

Chapter 17.22 - VIEW PRESERVATION

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17.22.1 - Purpose.

The purpose of this chapter is to:

- A. Establish a person's right to preserve or restore the view or sunlight which existed at the time of that person's purchase or initial occupation of the property or at any time thereafter from unreasonable obstruction by the growth of a tree; and
- B. Establish a process by which one may seek restoration of such view or sunlight when unreasonably obstructed by the growth of a tree.

(Ord. 99-5 § 2 (Exh. A (part)))

17.22.2 - General principles applicable to the process of view and sunlight restoration.

The right to a view and to sunlight and the process by which those rights may be restored are based upon the following general principles:

- A. The city recognizes that residents, property owners and businesses cherish their outward views from their properties and the benefits of plentiful sunlight reaching their buildings and yards. Both outward views and plentiful sunlight reaching property contribute greatly to the quality of life and promote the general welfare of the entire community.
- B. The city also recognizes the desire of its residents, property owners and businesses for

beautiful and plentiful landscaping, including trees. The city realizes that this desire may sometimes conflict with the preservation of views and sunlight, and that disputes related to view or sunlight obstruction may arise.

C. Owners and residents should maintain trees on their property in a healthy condition 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 at the time of planting and at tree maturity. A person should have the right to seek a civil remedy when threatened by dangerous tree growth.

D. This chapter establishes a process by which one may seek to preserve or restore a view or sunlight which existed at the time of one's purchase or occupation of the property or at any time afterwards from the unreasonable obstruction by the growth of trees.

E. When a dispute over view or sunlight obstruction arises, the parties involved should act reasonably to resolve the dispute through friendly communication, thoughtful negotiation, compromise, discussion with the appropriate neighborhood and homeowner association and other traditional means for settling a dispute. A dispute which is not resolved through such means shall follow the procedure established by this chapter.

F. This chapter should receive thoughtful and reasonable application. The rights and remedies established by this chapter do not authorize clear-cutting or substantial denuding of property of its trees.

G. The resources of the city will not be allocated to enforcement of the terms of this chapter.

(Ord. 99-5 § 2 (Exh. A (part)))

17.22.3 - Application.

The procedures, rights, obligations and remedies provided by this chapter apply to a view or sunlight of a complaining party which existed at the time of the complaining party's purchase or occupation of the property or at any time afterwards.

(Ord. 99-5 § 2 (Exh. A (part)))

17.22.4 - Definitions.

In this chapter, unless the context otherwise requires:

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

"Arbitrator" means a neutral person who conducts a process similar to a trial, and who hears testimony, considers evidence, and makes a binding decision for the disputing parties.

"Binding arbitration" means the legal procedure set forth in Sections 1280 et seq., of the Code of Civil Procedure;

"Complaining party" means a 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 preexisting views or sunlight.

"Heritage tree" means a tree designated by the City Council because of the tree's association with some person or event of historical significance or because of its exceptional size which exceeds fifteen (15) inches in diameter, its condition or its aesthetic qualities.

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

"Preexisting view or sunlight" means the view or sunlight as existed at the time the property was first purchased by the current property owner or in lawful possession by the current occupant who has maintained substantially continuous occupancy since initial occupancy.

"Primary living area" means the portion 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 made on a case-by-case basis.

"Protected tree" means a tree which has been so designated in accordance with Sections 17.21.1 through 17.21.9 of the Orinda Municipal Code.

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

"Restorative action" means a 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 to improve visibility through the tree or improve the tree's structural condition.

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

"Tree" means a woody plant with the potential to obstruct a view or sunlight, including but not limited to a tree, shrub, hedge and bush, which exceeds fifteen (15) feet in height.

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

"Tree owner" means a person owning real property upon whose land is located a tree 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 alter the tree's shape or appearance.

"Unreasonable obstruction" means the obstruction of a view or sunlight, or both, which is determined to exist applying the criteria (Section 17.22.7), the purpose of this chapter (Section 17.22.1), the general principles for restorative action (Section 17.22.2) and the criteria for determining restorative action (Section 17.22.8).

"View" means a scene from the primary living area of a residence or the active use area 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. View includes but is not limited to distinctive geologic features, hillside terrains, wooded canyons, ridges, and bodies of water. Some

examples are:

1. Mt. Diablo;
2. Prominent features of the East Bay Hills, such as Round Top, Huckleberry Preserve and Tilden Park;
3. Briones Reservoir;
4. Briones Agricultural Preserve.

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

(Ord. 99-5 § 2 (Exh. A (part)))

17.22.5 - Right to preservation of a view or sunlight.

A person has the right to preserve and seek restoration of a view or sunlight which existed at the time of purchase or occupation of a property when the view or sunlight is enjoyed from the primary living area or active use area and has subsequently been unreasonably obstructed by the growth of a tree. The right established by this chapter is a private right between persons. It is not enforceable through action by the city. However, a person must follow the process under Sections 17.22.11 to 17.22.13 in order to establish this private right.

(Ord. 99-5 § 2 (Exh. A (part)))

17.22.6 - Unreasonable obstruction prohibited.

No person may maintain a 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 city.

(Ord. 99-5 § 2 (Exh. A (part)))

17.22.7 - Criteria for determining unreasonable obstruction.

The criteria to be considered in determining whether an unreasonable obstruction has occurred include, but are not limited, to one or more of the following:

- A. The extent of the obstruction of the view 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 view being obstructed, including the obstruction of vistas, ridgelines, or other unique features;
- C. The extent to which the tree interferes with efficient operation of a solar energy system;
- D. The extent to which a view or sunlight has been diminished over time by factors other than tree growth;
- E. The length of time the complaining party has resided on the property;
- F. The view or sunlight which existed at the time the complaining party first occupied the

property and the view or sunlight which the claimant seeks to have restored;

G. The size and quality of the tree as it existed at the time the current occupant originally purchased or occupied the property upon which the tree is located.

(Ord. 99-5 § 2 (Exh. A (part)))

17.22.8 - Criteria for determining appropriate restorative action.

When it is determined that an unreasonable obstruction exists, the following unweighted factors shall be considered in determining appropriate restorative action:

- A. The hazard posed by a tree to a person or structure 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, including but not limited to species characteristics, size, growth, form and vigor;
- D. Location with respect to overall appearance, design and use of the tree owner's property;
- E. Soil stability provided by the tree considering soil structure, degree of slope and extent of the tree to the tree owner and to neighbors;
- F. Energy conservation and climate control provided by the tree;
- G. Wildlife habitat provided by the tree;
- H. Whether the tree is a protected or heritage tree.

(Ord. 99-5 § 2 (Exh. A (part)))

17.22.9 - Types of restorative action.

A. If the determination to provide restorative action is made, restorative action may include, but is not limited to, the following:

- 1. Trimming;
- 2. Thinning or windowing;
- 3. Topping;
- 4. Removal with replacement plantings;
- 5. Removal without replacement plantings.

B. Before restorative action is undertaken, the applicability of the permit requirement imposed on the alteration, removal and planting by Sections 17.21.3 through 17.21.5 of the Municipal Code shall be determined.

C. Restorative action shall not result in a view or sunlight greater than that which is documented to exist at any time during the tenure of the complaining party.

D. Restorative action may include written conditions (including ongoing maintenance) and directions as to timing for taking appropriate actions and may be made to run with the land and apply to successors in interest. Where removal is required, replacement by an appropriate species should be considered.

E. If trimming, windowing or other restorative action may affect the health of a tree which is to be preserved, such action should be carried out in accordance with standards established by the International Society of Arboriculture for use in the state of California.

(Ord. 99-5 § 2 Exh. A (part))

17.22.10 - Guidelines concerning restorative action.

The following general guidelines shall apply to restorative action:

A. **Undesirable Trees.** By reason of tall height at maturity, rapid growth, dense foliage, shallow root structure, flammability, breakability, or invasiveness, the city has determined that certain types of trees are "undesirable," including Blue Gum Eucalyptus, Coast Redwood, Monterey Pine, Monterey Cypress trees, and other trees which generally grow more than three feet per year and are capable of reaching a height of over thirty-five (35) feet at maturity. When considering restorative action for "undesirable" trees, aggressive action is preferred.

B. **Protected Trees.** The city has designated certain trees to be "protected trees" as set forth in Sections 17.21.1 through 17.21.9. The alteration or removal of a protected tree may require a permit, from the Planning Director under Sections 17.21.3 through 17.21.5

C. **Heritage Trees.** A tree designated as a "heritage tree" under Sections 17.24.1 through 17.24.6, requires City Council approval of a permit in order to be removed, destroyed or pruned.

D. **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.

E. **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.

F. **Thinning or Windowing.** When simply trimming will not resolve the unreasonable obstruction, thinning or windowing may be necessary. These actions should be supervised by a certified arborist.

G. **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.

H. **Removal.** Tree removal may be required where removal is essential to preserve a view or sunlight. While normally considered a drastic measure, tree removal may be the preferred solution in many circumstances.

I. **Maintenance.** Ongoing tree maintenance requirements are strongly recommended as part of restorative action in order to achieve lasting preservation of preexisting views or sunlight.

(Ord. 02-03 § 33 (part); Ord. 99-5 § 2 Exh. A (part))

17.22.11 - Procedure for resolution of obstruction disputes.

The following procedure shall be used in the resolution of a view or sunlight obstruction dispute between parties:

A. Initial Reconciliation.

1. A complaining party who believes that tree growth on the property of another has caused unreasonable obstruction of view or sunlight from the primary living area or active use area shall notify the tree owner in writing of this concern.
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.

B. Mediation.

1. If the initial reconciliation attempt fails, the complaining party shall propose in writing that mediation be used as a means to settle the obstruction dispute.
2. The acceptance of mediation by the tree owner is voluntary. However, the tree owner must either accept or reject the offer of mediation within thirty (30) days of the date the tree owner is served with the proposal to mediate. If mediation is accepted, the parties shall agree upon a mediator within ten days of the date of acceptance.

C. Section 17.22.18 governs the dispute between a complaining party and the city over a tree located on city-owned property.

(Ord. 99-5 § 2 Exh. A (part))

17.22.12 - Tree claim preparation.

If the initial reconciliation process fails, and the 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 of this chapter. A tree claim consists of the following:

- A. 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. The evidence must show absence of the obstruction at a point in time during the tenure of the complaining party. Evidence to show the date by property acquisition or occupancy by the complaining party must be included;
- B. The location of each tree alleged to cause the obstruction, the address of the property upon which the tree is located, and the present tree owner's name and address;
- C. Evidence of the failure of initial reconciliation (Section 17.22.11(A)) to resolve the dispute. The complaining party must provide physical evidence that a written attempt at reconciliation has been made and failed. Evidence may include a copy of and receipt for certified or registered mail

correspondence;

D. Evidence that mediation (Section 17.22.11(B)) has been attempted and has failed or has been declined by the tree owner;

E. Specific restorative action proposed by the complaining party to resolve the unreasonable obstruction.

(Ord. 99-5 § 2 Exh. A (part))

17.22.13 - Binding arbitration.

A. In the case 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. The acceptance of binding arbitration by the tree owner is voluntary. However, the tree owner has thirty (30) days from service of notice to either accept or reject binding arbitration. If binding arbitration is accepted, the parties shall agree on a specific arbitrator within twenty-one (21) days of the date of acceptance and shall indicate an agreement in writing.

B. The arbitrator shall use 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 17.22.7 and 17.22.8 of this chapter, a pertinent list of all mandated restorative actions with any appropriate conditions concerning such actions, and a schedule by which the mandated actions must be completed. The decision of the arbitrator is enforceable under Code of Civil Procedure Section 1280 et seq.

(Ord. 99-5 § 2 Exh. A (part))

17.22.14 - Litigation.

A. If binding arbitration is declined by the tree owner, the complaining party may pursue a civil action for resolution of the view or sunlight obstruction dispute under the provisions of this chapter.

B. The litigation must state in the lawsuit that arbitration was offered and not accepted.

(Ord. 99-5 § 2 (Exh. A (part))

17.22.15 - Apportionment of costs.

A. Cost of Mediation and Arbitration. The complaining party and tree owner shall each pay fifty (50) percent of mediation or arbitration fees and costs, unless they agree otherwise or allow the mediator or arbitrator discretion to allocate fees and costs.

B. Cost of Litigation. The costs of litigation is determined by the court or through a settlement.

C. Cost of Restorative Action. The cost of restorative action is determined by mutual agreement, or through mediation, arbitration, court judgment, or settlement.

(Ord. 99-5 § 2 (Exh. A (part))

17.22.16 - Liabilities.

A. The issuance of mediation findings, an arbitration report or a court decision does not create

liability of the city with regard to the restorative action to be performed.

B. Failure of the city to enforce this chapter does not give rise to civil or criminal liability on the part of the city.

C. A violation of this chapter is not a misdemeanor or an infraction.

(Ord. 99-5 § 2 (Exh. A (part)))

17.22.17 - Limitations.

It is not the intent of the city in adopting this chapter to affect obligations imposed by an existing easement or a valid preexisting covenant or agreement.

(Ord. 99-5 § 2 (Exh. A (part)))

17.22.18 - Trees on city-owned property.

A tree located on city-owned property is exempt from this chapter. A request or complaint regarding a tree located on city-owned property should be made in writing to the Director of Public Works for consideration in accordance with policies adopted by the city.

(Ord. 99-5 § 2 (Exh. A (part)))