result in future stump growth should be avoided.

(d) Trimming. Trimming is the most minor form of physical restorative action. This option is recommended when minor unreasonable obstruction has occurred, provided that ongoing maintenance is guaranteed.

(e) Thinning or windowing. When simple trimming will not resolve the unreasonable obstruction, thinning or windowing may be necessary. These should be supervised by a certified arborist.

(f) Topping. Topping as a restorative action should be used with caution. Topping can have deleterious effects on a tree's health, appearance and cost of maintenance. Topping frequently results in stump growth. Tree removal, with replacement plantings, may be a preferable alternative.

(g) Removal. Tree removal may be required where such removal is essential to preserve pre-existing views or sunlight. While normally considered a drastic measure, tree removal can be the preferred solution in many circumstances.

(h) Maintenance. Ongoing tree maintenance requirements are strongly recommended as part of restorative action in order to achieve lasting preservation of pre-existing views or sunlight.

(i) Permanence. Conditions of restorative action should be recorded and run with the land to help guarantee permanent preservation of pre-existing views and sunlight.

(Ord. No. 379 N.S., § 3 (part))

15-9 - Process for resolution of obstruction disputes.

The following process shall be used in the resolution of view and sunlight obstruction disputes between parties.

(a) (1) Initial reconciliation. A complaining party who believes that tree growth on the property of another has caused unreasonable obstruction of views or sunlight from the primary living area or active use area shall notify the tree owner in writing of such concerns.

(2) The notification should, if possible, be accompanied by personal discussions to enable the complaining party and tree owner to attempt to reach a mutually agreeable solution. If personal discussions fail, neighborhood associations may be willing to assist with the resolution of the obstruction dispute.

(3) For trees located on town-owned property, see section 15-16

(b) (1) Mediation. If the initial reconciliation attempt fails, the complaining party shall propose mediation as a timely means to settle the obstruction dispute.

(2) Acceptance of mediation by the tree owner shall be voluntary, but the tree owner shall have no more than thirty days from service of notice to either accept or reject the offer of mediation. If mediation is accepted, the parties shall mutually agree upon a mediator within ten days.

(3) It is recommended that the services of a professionally trained mediator be employed. The county of Marin provides professional mediation services at a nominal cost.

(4) The mediation meeting may be informal. The mediation process may include the hearing of viewpoints of lay or expert witnesses, and shall include a site visit to the properties of the complaining party and the tree owner. Parties are encouraged to contact immediate neighbors and solicit input.

(5) The mediator shall consider the purposes and policies set forth in this chapter in attempting to help resolve the dispute. The mediator shall not have the power to issue binding orders for restorative action, but shall strive to enable the parties to resolve their dispute by written agreement in order to eliminate the need for binding arbitration or litigation.

(Ord. No. 379 N.S., § 3 (part))

15-10 - Tree claim preparation.

(a) In the event that the initial reconciliation process fails, and mediation either is declined by the tree owner or fails, the complaining party must prepare a tree claim, and provide a copy to the tree owner, in order to pursue either binding arbitration or litigation under the authority established by this chapter.

(b) A tree claim shall consist of all of the following:

(1) A description of the nature and extent of the alleged obstruction, including pertinent and corroborating physical evidence. Evidence may include but is not limited to photographic prints, negatives or slides. Such evidence must show absence of the obstruction at any documentable time during the tenure of the complaining party. Evidence to show the date of property acquisition or occupancy by the complaining party must be included;

(2) The location of all trees alleged to cause the obstruction, the address of the property upon which the tree(s) are located, and the present tree owner's name and address;

(3) Evidence of the failure of initial reconciliation, as described in section 15-9, to resolve the dispute. The complaining party must provide physical evidence that written attempts at reconciliation have been made and have failed. Evidence may include, but is not limited to, copies of and receipts for certified or registered mail correspondence;

(4) Evidence that mediation, as described in section 15-9, has been attempted and has failed, or has been declined by the tree owner;

(5) Specific restorative actions proposed by the complaining party to resolve the unreasonable obstruction.

(Ord. No. 379 N.S., § 3 (part))

15-11 - Binding arbitration.

(a) In those cases where the initial reconciliation process fails and where mediation is declined

by the tree owner or has failed, the complaining party must offer in writing to submit the dispute to binding arbitration, and the tree owner may elect binding arbitration.

(b) The tree owner shall have thirty days from service of notice to accept or reject binding arbitration. If accepted, the parties shall agree on a specific arbitrator within twenty-one days, and shall indicate such agreement in writing.

(c) The arbitrator shall use the provisions of this chapter to reach a fair resolution of the tree claim and shall submit a complete written report to the complaining party and the tree owner. This report shall include the arbitrator's findings with respect to sections 15-5 and 15-6 of this chapter, a pertinent list of all mandated restorative actions with any appropriate conditions concerning such actions, and a schedule by which the mandates must be completed. A copy of the arbitrator's report shall be filed with the town attorney upon completion. Any decision of the arbitrator shall be enforceable pursuant to the provisions of Code of Civil Procedure section 1280 et seq.

(Ord. No. 379 N.S., § 3 (part))

15-12 - Litigation.

(a) In those cases where binding arbitration is declined by the tree owner, then civil action may be pursued by the complaining party for resolution of the view or sunlight obstruction dispute under the rights and provisions of this chapter.

(b) The litigant must state in the lawsuit that arbitration was offered and not accepted, and that a copy of the lawsuit was filed with the town attorney. A copy of any order or settlement in the lawsuit shall also be filed with the town attorney.

(Ord. No. 379 N.S., § 3 (part))

15-13 - Apportionment of costs.

Cost of mediation and arbitration. The complaining party and tree owner shall each pay fifty percent of mediation or arbitration fees, unless they agree otherwise or allow the mediator or arbitrator discretion for allocating costs.

Cost of litigation. To be determined by the court or through a settlement.

Cost of restorative action. To be determined by mutual agreement, or through mediation, arbitration, court judgment or settlement.

(Ord. No. 379 N.S., § 3 (part))

15-14 - Liabilities.

(a) The issuance of mediation findings, an arbitration report or a court decision shall not create any liability of the town with regard to the restorative actions to be performed.

(b) Failure of the town to enforce provisions of this chapter shall not give rise to any civil or criminal liabilities on the part of the town.

(Ord. No. 379 N.S., § 3 (part))

15-15 - Limitations.

It is not the intent of the town in adopting this chapter to affect obligations imposed by an

existing easement or a valid preexisting covenant or agreement.

(Ord. No. 379 N.S., § 3 (part))

15-16 - Trees on town-owned property.

Trees located on town-owned property are exempt from the provisions of this chapter. Requests or complaints regarding trees located on town-owned property should be made in writing to the superintendent of public works for consideration in accordance with policies adopted by the town.

(Ord. No. 379 N.S., § 3 (part))

Summary Matrix of View Ordinances

City Components	Beverly Hills	Laguna Beach	Rancho Palos Verdes	Rolling Hills Estates	Sausalito	Tiburon	Rolling Hills
Private efforts	x	x	x	x	x	x	x
Mediation	x	x		x	x	x	x
Voluntary binding arbitration	x	x		x	x	x	
City staff judgment			x	x			
View defined by a specific point in time		x	x	x	x	x	
Owners have private cause of action	x	x		x	x	x	
Local agency review and permitting (enforcement)	x	x	x		x		x
Liability & Indemnification protecting City	x	x		x		x	
Distance limitation of view impairment	x	x	x	x			

City Summary Matrix of View Ordinances.docx
August 2012

Public:View Preservation:PLANNING COMMISSION MEETINGS:08-09-12 PC Meeting:City Summary Matrix of View Ordinances.docx