

Chapter 8.28

TREES¹

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8.28.010 Purpose of provisions. This Chapter is adopted for the following purposes:

- A. To provide reasonable regulations for the control of the hazards of personal injury and property damage resulting from uncontrolled growth of trees, stumps and shrubs;
- B. To prevent the diminution in enjoyment and value of private property caused by the growth of trees, shrubs or hedges that unreasonably obstruct the view from or sunlight reaching such property;
- C. To promote and maintain the assessed values of private property for tax purposes;
- D. To promote and maintain the aesthetic value of the community generally;
- E. To encourage informal resolution of tree/view/ sunlight disputes between neighbors, to provide guidelines for such resolution, and to provide alternative remedies in those situations where neighbors are unable to resolve their dispute themselves. The

¹ Prior history: Prior code §§ 16A-1 through 16A-9, and Ords. 75-8, 82-1, 83-1, 87-9 and 97-1.

City encourages the affected neighbors to make every attempt to resolve the issue in a timely, neighborly and amicable manner;

F. To encourage prompt efforts to resolve tree/view/ sunlight complaints, in the interests of providing reasonable notice to the tree owner of a potential or existing view or sunlight obstruction and minimizing the work required to correct such obstruction. (Ord. 98-8 § 1 (part), 1998.)

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

A. "City" means the City of Belvedere.

B. "Complainant" means any owner of real property in the City of Belvedere who alleges that one or more trees, shrubs or hedges located on another property in the City of Belvedere are an unreasonable obstruction of his or her view or sunlight.

C. "Hedge" means 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.

D. "Personal injury or property damages hazard" means trees and limbs of trees, which by reason of either their size or location, condition, root structure or natural tendencies, are liable to fall upon public streets or upon structures built upon adjacent private property; and any plant growth protruding into roadways and obstructing clear vision from automobiles driving along public or private streets and any growth creating a blind intersection.

E. "Shrubs" or "shrubbery" means a woody perennial plant smaller than a tree, usually having permanent stems branching from or near the ground.

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

G. "Tree" means a perennial plant having a permanent, woody, self-supporting main stem or trunk ordinarily growing to a considerable height, such as eucalyptus, cypress, pine, fir, oak and acacia.

H. "Tree owner" means any owner of real property in the City of Belvedere, upon whose land is located one or more trees, shrubs or hedges which a complainant alleges have become an unreasonable obstruction of the complainant's view or sunlight.

I. "Unreasonable obstruction" as used in this Chapter means an obstruction of view or sunlight that impairs the economic value, use or comfortable enjoyment of a parcel of real property and is caused by the growth of trees, shrubs or hedges on another parcel of property, the adverse effect of which growth can be reduced or eliminated without material impairment of the economic value, privacy, use or comfortable enjoyment of the property on which it exists, or the aesthetic value of the community generally. The view from or sunlight reaching a parcel shall not be assumed to be unreasonably obstructed simply because it is partially impeded. Maintenance of an unreasonable obstruction of view or sunlight constitutes a public nuisance.

J. "View" means a scene or vista which includes, but is not limited to, one or more of the following: Mt. Tamalpais, Belvedere, Tiburon, San Francisco Bay and/or its environs, the bridges, neighboring communities, and surrounding hills. The term "view" is not intended to mean an unobstructed panorama of all or any of the above. (Ord. 988 § 1 (part), 1998.)

8.28.030 Personal injury and property damage hazards—City staff member designated—Report—Complaints—Notice to correct—Appeals—Correction costs. A. City Staff Member Designated to Handle Complaints. The superintendent of public works, or other staff member designated by the City Manager shall receive and investigate complaints or reports of personal injury or property damage hazards as set forth in this Section.

B. Reports by Superintendent of Public Works. It shall be the duty of the superintendent of public works to report to the City Manager the existence of any conditions of which he is made aware, which constitute a personal injury or property damage hazard on any property within the City.

C. Complaints by Citizens. Any resident or property owner may complain in writing to the City Manager of the existence of any alleged personal injury or property damage hazard from uncontrolled growth of trees, stumps, and/or shrubbery on property within the City. Promptly upon the receipt of such complaint the City Manager shall refer it to the superintendent of public works for a report whether in his or her opinion the conditions complained of constitute such a hazard. In the event the superintendent of public works does not or is unable to determine that a personal injury or property damage hazard exists on the property, the complainant shall be given the opportunity to deposit with the City such funds as shall hereafter be fixed by City Council resolution to defray the cost for the City to engage the services of a certified arborist for an opinion on the existence of any alleged hazard and a recommendation for correction thereof. Upon deposit of such funds, the superintendent of public works shall retain a certified arborist to render such a report.

D. Notice to Correct.

1. Immediate Danger from Hazard. For any case in which the superintendent of public works reports to the City Manager that there is an imminent and immediate danger of personal injury or property damage as a result of an alleged hazard's continued existence, the City Manager shall:

a. Send written notice, by ordinary mail or personal delivery, to the last owner of record of the property upon which the hazard is claimed to exist, ordering immediate correction of the hazard; or

b. Cause the hazard to be corrected, if it exists on public property or by summary abatement proceedings if the record property owner cannot be contacted or fails to immediately correct the hazard.

2. No Immediate Danger from Hazard; Appeal. In all other cases, the City Manager shall:

a. Cause the hazard to be corrected, if it exists on public property; or

b. Send written notice, by ordinary mail or personal delivery, to the last owner of record of the property upon which the hazard is claimed to exist, ordering correction of the hazard within thirty days, and advising that the property owner shall have the right to file a written appeal to the City Council within seven days of the date of the notice. Any such appeal will be set for hearing at the next available meeting of the City Council, at which time the property owner may present evidence showing why he or she should not be required to correct the alleged hazard. If the City Council

determines that the existence of a hazard has been established, such hazard shall be declared to be a public nuisance and the City Council shall order the property owner to correct the hazardous condition within thirty days.

E. **Costs of Correction.** All work required to correct any personal injury or property damage hazard, including without limitation any associated cleanup work, shall be performed at the cost of the party owning the property on which the hazardous trees, stumps, and/or shrubbery grow. If any owner of private property fails to correct a hazard on his or her property within thirty days after the expiration of time for appeal from a notice to correct or after an appeal has been finally decided adverse to the property owner, the City Council may request that the City Manager or City attorney take all appropriate action to correct the hazard at the property owner's expense. The remedies provided in this Section shall be in addition to any other remedies available to the City under applicable law. (Ord. 98-8 § 1 (part), 1998.)

8.28.035 Unreasonable obstruction prohibited. Unreasonable obstruction of a view from or sunlight reaching a parcel of property is prohibited. (Ord. 98-8 § 1 (part), 1998.)

8.28.040 Remedy for unreasonable obstruction of view or sunlight—Maximum extent of view or sunlight restoration—Informal attempt to alleviate obstruction—Complaint of obstruction—Mediation—Binding arbitration—Litigation. A. **Remedy for Unreasonable Obstruction of View or Sunlight.** As provided in this Chapter, any complainant shall have the right to seek to preserve or restore views from or sunlight to his or her property in the City when such views or sunlight are unreasonably obstructed by the growth of one or more trees, shrubs or hedges on another property in the City.

B. **Maximum Extent of View or Sunlight Restoration.** No view or sunlight shall be considered unreasonably obstructed for purposes of this Chapter, nor be protected under this Chapter, where the claimed view or sunlight was available only through the temporary removal, whether by accident or act of nature, of trees, shrubs or hedges which previously obstructed such view or sunlight, unless such obstruction was otherwise unreasonable. Access to a view or sunlight does not run with the land as an easement.

C. **Informal Attempt to Alleviate Obstruction.** Any complainant who believes that growth on another property constitutes an unreasonable obstruction shall contact the owner of that property and attempt to reach agreement on corrective work necessary to alleviate the problem.

D. **Complaint of Obstruction.** Any complainant who has attempted to resolve the obstruction dispute informally as required in Subsection C of this Section, and who wishes to pursue arbitration or litigation under the authority of this Chapter, must first prepare a complaint of obstruction and serve it in person or by mail on the tree owner. The complaint of obstruction shall include:

1. A description of the nature and extent of the alleged obstruction and the location, by address, of the trees, shrubs or hedges allegedly causing the obstruction;
2. A statement that good faith efforts to resolve the dispute have been unsuccessful;

3. A reasonably detailed proposal of the work required to correct the obstruction;

4. Specification of a certified arborist that the complainant will employ in the event that the work is to proceed;

5. An offer to resolve the dispute by mediation through the office of Marin mediation services program or a similar service together with a statement as to whether the complainant is willing or not willing to submit the dispute to binding arbitration if mediation fails. The respondent shall have thirty days within which to respond to the offer of mediation and if the complainant has expressed willingness to submit the matter to binding arbitration if mediation fails whether the respondent is willing or not willing to do so; and

6. A statement of the date of service of the complaint of obstruction, in person or by U.S. mail, on the tree owner.

E. Mediation. Where both parties agree to mediate the complaint of obstruction, mediation shall be scheduled on the earliest possible date. The complainant and the tree owner shall equally share the cost of the mediation. If the parties to the mediation process resolve their differences then the mediator shall reduce their agreement to writing. This agreement shall be signed by each of the parties. Performance of the terms of the agreement shall be enforceable by a court of competent jurisdiction.

F. Binding Arbitration. In those cases where mediation is declined by the tree owner or fails, and both parties agree to binding arbitration, such arbitration shall proceed as set forth below.

1. Procedure for Arbitration. Within thirty days after the unsuccessful conclusion of mediation or the agreement to arbitrate, whichever is later, the parties shall agree in writing upon a specific arbitrator. If they are unable to agree, then the parties shall request that the American Arbitration Association, or another arbitration company agreeable to all parties, select an arbitrator. In all cases, whether the arbitration is to be performed by the American Arbitration Association or by another company agreed to by the parties, the arbitration shall be conducted according to the rules of procedure of the American Arbitration Association. The complainant shall provide the arbitrator with a copy of the complaint of obstruction, and the tree owner may provide the arbitrator with a written response to the complaint prior to the date of arbitration. The arbitrator may require either party to pay for and submit a report from a certified arborist. The parties shall equally share the cost of the arbitration.

2. Report of Arbitrator. The arbitrator shall submit a complete written report to the complainant and to the tree owner. This report shall include the arbitrator's findings with respect to the standards and guidelines set forth in Sections 8.28.070 and 8.28.080, a list of all mandated corrective actions, and a schedule by which the mandated actions must be completed. The complainant shall file a copy of the arbitrator's report with the City Manager for informational purposes only. Any decision of the arbitrator shall be enforceable pursuant to the provisions of Code of Civil Procedure Section 1285 et seq.

G. Litigation. Where binding arbitration is not agreed upon by the parties the complainant may file a civil action in the Marin County superior court to enforce the provisions hereof provided he has complied with all prior steps required by this Chapter. Such action must be filed within one hundred eighty days after service of the complaint

of obstruction on the owner of the property on which the alleged obstruction exists, or if the parties have attempted to mediate the dispute within one hundred eighty days after the date of the conclusion of mediation, whichever is later. The complainant shall file a copy of the court's decision with the City Manager for informational purposes only. (Ord. 98-8 § 1 (part), 1998.)

8.28.050 Adjudication of complaint of obstruction by arbitrator or court. In any arbitration or litigation of a complaint of obstruction under this Chapter, the arbitrator or court shall use the provisions of this Chapter to reach a fair resolution of the complaint of obstruction. The complainant shall have the burden to establish, under the standards set forth in Section 8.28.070 of this Chapter that the alleged view or sunlight obstruction is unreasonable. The arbitrator or court shall determine the corrective action to be taken, or may order that no action be taken, may impose ongoing tree maintenance requirements on the parties to the dispute, and may, in cases of tree removal, require replacement plantings, where the evidence shows that such is required to fully and fairly balance the interests of all the parties to the action. (Ord. 98-8 § 1 (part), 1998.)

8.28.060 Extent of view—Sunlight restoration. In resolving a complaint of obstruction, the arbitrator or court shall limit the corrective work required, if any, to that work which the arbitrator or court considers necessary to provide a reasonable view or sunlight restoration under all the circumstances of the case. (Ord. 98-8 § 1 (part), 1998.)

8.28.070 Standards for resolution of disputes. In resolving any complaint under this Chapter, the arbitrator or court shall consider the benefits and burdens to both property owners derived from the alleged obstruction and the proposed corrective action, within the framework of the objectives of this Chapter. In addition, other factors which should be considered in determining whether the obstruction complained of is an unreasonable obstruction, shall include, but are not limited to, the following:

- A. The impact of the view or sunlight obstruction on the complainant's property, including the extent to which the subject trees, shrubs or hedges are blocking the complainant's view or sunlight, and the claimed effect of the obstruction on the complainant's property;
- B. The significance of the view or sunlight being obstructed in relation to the views and/or sunlight available to the entire property;
- C. The extent to which the obstruction interferes with a preexisting solar energy system;
- D. The extent to which the subject view or sunlight is obstructed or diminished by factors other than the subject trees, shrubs or hedges;
- E. The significance of the trees, shrubs or hedges to the tree owner's property, including their visual quality and location, their use in visual, auditory or windscreening for the tree owner's privacy or benefit, and the overall impact of their removal or trimming;
- F. Soil and slope stability provided by the trees, shrubs or hedges;
- G. Energy or climate control provided by the trees, shrubs or hedges; and
- H. The effect of the proposed corrective work on the health and vitality of the trees, shrubs or hedges involved. (Ord. 98-8 § 1 (part), 1998.)

8.28.080 Principles governing determination of corrective work required. In the event of arbitration or litigation of a complaint of obstruction, the arbitrator or court shall consider the following guidelines regarding whether corrective work is required and, if so, the nature and extent thereof.

A. Undesirable Trees. By reason of their tall height at maturity, rapid growth, dense foliage, shallow root structure, flammability, breakability, or invasiveness, certain types of trees have been deemed undesirable by the City, including blue gum eucalyptus, coast redwood, Monterey pine, Monterey cypress, poplar, acacia decurrens, acacia melanoxylon 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 corrective work for undesirable trees, aggressive action may be appropriate.

B. Stump growth. Stump growth generally results in various types of hazards, and should be discouraged.

C. Trimming. In determining corrective work on other than stump growth and hedges, to the extent it is feasible, corrective work should be limited to proper pruning and thinning techniques as specified by the International Society of Arboriculture.

D. Topping. Topping means the elimination of the upper portion of a tree's trunk or main leader. Topping normally should be limited to those instances in which it is essential to avoid hazards, unless other corrective measures are inadequate. Topping may be permitted in all instances where it is the only reasonable method of correcting an unreasonable view or sunlight obstruction.

E. Removal of Trees. Tree removal to the ground may be required where, by reason of the nature or number of trees growing on the same parcel, such removal is essential to eliminate an unreasonable view or sunlight obstruction or where such removal is desirable to prevent undue density or growth with the consequent danger of increase in fire hazard or aggravation of view impairment.

F. Hedges—Height Limitations. No hedge, as defined in Section 8.28.020, shall be permitted to grow to a height exceeding the authorized height of fences as set forth in this Code, if in so doing such hedge interferes with the view from or sunlight reaching any parcel of private property in the City. (Ord. 98-8 § 1 (part), 1998.)

8.28.090 Allocation of costs of correction—Funds in escrow—Attorneys' fees.

A. In the case of hedges, the hedge is regarded as a "living fence." As such, the owner of the property upon which the hedge grows is responsible to maintain the hedge to comply with City fence height limitations. In the case of hedges, therefore, all work required to correct any obstruction, and associated cleanup work, shall be performed at the cost of the owner of the property upon which the hedge grows, unless otherwise agreed by the parties. In all other cases, the arbitrator or trial judge shall determine by whom the cost of any permitted corrective work, associated clean up work and any ongoing maintenance requirements shall be paid.

B. The party who is required to pay the costs of corrective work pursuant to this Chapter shall deposit the funds reasonably estimated to pay for such work with the City Manager, with written instructions calling for release of the funds to the persons or

company performing the work upon completion of the work, submittal of a bill therefor, and receipt of written acceptance of the work by the complainant. Any portion of the deposit not required to satisfy the bill for the corrective work shall be returned immediately to the depositor.

C. The party responsible for payment of the cost of the work shall have the right to select the certified arborist who is to perform it. If the arbitrator's award or the trial judge's decision requires it the arborist shall prepare a written scope of the proposed work, including the time frame within which the work should be performed. The written scope of the proposed work shall be subject to the approval of the trier of fact.

D. As part of any award of costs hereunder, the arbitrator or judge may, in his or her discretion, order the losing party to pay all or part of the prevailing party's reasonable attorneys' fees incurred in the action. (Ord. 98-8 § 1 (part), 1998.)

8.28.100 Access to property. The party having the work performed shall give at least seven days notice of a time, within normal working hours, when he or she wishes to have the corrective work performed, and the owner of any property which is the subject of a final order or decision for correction shall give the arborist and complainant reasonable access for the purpose of effecting such correction. (Ord. 98-8 § 1 (part), 1998.)

8.28.110 Responsibility for damages. The party who is responsible for bearing the cost of any work hereunder shall be responsible for any damage caused by such work, including but not limited to the cost of removal of debris resulting therefrom. For this purpose, the tree owner may require that the complainant or the arborist performing the corrective work carry insurance or post a bond to protect against personal injuries or property damage occurring during the performance of the work. (Ord. 98-8 § 1 (part), 1998.)

8.28.120 Procedures for corrective tree work. Any action to trim or remove a tree within the City shall conform to the following requirements:

A. Tree trimming or removal shall only take place during the hours of eight a.m. to five p.m., Monday through Friday.

B. All debris shall be contained on-site and not allowed to enter any body of water nor storm drainage system. At the end of each day, a site which is the subject of tree trimming or removal activity shall be clean and free of cuttings or other debris associated with such activity.

C. Any tree removed on a sloping site shall immediately be replaced by adequate vegetation or other appropriate measure to stabilize the hillside.

D. Any tree-trimming or removal activity that will necessitate a road closure or may otherwise interfere with the normal flow of traffic shall not be undertaken until approved by the superintendent of public works. (Ord. 98-8 § 1 (part), 1998.)

8.28.130 Enforcement. Where pursuant to the process provided in this Chapter, a final arbitration award or court judgment determines that trees, shrubs or hedges growing upon private property constitute an unreasonable obstruction of view or sunlight, the tree owner shall, within the time required by the award or judgment and/or the arborist's scope

of work, perform such corrective work as may be required of him or her, and/or allow access to the property by the complainant or his or her agents to perform the corrective work authorized by such award or judgment. The time for completion of such corrective work may be extended by agreement of the parties to the award or judgment. Any person who fails to comply with this provision shall be guilty of maintaining a public nuisance, and shall be subject to all the provisions of law pertaining thereto. (Ord. 98-8 § 1 (part), 1998.)

8.28.140 Trees on City-owned property. Any complainant who believes that the growth of trees, shrubs or hedges on City property constitutes an unreasonable obstruction shall notify the City Manager in writing setting forth the nature and extent of the obstruction and a reasonably detailed description of the work required to correct it. The City Manager shall send a copy of this notice to all property owners within three hundred feet of the claimed offending growth, together with a notice that if the property owner believes that such corrective work would adversely affect the value of his property he or she must, within thirty days of the date of mailing of the notice by the City, advise in writing both the City Manager and the complainant of this fact. If no property owner responds to this notice within the thirty-day period, the City Manager shall notify the complainant that he or she may proceed to perform the corrective work requested and the complainant may do so after notifying the City Manager of the date or dates on which the work will be performed. If any property owner responds to the notice and claims that the corrective work requested would have an adverse impact upon the value of his or her property, the procedures set forth in Section 8.28.040C et seq., shall be followed by the parties, with the responding property owner having all the rights, privileges and obligations of the tree owner therein. The City shall not be a party to the proceedings unless it elects so to be. In the event the parties cannot agree to a resolution of the problem and do not agree to binding arbitration, then the complainant may file an action for declaratory relief in the Marin County superior court. The City shall not be a necessary party to the action if it agrees to be bound by the court's determination of the dispute between the principals involved. (Ord. 98-8 § 1 (part), 1998.)