

CHAPTER 22.76

VIEW DISPUTE RESOLUTION PROCESS

Sections:

- 22.76.010 Findings.
- 22.76.020 Intent and Purpose.
- 22.76.030 Definitions.
- 22.76.040 View or Sunlight Claim Limitations.
- 22.76.050 Private View or Sunlight Claim.
- 22.76.060 Initial Discussions.
- 22.76.070 Mediation.
- 22.76.080 Arbitration.
- 22.76.090 Private Cause of Action - View Restoration.

- 22.76.100 Restoration Action Limitations.
- 22.76.110 View or Sunlight Claim Evaluation Criteria.
- 22.76.120 Hierarchy of Restoration Actions.
- 22.76.130 Responsibility for Restoration Action and Subsequent Maintenance.
- 22.76.140 Liability.

- 22.76.010 Findings.

The City Council finds and declares as follows:

A. Both views and trees and vegetation contribute to the aesthetic value, quality of life, ambiance and economic value of properties within the City of Santa Barbara. 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 promotes the general health and welfare of the residents of the City.

B. Views, whether of the Pacific Ocean, the Channel Islands, the City, the Santa Ynez Mountains, the surrounding hillsides and canyons, or other natural and man-made landmarks produce a variety of significant and tangible benefits for both residents and visitors. Views contribute to the aesthetic visual environment of the City of Santa Barbara by providing scenic vistas and inspiring distinctive architectural design.

C. 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.

D. The benefits derived from views, trees and 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 or on neighboring properties. (Ord. 5220, 2002.)

22.76.020 Intent and Purpose.

The intent and purpose of this Chapter is to accomplish the following:

A. Right to Scenic View and Sunlight Access. Establish the right of a real property owner to preserve scenic views and access to sunlight free from unreasonable obstructions caused by the growth of trees under circumstances where such views and sunlight access existed prior to the growth of the unreasonable obstruction.

B. Dispute Resolution Process. Establish that real property owners are in need of a process to resolve disputes among themselves concerning view or sunlight access within the immediate vicinity of their property.

C. Evaluation Procedures. Establish procedures and evaluation criteria by which private real property owners may seek a mutually acceptable resolution of such views or sunlight access disputes.

D Protect Trees. Discourage ill-considered damage to trees and vegetation and promote proper use of trees and landscaping establishment and maintenance.

E. Not a Covenant or Servitude. It is not the intent and purpose of this Chapter for the City to create either a covenant running with the land or an equitable servitude.

F. Right Exclusive to this Chapter. Nothing herein shall be deemed to establish a general right of a homeowner to affect or restrict the lawful development or use (including the use and maintenance of landscaping) of a neighboring property under circumstances where such development or use is otherwise permitted, approved, or allowed under the provisions of the Santa Barbara Municipal Code. In addition, nothing herein shall be deemed or construed to provide a homeowner with any thing other than the rights specified in this Chapter for the restoration of a view or access to sunlight and a right to utilize the dispute resolution process for addressing unreasonable tree or vegetation view obstructions, as such claim process is established herein. (Ord. 5220, 2002.)

22.76.030 Definitions.

For the purpose of this Chapter, the following words and phrases shall have the meanings set forth herein:

A. ALTER. To take action that changes a 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.

B. ARBITRATION. A voluntary legal procedure for settling disputes and leading to a 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.

C. **ARBITRATOR.** A mutually agreed upon neutral third party professional intermediary who conducts a hearing process and who hears testimony, considers evidence, and makes a decision for the disputing parties. The arbitrator may be chosen from a list available from the City of qualified and professionally trained arbitrators, including but not limited to members of the American Association of Arbitrators.

D. **ARBORIST, CERTIFIED.** 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 education and training to provide for or supervise the management of trees and other woody plants.

E. **AUTHORIZED AGENT.** A person, as defined herein, who has been designated and approved in writing by a real property owner of record to act on his or her behalf in matters pertaining to the processing of a view or sunlight claim as outlined in this Chapter.

F. **CANOPY.** The umbrella-like structure created by the overhead leaves and branches of a tree which create a sheltered area below.

G. **CITY MAINTAINED TREES.** Trees which are specifically designated for maintenance by the City Council for City maintenance under SBMC Section 15.20.050 in the Master Street Tree Plan adopted pursuant to SBMC Section 15.20.030.

H. **CITY PROPERTY.** Real property of which the City is the fee simple owner of record.

I. **CLAIM. VIEW OR SUNLIGHT.** Documentation, as set forth in Section 22.76.050, that outlines the basis of view or sunlight access diminishment and the specific restoration action that is being sought which shall serve as the written basis for arbitration or a legal cause of action under the provisions of this Chapter.

J. **COMPLAINANT.** Any property owner, group of property owners (or an authorized agent thereof) who allege that tree(s)/vegetation located within the immediate vicinity of their property as set forth in Section 22.76.040 is causing unreasonable obstruction of the view or blocking the sunlight benefiting the real property of the Complainant.

K. **CROWN.** The rounded top of the tree.

L. **CROWN REDUCTION/SHAPING.** A method of comprehensive trimming that reduces a tree's height or spread. Crown reduction entails the reduction of the top, sides, or individual limbs of a tree by means of removal of leaders or the longest portion of limbs to a lateral large enough to assume the terminal.

M. **DESTROY.** To 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 of a tree.

N. **DIRECTOR.** The Director of the City Community Development Department.

O. **HEADING BACK.** The overall reduction of the mass of a tree by modification to its major limbs.

P. **HISTORIC or SPECIMEN TREE.** Any tree or stand of trees that have been designated as either an Historic Tree or a Specimen Tree pursuant to the authority of the Santa Barbara Municipal Code Chapters 15.20 and 15.24.

Q. **LACING or THINNING.** A comprehensive method of trimming that systematically and sensitively removes excess foliage and improves the structure of a tree.

R. **LANDSCAPE CONSULTANT.** A landscape professional retained to provide advice and information regarding landscape plans, view or sunlight claims, and landscaping

techniques and maintenance procedures.

S. MAINTENANCE PRUNING. 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".

T. MEDIATOR. A neutral, objective third party professional negotiator to help disputing parties reach a mutually satisfactory solution regarding a view or sunlight claim. The mediator 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.

U. OBSTRUCTION. The blocking or diminishment of a view or sunlight access attributable to growth, improper maintenance or location of trees or vegetation.

V. PERSON. Any individual, individuals, corporation, partnership, firm or other legal entity.

W. PRUNING. The removal of plant material from a tree or from vegetation.

X. REAL PROPERTY. 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.

Y. RESTORATION ACTION. Any specific steps taken affecting trees or vegetation that would result in the restoration of a view or sunlight access across real property lines.

Z. SEVERE PRUNING. The cutting of branches 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.

AA. STAND THINNING. The selective removal of a portion of trees from a grove of trees.

BB. STREET. 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.

CC. SUNLIGHT. The availability or access to light from the sun across property lines.

DD. TOPPING. Eliminating the upper portion of the trunk or main leader of a tree.

EE. TREE. Any woody perennial vegetation that generally has a single trunk and reaches a height of at least eight feet at maturity.

FF. TREE or VEGETATION OWNER. Any person owning real property in the City whereon tree(s) or vegetation is located.

GG. VIEW. A vista of features, including but not limited to, bodies of water, beaches, coastline, islands, skylines, ridges, hillside terrain, canyons, geologic features, mountains, and landmarks. The term "view" does not necessarily include an unobstructed panorama of these features.

HH. VISTA PRUNING. The selective thinning of framework limbs or specific areas of the crown of a tree to allow a view from a specific point. (Ord. 5220, 2002.)

22.76.040 View or Sunlight Claim Limitations.

A. PRIVATE VIEW DISPUTE RESOLUTION. Subject to the other provisions of this Chapter, the owner or owners of real property within the City (as the "Complainant") may initiate the private view dispute resolution process provided for in this Chapter. However, a request for view or sunlight access dispute resolution may only be made if such a claim has not been initiated against the same real property by the Complainant with respect to the same tree or vegetation obstruction within a two-year time period prior to the initiation of the most recent request.

B. CITY OWNED AND MAINTAINED TREES. Nothing herein shall provide any authority or process for the permitting of alterations to or the removal of City Maintained Trees or the alteration or removal of those trees regulated by SBMC Chapters 15.20 and 15.24. (Ord. 5220, 2002.)

22.76.050 Private View or Sunlight Claim.

A. NOTICE TO CITY OF COMPLAINT. A Complainant shall notify the City Community Development Department of any request for mediation or arbitration pursuant to the provisions of this Chapter and shall provide the City with the claim documentation materials described in subsection B hereof. Such notification and documentation shall be for the purposes of City record-keeping regarding the use of this Chapter only and shall not obligate the City to assist or advise a property owner or participate in the dispute resolution process in any way.

B. CONTENTS OF CLAIM. A view or sunlight restoration dispute resolution process claim shall consist of all of the following documentation and evidence:

1. Evidence of Prior View. A written description of the nature and extent of the alleged obstruction, including pertinent and corroborating photographic evidence. Evidence may include, but is not limited to, documented and dated photographic prints or slides as well as written testimony or declarations from residents living in the area. Such evidence should, if possible, show the extent to which the view or sunlight access has been diminished over time by the excessive growth of the trees or vegetation;

2. Evidence Regarding Unreasonable Tree Blockage. The location of all trees or vegetation alleged to cause the obstruction, the address of the property upon which the trees or vegetation are located, and the present tree/vegetation owner's name and address;

3. Desired Action. The specific view or sunlight access restoration actions being requested by the Complainant in order to resolve the allegedly unreasonable view obstruction;

4. Evidence of Attempted Resolution. Evidence that an initial discussion between the two property owners (as described in Section 22.76.060) 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 of Ownership. Evidence confirming the ownership and the date of acquisition of the Complainant's property.
(Ord. 5220, 2002.)

22.76.060 Initial Discussions.

A. INITIAL CONTACT. A Complainant who believes that a tree or some other vegetation which has grown on another person's real property has caused unreasonable

obstruction of a view or sunlight access from the Complainant's property shall first advise the tree or vegetation property owner of such view or sunlight blockage concerns. This notification shall request personal discussions to enable the Complainant and tree/vegetation property owner to attempt to reach a mutually agreeable solution and shall be followed up with a written confirmation of any agreed-upon resolution and schedule for the required work of view restoration.

B. NOTIFICATION REQUIREMENTS. The initial notification from the Complainant to the owner of the tree/vegetation shall provide a copy of the View Preservation Ordinance (Santa Barbara Municipal Code Chapter 22.76). In the initial notification, 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 the owner's property. Failure of the tree/vegetation owner to respond to the written request for initial discussion within thirty (30) days from the date of posting shall be deemed a refusal by the owner to participate in the initial discussion phase of the process.

C. FAILURE TO AGREE. After the initial discussion, if the parties do not agree as to the existence and nature of the Complainant's obstruction or to the appropriate restoration action or if the initial discussion is refused, the Complainant may proceed with the subsequent dispute resolution process outlined herein with respect to mediation, arbitration, and court action. (Ord. 5220, 2002.)

22.76.070 Mediation.

A. MEDIATION REQUEST. If initial discussion under Section 22.76.060 fails to achieve agreement between the tree/vegetation owner and Complainant, the Complainant may send to the tree/vegetation owner a request that the tree/vegetation owner accept participation in a mediation process in an effort to resolve the view or sunlight blockage claim. Acceptance of mediation by the tree/vegetation owner shall be voluntary. However, the request may inform the tree/vegetation owner that failure to participate in mediation may be brought to the court's attention in the event of subsequent legal action by the Complainant. Failure of the tree/vegetation owner to respond to the notice requesting mediation within thirty (30) days from the date of posting shall be deemed formal refusal of the mediation process by the tree/vegetation owner.

B. SELECTION OF MEDIATOR. If the tree/vegetation owner agrees to participate in a mediation process, the parties shall agree in writing to the selection of an individual mediator, which may be chosen from a list of professional mediators available from the City Community Development Department.

C. AUTHORITY OF MEDIATOR. The mediator is encouraged to be guided by the provisions of this Chapter, including the claim evaluation criteria and the hierarchy of restoration actions set forth in Sections 22.76.110 and 22.76.120, respectively, in attempting to mediate a resolution of the view or sunlight blockage claim. The mediator may request a consultation or information from a certified arborist (chosen from a list of such arborists made available by the Community Development Director) regarding any questions involving landscape techniques or maintenance procedures, with the expense of such consultation payable as a mediation expense in accordance with the provisions of this Chapter.

D. ROLE OF THE MEDIATOR; COSTS; FAILURE TO RESPOND. The role of

the mediator shall be advisory in nature and shall not be binding in establishing view or sunlight restoration action. Any agreement reached between the two parties as a result of the mediation process described herein shall be reduced to writing by the mediator and signed by the mediator and all of the parties. The cost of mediation shall be paid by the Complainant or shared in a manner set by mutual agreement between the parties. The failure of the tree/vegetation owner to respond to implement (or allow the implementation of) a mediated resolution within thirty (30) days of the submission of the mediated resolution to the owner (as established by the posting date) shall be deemed a refusal by the tree/vegetation owner to accept mediation. (Ord. 5220, 2002.)

22.76.080 Arbitration.

A. REQUEST FOR ARBITRATION. If the initial discussion under Section 22.76.060 or a mediated resolution pursuant to Section 22.76.070 fails to achieve agreement between the tree/vegetation owner and the Complainant, the Complainant may advise the tree/vegetation owner in writing that the Complainant is requesting participation in a formal arbitration process. Acceptance of arbitration by the tree/vegetation owner shall be voluntary. However, the request may inform the tree/vegetation owner that failure to participate in the arbitration process may be brought to the court's attention in the event of subsequent legal action by the Complainant pursuant to Section 22.76.090.

The tree/vegetation owner shall have thirty (30) days from posting of the arbitration notice to either accept or decline arbitration. Failure to respond within thirty (30) days shall be deemed a formal refusal of arbitration. If accepted, the parties shall agree in writing to the selection of an individual arbitrator, who may be chosen from a list of professional arbitrators available from the City, within thirty (30) 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.

B. AUTHORITY OF ARBITRATOR. The arbitrator is encouraged to be guided by the provisions of this Chapter, including the claim evaluation criteria and the hierarchy of restoration actions set forth in Sections 22.76.110 and 22.76.120, respectively, in attempting to help resolve the view or sunlight blockage claim and shall submit a complete written decision to the Complainant and the tree/vegetation owner. An arbitrator is encouraged to request a report from a certified arborist with respect to the view obstruction dispute. Any decision of the arbitrator shall not be binding and shall only be enforceable pursuant to the provisions of California Code of Civil Procedure Section 1285 et seq.

C. ACCEPTANCE OF THE ARBITRATOR'S DECISION; COSTS OF ARBITRATION. The failure of the tree/vegetation owner to implement the arbitrator's decision within thirty (30) days of the posting of the written decision shall be deemed a refusal to accept arbitration. The costs of arbitration shall be paid by the Complainant or shared by mutual agreement between the parties. (Ord. 5220, 2002.)

22.76.090 Private Cause of Action - View Restoration.

A. INITIAL COMPLAINT. If a Complainant has pursued and has been unsuccessful in attempting to obtain an acceptable restoration under Section 22.76.060 ("Initial Discussion"),

Section 22.76.070 ("Mediation"), or Section 22.76.080 ("Arbitration"), the Complainant may initiate a civil action in Superior Court for the County of Santa Barbara for resolution of owner's view or sunlight claim under the provisions of this Chapter. The Complainant is encouraged to provide the Court the results of the view or sunlight claim resolution process, particularly any proposed mediator's or arbitrator's decision, as well as any report or study prepared by a certified arborist prepared in connection with the view obstruction dispute. At the discretion of the judge issuing a judgment pursuant to this section, the judgment may be recorded in the official records of Santa Barbara County.

B. SUBSEQUENT COMPLAINTS. A Complainant who has initiated a Complaint and obtained Restoration Action through mediation or arbitration under this Chapter with respect to a particular Obstruction within two (2) years of a subsequent Complaint shall not be required to seek mediation or arbitration on the subsequent Complaint for the same obstruction prior to initiating legal action pursuant to this Section. (Ord. 5220, 2002.)

22.76.100 Restoration Action Limitations.

Except as otherwise authorized by law, no tree or vegetation on real property owned or controlled by another person may be removed, destroyed, or otherwise altered unless the Complainant either enters into a written agreement with the tree/vegetation owner allowing the Complainant to enter the property to do so or the Complainant obtains a judicial determination specifying, in detail, the nature and timing of the restoration action, the Complainant's right to enter the property, and designating the parties responsible for performing such restoration action. In all cases, restoration actions shall be structured and implemented in accordance with the hierarchy established by Section 22.76.120. (Ord. 5220, 2002.)

22.76.110 View or Sunlight Claim Evaluation Criteria.

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

- A. The vantage point(s) in the Complainant's home from which the view or sunlight is obtained or received;
- B. The extent of the view or sunlight obstruction;
- C. The quality of the view or sunlight access, including the existence of landmarks or other unique view features, or the extent to which these views or sunlight access are blocked by tree(s) or vegetation;
- D. The extent to which the view or sunlight access is diminished by factors other than tree(s) or vegetation;
- E. The extent to which the tree(s) or vegetation have grown to obscure the enjoyment of view or sunlight access from the Complainant's property compared with the view or sunlight access which was available at the time the Complainant acquired his or her home;
- F. 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;
- G. The extent to which the tree(s) or vegetation provide:
 1. Screening or privacy;

2. Energy conservation or climate control;
3. Soil stability, as measured by soil structure, degree of slope, and extent of the tree's root system when a tree is proposed for removal;
4. Aesthetics;
5. Community or neighborhood quality or significance;
6. Shade;
7. Historical context due to the age of the tree/vegetation;
8. Rare and interesting botanical species;
9. Habitat value for wildlife; and
10. Blending, buffering or reduction in the scale and mass of adjacent architecture.

H. The date the Complainant purchased his or her property and circumstances which existed at that time with respect to the view;

I. The date the tree/vegetation owner purchased his or her property and circumstances which existed at that time with respect to the view;

J. The distance between the Complainant's home and the tree or vegetation Obstruction for which Restoration Action is sought;

K. Whether the tree or vegetation Obstruction is located within a City-designated "High Fire Hazard" zone and constitutes the type of trees or vegetation not generally encouraged for new residential construction within such zones;

L. The extent to which the City has an interest in the preservation of an affected tree in its present form due to its unique character, its historical importance, or other specific factors as may be identified by a certified arborist. (Ord. 5220, 2002.)

22.76.120 Hierarchy of Restoration Actions.

View or sunlight restoration actions must be consistent with all other provisions of this Chapter and SBMC Title 22 generally. Severe pruning should be avoided due to the damage such practice causes to the tree's form and health. Restoration actions may include, but are not limited to the following, in order of preference:

A. Lacing or Thinning. Lacing/thinning is the most preferable pruning technique that removes excess foliage and can improve the structure of the tree.

B. 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.

C. 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.

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

E. 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 (A) through (D) of this section will not accomplish the determined restoration and the subsequent growth characteristics will not create a future

obstruction of greater proportions.

F. 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 (A) through (E) of this section will not accomplish the determined restoration and the subsequent growth characteristics will not create a future obstruction of greater proportions.

G. Tree/Vegetation Removal. Tree 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. 5220, 2002.)

22.76.130 Responsibility for Restoration Action and Subsequent Maintenance.

The costs of restoration action and subsequent maintenance shall be determined either by agreement between the tree or vegetation owner and the Complainant or as required pursuant to any final arbitration decision or court order. (Ord. 5220, 2002.)

22.76.140 Liability.

A. NON-LIABILITY OF CITY. The City shall not be liable or responsible for any damages, injury, costs or expenses which are the result of any recommendations or determinations made by City Staff or mediator, or decisions made by other persons (e.g., arbitrator or judge) concerning a view or sunlight claim or a Complainant's assertions pertaining to views or sunlight access granted or conferred herein.

B. CITY ENFORCEMENT. Under no circumstances shall the City have any responsibility or obligation to enforce or seek any legal redress, civil or criminal, for any decision made concerning a view or sunlight claim.

C. NO CRIMINAL RESPONSIBILITY. Notwithstanding Chapter 1.28 of the Santa Barbara Municipal Code, a failure to comply with the provisions of this Chapter is not a criminal offense, and the enforcement of this Chapter shall be only by the affected and interested private parties. (Ord. 5220, 2002.)