

MEETING DATE 10/24/05

AGENDA ITEM Introduction and First Reading of an Ordinance to Amend Municipal Code Title 9, General Regulations, Regarding View Preservation (Obstruction from Trees)

ATTACHMENTS

		<u>Pages</u>
1	City Council Ordinance No 2005-O____, View Preservation Ordinance	1-20
2	City Council Staff Report dated 7/26/04 and Meeting Minutes Excerpt	21-31
3	Planning Commission Staff Report dated 11/10/04 and Meeting Minutes Excerpt	32-40
4	Town of Tiburon regulations	41-57
5	City of Santa Barbara regulations	58-63
6	City of Berkeley regulations	64-72
7	Photographs of Views in Blair Hills and Culver Crest	
8	Map of Hillside Areas in the City	

ORDINANCE NO 2005-

ORDINANCE NO 2005-_____

AN ORDINANCE OF THE CITY OF CULVER CITY,
CALIFORNIA, AMENDING TITLE 9, GENERAL REGULATIONS,
BY ADDING CHAPTER 9 12 TO THE CULVER CITY
MUNICIPAL CODE (CCMC) REGARDING VIEW
PRESERVATION (OBSTRUCTION FROM TREES)

The City Council of the City of Culver City, California, DOES HEREBY

ORDAIN as follows

SECTION 1 Title 9 of the Culver City Municipal Code is hereby amended
by adding Chapter 9 12 thereto to read as follows

CHAPTER 9 12 VIEW PRESERVATION (OBSTRUCTION FROM TREES)

Section 9 12 003 Findings

The City Council finds and declares as follows

A Views, trees and vegetation contribute to the aesthetic
value, quality of life, ambiance, and economic value of properties within
the City of Culver City (City")

B Views, whether of the City the Los Angeles Basin, 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

C Trees and vegetation (defined in Section 9 12 010 as "Tree"
and hereinafter collectively referred to as Tree') 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

1 maintain soil moisture, mitigate soil erosion, and provide wildlife habitat
2 Trees contribute to the visual environment and aesthetics by blending,
3 buffering, and reducing the scale and mass of architecture Trees within
4 the City provide botanical variety and sense of history Trees also create
5 shade and visual screens and provide a buffer between different land
6 uses The benefits derived from preexisting views may sometimes come
7 into conflict with Trees The planting of Trees and other vegetation and
8 their subsequent growth, particularly when such Trees are not properly
9 maintained, can produce unintended harmful effects both on the property
10 on which they are planted and on neighboring properties
11

12 **Section 9 12 005 Purpose and Principles**

13 A The purposes of this Chapter are to

14 1 Establish the right of a real property owner to
15 preserve preexisting views from unreasonable obstruction by the
16 growth of Trees,

17 2 Establish real property owners are in need of a
18 process to resolve disputes among themselves concerning views
19 within the immediate vicinity of their property that are unreason
20 obstructed by the growth of Trees and
21

22 3 Establish a process and evaluation criteria by which
23 real property owners may seek mutually acceptable resolution of
24 such view disputes

25 B The rights and the restoration processes are based upon the
26 following general principles
27

1 1 The City recognizes the desire of many of its
2 residents and property owners for beautiful and plentiful
3 landscaping, including Trees. The City realizes this desire may
4 sometimes conflict with the preservation of preexisting views, and
5 disputes related to view are inevitable,

6 2 The City also recognizes residents and property
7 owners cherish their views of and from the hills of the City. The
8 City recognizes views contribute greatly to the quality of life in the
9 City, and promote the general welfare of the entire community,

10 3 Owners and residents should maintain Trees on their
11 property in a healthy condition for both safety reasons and for
12 preservation of preexisting views. Before planting Trees, owners
13 and residents should consider the potential for view blockage, both
14 currently and at Tree maturity. Persons have the right to seek civil
15 remedies when threatened by dangerous Tree growth,

16 4 The City shall establish a process by which a real
17 property owner may seek to preserve and restore views from
18 unreasonable obstruction by the growth of Trees when those views
19 existed at the time they purchased their property. The City shall
20 also establish a list of factors to be considered in determining
21 appropriate actions to restore such views,

22 5 When a preexisting view obstruction dispute arises,
23 the parties should act reasonably to resolve the dispute through
24 friendly communication, thoughtful negotiation, compromise, and
25
26
27
28

1 other traditional means such as discussions with the appropriate
2 neighborhood or homeowner association Those disputes not
3 resolved through such means shall follow the procedure
4 established herein,

5 6 It is the intent of the City for the provisions of this
6 Chapter to receive thoughtful and reasonable application It is not
7 the intent of the City to encourage clear-cutting or substantial
8 denuding of any property of its Trees by overzealous application of
9 provisions of this Chapter, and
10

11 7 It is the intent of the City to discourage ill-considered
12 damage to Trees and promote proper use of Trees and
13 landscaping establishment and maintenance

14 **Section 9 12 010 Definitions**

15 For the purpose of this Chapter, the meaning and construction of words
16 and phrases is as follows

17 Arbitrator A neutral person who will conduct a process similar to a trial
18 and who will hear testimony, consider evidence, and make a binding decision for the
19 disputing parties
20

21 Binding Arbitration A legal procedure as set forth in Section 1280 et seq
22 of the California Code of Civil Procedure

23 Complainant Any real property owner (or legal occupant with written
24 permission of the property owner) who alleges Trees located within the immediate
25 vicinity and on the property of another person are causing unreasonable obstruction of
26 his or her preexisting views
27

1 Crown Reduction/Shaping A method of comprehensive trimming that
2 reduces a tree's height or spread. Crown reduction entails the reduction of the top
3 sides or individual limbs of a tree by means of removal of leaders or the longest portion
4 of limbs to a lateral large enough to assume the terminal

5 Mediator A neutral, objective third person that assists people in finding
6 mutually satisfactory solutions to their problem

7 Preexisting View A view which existed at the time a Complainant
8 became owner or occupant of a property

9 Primary Living Area The portion or portions of a residence from which a
10 view is observed most often by the occupants relative to other portions of the residence
11 The determination of primary living area is to be made on a case-by-case basis

12 Removal The elimination of any Tree from its present location

13 Restoration Action Any specific requirement to resolve a Tree dispute as
14 discussed in this Chapter

15 Stump Growth New growth from the remaining portion of the Tree trunk,
16 the main portion of which has been cut off

17 Thinning The selective and systematic removal of branches from a Tree
18 so as to improve visibility through the Tree and/or improve the Tree's structural
19 condition

20 Topping Elimination of the upper portion of a Tree's trunk or main leader

21 Tree Any woody plant with the potential to obstruct views, including but
22 not limited to trees, shrubs, hedges, and bushes. References to "Tree" shall include
23 the plural
24
25
26
27
28

1 Tree Claim The written basis for mediation, arbitration or court action
2 under the provisions of this Chapter

3 Tree Owner Any person owning real property in the City upon whose
4 land is located a Tree alleged by a Complainant to cause an unreasonable obstruction
5 to a preexisting view

6 Trimming The selective removal of portions of branches from a Tree so
7 as to modify the Tree's shape or profile or alter the Tree's appearance

8 View A scene from the primary living area of a residence The term
9 "view" includes both upslope and down slope scenes, but is generally medium or long
10 range in nature as opposed to short range Views include but are not limited to
11 skylines, landmarks, distant urban settings, distinctive geologic features, hillside
12 terrains ridges, and bodies of water The term "view" does not necessarily include an
13 unobstructed panorama of these features

14 Windowing A form of thinning by which openings or "windows" are
15 created to restore views
16

17 **Section 9 12 015 Rights Established**

18 A A real property owner shall have the right to preserve and
19 seek restoration of a preexisting view, when such view is from the primary
20 living area and has subsequently been unreasonably obstructed by the
21 growth of one or more Trees provided such action has not been initiated
22 against the same real property by the Complainant with respect to the
23 same Tree within a two year time period prior to the initiation of the most
24 recent action
25
26
27
28

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 Nothing contained in this Chapter is intended to provide any authority or process for the permitting of alterations to or the removal of City owned and maintained trees

Section 9 12 025 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 a preexisting view from the primary living area of the Complainant, both currently and at Tree maturity

B The quality of the preexisting views being obstructed, including obstruction of landmarks, vistas, or other unique view features

C The extent to which the Trees have grown to obscure the enjoyment of view from the Complainant's property compared with the view which was available at the time the Complainant acquired or occupied his or her home

D The extent to which the Complainant's preexisting view has been diminished over time by factors other than Tree growth

E Deleterious effect of the Trees upon the Complainant s
vegetation through loss of heat and light except that the dropping of

1 leaves or maintenance factors shall not be considered a criterion under
2 this Chapter

3 **Section 9 12 030 Criteria for Determining Appropriate Restorative Action**

4 When it has been determined per Section 9 12 025 of this Chapter
5 unreasonable obstruction has occurred, the following unweighted factors shall be
6 considered in determining appropriate Restoration Action

7 A The hazard posed by a Tree to any person or structure on
8 the property of the Complainant Party including but not limited to, fire
9 danger and the danger of falling limbs or Trees

10 B The variety of the Tree, its projected rate of growth and
11 maintenance requirements

12 C Aesthetic quality of the Tree, including but not limited to
13 species characteristics, size, growth, form and vigor

14 D Location with respect to overall appearance, design, or use
15 of the Tree Owner's property (i e Blending, buffering or reduction in the
16 scale and mass of adjacent architecture)

17 E Soil stability provided by the Tree considering soil structure,
18 degree of slope and extent of the Tree's root system

19 F Privacy (visual and auditory) and wind screening provided by
20 the Tree to the Tree Owner and to neighbors

21 G Energy conservation and or climate control provided by the
22 Tree

23 H Wildlife habitat provided by the Tree
24
25
26
27
28

I The extent to which Trees provide historical context due to the age of the Tree and rare and interesting botanical species

Section 9 12 035 Hierarchy of Restoration Actions

A If an unreasonable obstruction of a preexisting view exists a Mediator shall recommend, or an Arbitrator or Court shall order, Restorative Action based only on this Chapter Restorative Action may include written directions as to appropriate timing for such Restorative Action to be taken Restoration action shall be structured and implemented in accordance with the hierarchy established herein Restoration Action includes but is not limited to the following

- 1 Trimming,
- 2 Thinning or Windowing
- 3 Crown Reduction
- 4 Topping,
- 5 Removal with replacement plantings, and
- 6 Removal without replacement plantings

B In each case, Restorative Action shall only be required to the extent a preexisting view is proven by the Complainant based on documentable evidence

C Restorative Action may include written conditions (including ongoing maintenance), and directions as to appropriate timing of such actions, as well as recordation of an agreement containing covenants or other documentation to memorialize the conditions and make them applicable Where Removal is required replacement by appropriate

1 species should be considered The Tree Owner may elect Tree removal
2 with replacement plantings as an alternative to Trimming, Thinning, and
3 Topping

4 D In cases where Trimming, Windowing, or other Restorative
5 Action may affect the health of a Tree that is to be preserved, such
6 actions should be carried out in accordance with standards established by
7 the International Society of Arboriculture for use in the State of California

8 E A Tree, which has been the subject to Restorative Action
9 under the terms of this Chapter, is exempted from being part of another
10 Tree claim for a period of two years after the date of the satisfactory
11 completion of the Restorative Action
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **Section 9 12 040 City Guidelines Concerning Restoration Action**

2 The City of Culver City provides the following general guidelines
3 concerning Restorative Actions

4 A *Stump Growth* Stump Growth generally results in the
5 hazard of weak limbs, and its protection is not desirable When
6 considering Restorative Action for Stump Growth, aggressive action is
7 preferred Restorative Action, which will result in future Stump Growth,
8 should be avoided

9 B *Trimming* Trimming is the most minor form of physical
10 restorative action This option is recommended when minor unreasonable
11 obstruction has occurred provided that ongoing maintenance is
12 guaranteed

13 C *Thinning or Windowing* When simple Trimming will not
14 resolve the unreasonable obstruction, Thinning or Windowing may be
15 necessary This action should be supervised by a certified arborist

16 D *Crown Reduction* Crown Reduction may be necessary
17 when Thinning and Windowing will not resolve the unreasonable
18 obstruction However as with Thinning and Windowing Crown Reduction
19 should be supervised by a certified arborist

20 E *Topping* Topping as a Restorative Action should be used
21 with caution Topping can have deleterious effects on a Tree's health
22 appearance, and cost of maintenance Topping frequently results in
23 Stump Growth Tree Removal, with replacement plantings, may be a
24 preferable alternative

1 F *Removal* Tree Removal may be required where such
2 Removal is essential to preserve preexisting views While normally
3 considered a drastic measure, Tree removal can be the preferred solution
4 in certain circumstances

5 G *Maintenance* Ongoing Tree maintenance requirements are
6 strongly recommended as part of Restorative Action in order to achieve
7 lasting preservation of preexisting views

8 H *Permanence* Conditions of Restorative Action should be
9 memorialized in a recordable document to help notify successors-in-
10 interest of their applicability

11
12 **SECTION 9 12 045 Process For Resolution Of Obstruction Disputes**

13 The following process shall be used in the resolution of preexisting view
14 disputes between parties

15 A *Initial Discussions*

16 1 Complainant who believes Tree growth on the
17 property of another has caused unreasonable obstruction of a
18 preexisting view from the primary living area shall first notify the
19 Tree Owner in writing of such concerns

20 2 The notification should, if possible, be accompanied
21 by personal discussions to enable the Complainant and Tree
22 Owner to attempt to reach a mutually agreeable solution and shall
23 be followed up with a written confirmation of any agreed-upon
24 resolution and schedule for the required work of view restoration If
25
26
27
28

1 personal discussions fail, then neighborhood associations may be
2 willing to assist with the resolution of the obstruction dispute

3 3 The initial notification from the Complainant to
4 the Tree Owner shall provide a copy of the View Preservation
5 Ordinance (Culver City Municipal Code Chapter 9 12) In the initial
6 notification, the Complainant shall invite the Tree Owner to view the
7 alleged obstruction from the Complainant property, and the Tree
8 Owner is urged to invite the Complainant to view the situation from
9 the Tree Owner s property Failure of the Tree Owner to respond
10 to the written request for Initial Discussion within thirty-(30) days
11 after the date of the posting shall be deemed a refusal by the Tree
12 Owner to participate in the initial discussion phase of the process,
13 and
14

15 4 After the Initial Discussion, if the parties do not agree
16 as to the existence and nature of the Complainant's obstruction or
17 to the appropriate Restoration Action or if the initial discussion is
18 refused, the Complainant may proceed with the subsequent
19 dispute resolution process outlined herein with respect to tree claim
20 preparation, mediation, binding arbitration, and litigation
21
22
23
24
25
26
27
28

B *Tree Claim Preparation*

In the event the Initial Discussion process fails to resolve the dispute, the Complainant must prepare a Tree Claim and provide a copy to the Tree Owner, in order to pursue mediation, binding arbitration or litigation under the authority established by this Chapter

A Tree Claim shall consist of all of the following

1 *Evidence of Preexisting View* A written description of the nature and extent of the alleged obstruction, including pertinent and documentable physical evidence Evidence may include, but is not limited to photographic prints negatives or slides as well as written testimony or declarations from residents living in the area Such evidence must prove the absence of the obstruction at any documentable time during the tenure of Complainant Evidence confirming the ownership and the date of property acquisition of the Complainant's property must be included,

2 *Evidence Regarding Unreasonable Tree Blockage* The location of all Trees 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

3 *Evidence of Attempted Resolution* Evidence that an Initial Discussion as described in Section 9 12 045, to resolve the dispute has been made and has failed The Complainant must provide physical evidence written attempts at reconciliation have been made and have failed Evidence may include, but is not

1 limited to, copies of and receipts for certified or registered mail
2 correspondence and

3 4 *Desired Action* Specific view Restoration Actions
4 proposed by the Complainant to resolve the unreasonable view
5 obstruction

6 C *Mediation*

7 1 If the Initial Discussion attempt fails, then the
8 Complainant shall send to the Tree Owner a written request to
9 participate in a mediation process as a timely means to settle the
10 obstruction dispute,
11

12 2 Acceptance of mediation by the Tree Owner shall be
13 voluntary, but the Tree Owner shall have no more than thirty (30)
14 days after service of notice to either accept or reject the offer of
15 mediation Failure to respond shall be deemed formal refusal of
16 the mediation process If mediation is accepted, then the parties
17 shall mutually agree in writing to the selection of a Mediator,
18

19 3 It is recommended the services of a professionally
20 trained mediator be employed

21 4 The mediation meeting may be informal The
22 mediation process may include the hearing of viewpoints of lay or
23 expert witnesses, and shall include a site visit to the properties of
24 the Complainant and the Tree Owner Parties are encouraged to
25 contact immediate neighbors and solicit input, and
26
27
28

1 5 The Mediator shall consider the purposes and policies
2 set forth in this Chapter in attempting to help resolve the dispute
3 The Mediator shall not have the power to issue binding orders for
4 Restorative Action but shall strive to enable the parties to resolve
5 their dispute by written agreement in order to eliminate the need for
6 binding arbitration or litigation

7 D *Binding Arbitration*

8 1 In those cases where the Initial Discussion process
9 fails and where mediation is declined by the Tree Owner or has
10 failed to resolve the Complainant's complaint, the Complainant
11 must offer in writing to submit the dispute to Binding Arbitration,
12

13 2 Acceptance of Binding Arbitration by the Tree Owner
14 shall be voluntary The Tree Owner shall have thirty -(30) days
15 after service of notice to accept or reject Binding Arbitration
16 Failure to respond shall be deemed a formal refusal of Binding
17 Arbitration If accepted, the parties shall agree on a specific
18 Arbitrator and shall indicate such agreement in writing, and
19

20 3 The Arbitrator shall use the provisions of this Chapter
21 to reach a fair resolution of the Tree Claim and shall submit a
22 complete written report to the Complainant and the Tree Owner
23 This report shall include the Arbitrator's findings with respect to
24 Sections 9 12 025 and 9 12 030 of this Chapter, a pertinent list of
25 all mandated Restoration Actions with any appropriate conditions
26 concerning such actions and a schedule by which the mandates
27

1 must be completed A copy of the Arbitrator's report shall be filed
2 with the City Clerk upon completion Any decision of the Arbitrator
3 shall be enforceable pursuant to the provisions of California Code
4 of Civil Procedure Section 1280 et seq

5 E *Litigation*

6 1 In those cases where binding arbitration is declined
7 by the Tree Owner, then civil action may be pursued by the
8 Complainant for resolution of the view obstruction dispute under
9 the rights and provisions of this Chapter and
10

11 2 The litigant must state in the lawsuit Binding
12 Arbitration was offered and not accepted, and a copy of the lawsuit
13 was filed with the City Clerk A copy of any order or settlement in
14 the lawsuit shall also be filed with the City Clerk

15 **Section 9 12 050 Apportionment of Costs**

16 A *Cost of Mediation and Arbitration* Unless the parties agree
17 otherwise, the costs and fees for Mediation and Arbitration shall be
18 subject to provisions of section 1284 2 of the California Code of Civil
19 Procedure which states among other things that parties to an arbitration
20 should pay their own costs and a pro rate share of the Arbitrator s fees
21 and costs
22

23 B *Cost of Litigation* To be determined by the Court or through
24 a settlement
25
26
27
28

1 C *Cost of Restorative Action* To be determined by mutual
2 agreement, or through mediation, arbitration, court judgment or
3 settlement

4 D Nothing in this chapter shall be construed to deny
5 compensation to a Tree Owner to which a Tree Owner would be entitled
6 under any other provision of law

7 **Section 9 12 055 Liabilities**

8 The issuance of mediation findings, a Binding Arbitration report, or a court
9 decision shall not create any liability of the City with regard to the Restorative Actions to
10 be performed Failure of the City to enforce provisions of this Chapter shall not give
11 rise to any civil or criminal liabilities by or against the City

12 **Section 9 12 060 Enforcement**

13 A A violation of this Chapter is not a misdemeanor or
14 infraction The enforcement of this Chapter shall be by the private parties
15 involved The Complainant shall have the right to bring injunctive action to
16 enforce any Restorative Action ordered pursuant to this Chapter

17 B Under no circumstances shall the City have any
18 responsibility or obligation to enforce or seek any legal redress civil or
19 criminal for any decision made concerning a view claim
20
21
22
23
24
25
26
27
28

1 **Section 9 12 065 Limitations**

2 A It is not the intent of the City in adopting this Chapter to
3 affect obligations imposed by an existing easement, already existing City
4 Council and/or Planning Commission entitlements, or a valid preexisting
5 covenant or agreement

6 B It is the intention of the City all other portions of this Chapter
7 shall remain in effect in the event a portion of it is invalidated by court
8 action

9
10 **Section 9 12 070 Trees Owned and Maintained By the City**

11 Trees owned or maintained by the City are exempt from the provisions of
12 this Chapter Requests or complaints regarding Trees owned or maintained by the City
13 should be made in writing to the Public Works Director for consideration in accordance
14 with policies adopted by the City

15 SECTION 2 The Mayor of the City shall sign and City Clerk shall
16 attest to the passage of this ordinance The effective Date of this ordinance shall be
17 (30) days from the date of its adoption and prior to the expiration of fifteen (15) days
18 from the adoption hereof, the City Clerk, pursuant to Government Code Section
19 36933(c)(1) shall cause a summary of this ordinance to be published in The Culver City
20 News along with the record of the vote for approval and adoption and shall post at City
21 Hall, a certified copy of
22
23
24
25
26
27
28

1 the full text of this Ordinance along with the record of the vote thereon Additionally
2 the City Clerk shall post a summary of this Ordinance in at least three public places
3 within the City pursuant to Section 517 of the City Charter

4
5 APPROVED and ADOPTED this _____ day of _____, 2005
6

7
8 _____
9 ALBERT VERA, Mayor
City of Culver City, California

10 ATTEST

APPROVED AS TO FORM

11
12
13 _____
14 CHRISTOPHER ARMENTA,
City Clerk

A05 00063

15 jm

16
17
18 _____
19 CAROL A SCHWAB,
City Attorney

City of Culver City, California
City Council Agenda Item Report

Attachment No 2

Meeting Date 7/26/04 Item Number I-6

AGENDA ITEM Discussion of Issues and Options Related to View Protection, View Preservation, and View Restoration in the City

Contact Person/Dept Mark Wardlaw/CDD Phone Number (310) 253-5706 and
and David McCarthy/City Attorney's Office (310) 253-5660

Fiscal Impact Yes ☒ No ☐ General Fund Yes ☒ No ☐

Public Hearing ☐ Action Item ☒ Attachments ☒

Public Notification On July 12, 2004 a postcard was mailed to all residents and property owners within and generally adjacent to the Baldwin Hills (including Hetzler Road, Tomkins Way, Blair Hills, Culver Crest, and Youngsworth Property Owners), and to residents who signed the petition protesting the Kayal Home at 10639 Youngsworth Road Also, on July 12, 2004 a postcard notice was sent to Marta Zaragosa, Tom Camarella, the Chamber of Commerce, Downtown Business Association and all Culver City Homeowners Associations On July 12, 2004, email notification was sent to the Real Estate Advisory Brokers List and the Master Notification List Also a notice was published in the Culver City News on July 15, 2004

Department Approval
Susan Evans 7/15/04

CAO Approval
Jerry Fulwood 7/21/04

City Controller Approval
Marlee Chang 7/20/04

RECOMMENDATION

That the City Council review and discuss the issues and options related to view protection, view preservation and view restoration in the City, and provide staff with direction

BACKGROUND

The City Council requested staff to review the City's ability to adopt rules to protect views and to describe the options available The following report gives an overview of existing City policies and regulations, and five options that the City Council can consider for further study In preparing these alternatives, staff reviewed view protection approaches of ten cities in California More specific detail on other cities' view protection approaches will be contained in future staff reports, depending on City Council direction

Additionally, in order to receive input from interested parties, City Attorney and Community Development staff attended the Culver City Homeowner's Association meeting on January 15, 2004 to inform the attendees of the subject matter (staff

City of Culver City, California
City Council Agenda Item Report

sent more than 500 notices of this meeting to homeowners associations neighborhood watch captains, and residential hillside properties, including petitioners on Youngsworth and Drakewood Avenues)

DISCUSSION

This section contains a summary of different aspects of view shed protection, a brief paragraph on legal issues, a review of existing policies and regulations, and a discussion of the options

View Protection, View Preservation, and View Restoration

In their publication *Aesthetics, Community Character, and the Law*, the American Planning Association (APA) defines two types of views. First, is what the APA calls the view shed which is the grand scenic vista, often visible from many points. The other is the 'view corridor', a glimpse of something such as a mountain, historic building, or landmark through a narrower passage, such as between two buildings.

In dealing with view protection issues, there are three interrelated terms that are frequently used, often interchangeably, and need to be clarified. View Protection and View Preservation both attempt to prevent scenic vistas or view corridors from being blocked by landscaping or further construction. The third term requiring definition is View Restoration, which is the act of restoring views by the removal or modification of encroaching landscaping or illegally constructed buildings.

The sample ordinances staff reviewed from other Cities (these included such communities as Tiburon, Del Mar, Malibu, Rancho Palos Verdes, and Arroyo Grande) can be generally divided into two types: (I) those designed to protect views from being blocked or encroached on by structures, and (II) those meant to preserve or restore views blocked by trees or foliage. Because of the different regulatory bases on which each type rests, the two topics are usually addressed separately. Cities typically regulate the relationship between structure and view through some sort of development review process. Views blocked by landscaping are addressed by view preservation ordinances that actually deal as much with view restoration. That is, they afford a property owner the ability, or at least a procedure, to get nearby property owners to remove foliage that has over time grown to block a scenic view.

Legal Issues

California law does not establish an easement whereby a property owner is obligated to protect an adjacent property owner's access to air, light, and views. Of course, if life-safety issues are involved or zoning, lot size, setback, height

City of Culver City, California
City Council Agenda Item Report

restrictions, open space or similar rules and building and fire code requirements exist property owners must comply with those laws, and, to a certain extent, access to air, light and views are protected

A number of cities within California have adopted ordinances that provide greater protection than that afforded by zoning, building, or fire regulations. These cities have used various approaches that have each withstood legal challenges.

The court, in Associate Home Builders etc. Inc. v. City of Livermore and Guinnane v. San Francisco City Planning Commission, held, in part, 'The constitutional measure by which we judge the validity of a land use ordinance assailed as exceeding municipal authority under the police power is whether it has a real or substantial relation to the public health, safety, morals, or general welfare. Conversely, it is unconstitutional only if its provisions are clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare.' Additionally, in Metromedia, Inc. v. City of San Diego, the court cited the Tiburon case where the regulation of obstructing trees and tree growth were determined to be a valid use of police power.

Existing Policies and Regulations

The City Council has a number of options it can pursue. Before discussing these options, it is important to outline several facts that might influence any decision on this matter.

1. The Zoning Code contains development standards that limit height and bulk of buildings in all zones. Generally, the residential hillside areas of the City including Blair Hills and Culver Crest neighborhoods are in the R-1a Zone (Attachment 1). The maximum building height permitted in this district is two stories and 26 feet (measured to the midpoint of the highest pitched roof segment) with a maximum height of 30 feet to the highest ridge line of a pitched roof building. Pursuant to Zoning Code Section 37-10 (g) building height is measured from the average elevation around the building.

A specialized Hillside Residential (HR) Zone was established for the previous Vista Pacifica project proposed in the Blair Hills area (the property is now referred to as the Baldwin Hills Scenic Overlook and is owned and operated by State Department of Parks and Recreation). The HR zoning designation may be applied to property with an average slope of 15% or greater. Pursuant to Zoning Code Section 37-12 this Zone requires the adoption of development standards through a Comprehensive Plan, which include proposed landscaping, building size, and intensity. It also requires consideration of existing residential units that might have their views obstructed. The existing zoning of Blair Hills and/or Culver Crest could be changed to HR if their

City of Culver City, California
City Council Agenda Item Report

average slope is determined to be 15% or greater and the City was willing to develop a Comprehensive Plan (Attachment 2)

- 2 Culver City updated its General Plan in 1996 (Land Use, Circulation and Open Space Elements) This document contains various policy statements that are to guide planning decisions for the foreseeable future The Land Use Element and the Open Space Element of the General Plan both have a number of policy statements reflecting the need to protect the views both from and of hillside property Two examples of these policies follow

The Open Space Element, Objective 6, Policy 6A states Establish view shed guidelines which protect the views of and from Culver City Park, Blair Hills, and Culver Crest " (Attachment 3) This Element does not specifically identify the views to be protected

The Land Use Element, Objective 26, Policy 26E states 'Protect views of and from Culver Crest by establishing view shed guidelines " (Attachment 3) Again, the views to be protected are not specified Presumably these views would be identified in the view shed guidelines

- 3 At least part of the Culver Crest area is subject to Conditions, Covenants, and Restrictions (CC&Rs) (Attachment 4) While portions of the CC&Rs are no longer applicable, portions of them are still valid The City is not a party to the CC&Rs and cannot act to enforce them (homeowners associations commonly look to cities to enforce their CC&Rs, either because they believe the jurisdiction has that authority or they are trying to avoid taking legal action against their neighbors) However, a property owner or committees established by the document can take legal action to enforce them Relevant references of the CC&Rs are

Restriction No 5 states No building shall be erected until complete plans have first been approved in writing by the Committee all such plans shall show in detail height and elevation of any such structure The Committee mentioned is to be elected by the property owners

Restriction No 10 states All buildings to be constructed on any lot in said Tract shall either be of Ranch Colonial or Monterey type and no modern or ultra-modern type house shall be permitted '

ALTERNATIVES

The City Council has a wide range of choices to consider They are enumerated

City of Culver City, California
City Council Agenda Item Report

and ordered below from minor involvement to extensive involvement. As was stated above, in preparing possible alternatives, staff reviewed a sampling of what other cities have done with this issue. It appears that the more involved a city was in attempting to protect views, the greater expense to the city in the way of staff cost and litigation (actual cost impacts are not estimated in this report). The options include:

- 1 Rely on Existing Standards As previously stated, Culver City's Zoning Code sections relating to setbacks and height restrictions affect views and view preservation to some degree. All areas of the City have some overall height restriction, some of which are absolute while others may be granted an exception by the City Council. The current general height limits in the single-family residential zones restrict building height to 26 to 30 feet. The Zoning Code also restricts development by lot size, front, rear and side-yard setback and open space requirements.

In addition, for developments in excess of four acres (or two acres after special City Council and Planning Commission consideration), the City can establish a Hillside Residential Zone. The purpose of that category is to encourage and provide a means for effectuating desirable hillside development and conservation in areas where the average slope is 15% or greater, while allowing variations in siting of low density residential uses to protect the City's hillsides as valuable, visual open space and aesthetic resources.

With this option, hillside property owners would be responsible for protecting their views. They would either have to find favorable legal precedent or seek enforcement of CC&Rs, when applicable.

This alternative represents the least cost to the City in terms of cost and impact on City staff. Should the City Council favor this approach, staff proposes the General Plan be amended to clarify that the City's zoning, building and fire regulations, by establishing height, setback and open space restrictions, act as the view shed guidelines for the City, as mentioned in the General Plan.

- 2 View Restoration - Private Right of Action Adopt an ordinance that sets out the rights of property owners to seek restoration of views blocked by landscaping. Such an ordinance can provide direction to property owners seeking to protect or reclaim views. The ordinance would set out procedures for mediation and arbitration (and possible litigation) but takes the City out of the process. All costs are borne by the private parties. An example of this approach is the City of Tiburon's View and Sunlight Obstruction Ordinance (Attachment 5).

Tiburon's ordinance establishes a process or series of steps, for handling view

City of Culver City, California
City Council Agenda Item Report

claims, the most interesting aspect of which is the almost total absence of any participation on the part of the City itself. The ordinance requires that view claimants first approach the offending neighbor informally in a procedure called Initial Reconciliation. The claimant must complete a view claim report for the City's information and provide copies of letters, but is responsible on his or her own for actually notifying and approaching the neighbor. If this fails to resolve the problem, the ordinance sets out procedures for mediation and arbitration (voluntary on the part of the respondent) and finally, for litigation. However, at no point does the City become directly involved unless the landscaping involved is City owned. The claimant or respondent are responsible for finding and paying for a mediation or arbitration service (the City will provide a list of qualified persons), and for providing any expert information required, such as arborists reports.

This option only resolves views blocked by plants, not buildings. The height regulations contained in the Zoning Code would continue to be enforced. There would be moderate cost in formulating and adopting such an ordinance with minimal ongoing cost, thereafter.

- 3 View Protection - Establish More Restrictive Development Standards. The City could revise the Zoning Code as it applies to property with views. The intention of this alternative is to control more closely how buildings impact views. Staff would have to evaluate how best to implement this option without overburdening the development process. Such measures might include changing the zone of the hillside property, creating an overlay zone that addresses views and restricts heights, or changing how buildings are measured. Should the City pursue this option, there would be moderate to high costs in formulating and adopting an ordinance and administrative procedures with minimal to moderate staff costs for ongoing implementation. Depending on the methodology selected, the timing of development processing and permitting could be slowed for affected projects.
- 4 Private Right of Action and View Protection - Establish More Restrictive Development Standards. Options 2 and 3 can be combined and view obstruction by both landscaping and building would be addressed. The City would be responsible for the building related issues. Private property owners would bear the burden for landscape issues. Should the City pursue this option, there would be moderate to high costs in formulating and adopting an ordinance and administrative procedures with minimal to moderate staff costs for ongoing implementation. Depending on the methodology selected, the timing of development processing and permitting could be slowed for affected projects.

City of Culver City, California
City Council Agenda Item Report

- 5 View Preservation and Restoration - Establish City-Enforced Building and Vegetation Standards Instead of option 2, an ordinance could be adopted that requires the City to protect views of private property owners and use its police powers to remove offending landscaping. This approach has been upheld by the courts, but can be costly to the City in terms of staff time and litigation. A nearby city that has such regulations is the City of Rancho Palos Verdes (Attachment 6). They have one staff member dedicated to enforcing their ordinance and estimate their overall annual cost to be as high as \$500,000.

This choice would be the most costly in its formulation, as it has to be more carefully worded. Additionally, the staff cost would be higher as each project and complaint would have to be investigated and resolved, with resolution occasionally through the legal system. The City Council could also anticipate having to defend such an ordinance in court.

In summary, depending on the decision of the City Council, the next steps could include:

1. Take no action
2. Direct staff to proceed with one of the options discussed above
3. If the City Council believes view shed protection, preservation and restoration to be an urgent item, a moratorium could be established to prohibit new construction until appropriate View Protection measures are established.

FISCAL ANALYSIS

Regarding the immediate preparation of the Culver City Municipal Code Ordinance revisions, staff estimates a minimum of 100 hours of work will be required of the City staff and/or consultants to develop the standards and to present the amendments to the Planning Commission and City Council. Completion of a moratorium will require an estimated 35 hours. Total cost estimates for the initial ordinance preparation range from approximately \$8,500 to \$12,000. The cost for implementation of a moratorium is estimated at \$3,000. Thereafter, additional ongoing implementation costs can be expected as described for each option. Should City Council direct staff to implement and proceed with this work effort, staff will return to City Council with a budget amendment (FY 04-05) to fund the work.

ATTACHMENTS

1. R-1a Zoning Regulations
2. Hillside Residential Zoning Regulations

City of Culver City, California
City Council Agenda Item Report

- 3 General Plan Open Space Element Policy 6A, Objective 6 and General Plan Land Use Element Policy 26E, Objective 26
- 4 Culver Crest CC&Rs
- 5 City of Tiburon View and Sunlight Protection Ordinance
- 6 City of Rancho Palos Verdes Ordinance regulating views

MOTION

That the City Council - -

A Direct staff to undertake one of the following options

- 1 Rely on Existing Standards Staff will prepare a General Plan Amendment for Planning Commission and City Council consideration that clarifies that the view sheds identified in the General Plan are adequately protected by building zoning and fire regulations, or,
- 2 View Restoration - Private Right of Action Staff will formulate an Ordinance for City Council consideration to allow property owners to seek restoration of views with only nominal City involvement, or,
- 3 View Protection - Establish More Restrictive Development Standards Staff will devise modifications to the Zoning Code and development review process and regulations for consideration and approval by both the Planning Commission and City Council or
- 4 Private Right of Action and Establish More Restrictive Development Standards (This is a combination of Option 2 and Option 3, above, if the City Council wishes to pursue view shed issues for both landscaping and buildings) or
- 5 View Preservation and Restoration - Establish City-Enforced Building and Vegetation Standards An Ordinance will be presented to the City Council that requires City staff to actively use its police powers to protect views and remove offending landscape or structures. Additionally, budget amendments would be forthcoming to provide staffing for this new program, or,
- 6 Take a different or alternative action from any of options listed above

B If the City Council elects one of the Options 2 through 6, direct staff to implement the selected option by

City of Culver City, California
City Council Agenda Item Report

- 1 Preparing a moratorium to prohibit new construction until appropriate View Protection measures are established, or,
- 2 Do not prepare a moratorium and go through the typical or standard process

July 26, 2004

Item I 6

Discussion of Issues and Options Related to View Protection, View Preservation, and View Restoration in the City

Mark Wardlaw, Deputy Community Development Director, gave the staff report

The following members of the audience addressed the City Council

Charles Stephens
Dee Seehusen
Ed Renselaer
Mitch Glickman

Christopher Armenta, City Clerk, read written comments from

John Kuechle
Linda Shahinian
Mary Ann Greene
Livio Sanchez

Mark Wardlaw, Deputy Community Development Director, gave the staff report

Councilmember Silbiger proposed the following motion That the City Council refer this item to the Planning Commission

There was no second to Councilmember Silbiger's motion

The following motion was proposed

MOVED BY COUNCILMEMBER GROSS AND SECONDED BY COUNCILMEMBER CORLIN,
THAT THE CITY COUNCIL DIRECT STAFF TO FORMULATE AN ORDINANCE FOR CITY COUNCIL CONSIDERATION TO ALLOW PROPERTY OWNERS TO SEEK RESTORATION OF VIEWS WITH ONLY NOMINAL CITY INVOLVEMENT AND DIRECT STAFF NOT TO PREPARE A MORATORIUM AND GO THROUGH THE TYPICAL OR STANDARD PROCESS

July 26, 2004

Item I 6
(continued)

Mark Wardlaw, Deputy Community Development Director, clarified the ordinance mentioned in the proposed motion will only deal with restoration of views blocked by landscaping, not by buildings

Discussion ensued regarding agendaizing a future agenda item to identify hillside areas, requiring that neighbors be notified regarding any proposed developments, and developing arbitration and mediation methods for neighbors to utilize

Following discussion, the proposed motion was withdrawn and the following motion was voted on

MOVED BY COUNCILMEMBER GROSS, SECONDED BY COUNCILMEMBER CORLIN AND UNANIMOUSLY CARRIED, THAT THE CITY COUNCIL DIRECT STAFF TO BRING BACK CONCEPTS WHICH DEAL WITH VIEW PROTECTION AND VIEW RESTORATION FROM BOTH LANDSCAPING AND BUILDINGS

o0o

Item I 8

Consideration of the City Council to Accept the Work Performed by Zondiros-Peninsula Landscaping, JV Construction for the Tellefson Park Improvement Project (Project No P-790)

Discussion ensued regarding feasibility of providing fencing along Washington Place to help protect the children's play area at Tellefson Park. Further discussion ensued regarding delays in this project and liquidated damages paid. The City Council requested staff to provide information regarding these items.

Following discussion, the following motion was made

MOVED BY COUNCILMEMBER VERA, SECONDED BY COUNCILMEMBER GROSS AND UNANIMOUSLY CARRIED, THAT THIS ITEM BE TABLED.

o0o

31

Attachment No 3

Agenda Item No 6

November 10 2004

Staff Report

STUDY SESSION DISCUSSION OF PROPOSED VIEW PRESERVATION ORDINANCE

INTRODUCTION

The purpose of this Study Session is to present and discuss the result of staff's research, and to seek comment from both the Planning Commission (the Commission') and the public on a proposed ordinance providing a procedure to address conflicts when opportunities for those views are obstructed by trees. The proposed ordinance would amend Article 9, General Regulations of the Culver City Municipal Code by adding Chapter 9.12.

BACKGROUND

On July 26, 2004, the City Council held a public meeting to consider and discuss the City's ability to adopt regulations to protect views. At that meeting, staff provided an overview of existing City policies and regulations, and presented the following five options for City Council consideration:

- 1 Rely on Existing Standards Prepare a General Plan Amendment that clarifies that the views identified in the General Plan are adequately protected by building, zoning and fire regulations, or
- 2 View Restoration - Private Right of Action Formulate an ordinance to allow property owners to seek restoration of views with only nominal City involvement, or
- 3 View Protection - Establish More Restrictive Development Standards Devise modifications to the Zoning Code and development review process and regulations, or
- 4 Private Right of Action and Establish More Restrictive Development Standards (This is a combination of Option 2

and Option 3 above that involve view issues for both landscaping and buildings), or

- 5 View Preservation and Restoration - Establish City-Enforced Building and Vegetation Standards Present an ordinance that requires City staff to actively use its police powers to protect views and remove offending landscape or structures, or,
- 6 Take a different or alternative action from any of options listed above

The City Council staff report outlining the issues and options related to view protection, view preservation and view restoration was provided to the Commission under separate cover on October 25, 2004. At the conclusion of their discussion, the City Council directed staff to undertake Option No 2 and prepare a View Preservation ordinance that sets out a procedure for property owners located within hillside areas of the City to seek restoration of views blocked by landscaping through a 'private right of action' process.

The City Council also asked staff to investigate the possibility of this same private right of action process related to views obstructed by buildings.

DISCUSSION

Based on the City Council's direction, staff conducted further research on the issue of private right of action pertaining to both landscaping and buildings.

Private Right of Action- Views Obstructed by Landscaping

In regard to views obstructed by landscaping, example ordinances with the private right of action were found in the Town of Tiburon, City of Berkeley, and City of Santa Barbara (Attachment Nos 1, 2, and 3).

Simply defined, a 'private right of action' is a progressive process created by the City to enable a property owner/resident to resolve conflicts pertaining to views obstructed by landscaping at a civil level and without City involvement.

The primary concepts of the proposed View Preservation ordinance are summarized below (Attachment No 4 proposed View Preservation ordinance)

Intent The intent of proposed View Preservation ordinance (through a 'private right of action' process) is to provide direction to property owners/residents seeking to protect or reclaim a view and set out procedures for mediation and arbitration (and possible litigation). All costs would be borne by private parties. The City would not have any obligation to enforce the view preservation provisions of the code.

The proposed ordinance is crafted in a way that prevents Culver City from being compelled to enforce the regulations but allows an affected owner/occupant to seek legal redress in accordance with a defined process. The rationale for proposing this specific type of ordinance is that it creates a means to address a problem with little to no involvement of City resources.

One of the issues that staff considered in developing this ordinance was the amount of information contained in the ordinance to effectively resolve view concerns through the proposed process. Specifically, detailed information such as the provision of design standards, methods, illustrative information, and specifications. Staff believes that this subject can be handled adequately through very simple and direct ordinance/procedures. This is in line with City Council intent of simplicity.

Process The proposed ordinance seeks to provide guidance and options to property and landscape owners as well as mediators and arbitrators in order to avoid wholesale landscape removal when trimming is possible. Specific steps must be taken and documented to restore the view.

- A complaining party must first notify the offending owner of landscape or tree-owner of the problem and attempt to work it out.
- If this is not successful, then the complaining party must propose mediation.
- If mediation is not accepted or fails, binding arbitration must be offered.
- If this arbitration is not accepted, then the complaining party may bring an action in court.

Applicability The proposed View Preservation ordinance applies to hillside areas in the City such as Blair Hills and Culver Crest. Staff conducted site visits in Blair Hills and Culver Crest to assess the areas that had a view. Photographs were taken from various residences in both areas illustrating some of the views and views that are obstructed by trees (Attachment No. 5). The hillside areas to be governed by this ordinance are illustrated on the attached map (Attachment No. 6).

In regard to timing, the proposed ordinance states that a person may seek to preserve or restore certain views that existed at any time since that person purchased or occupied a property (this requires documentation by the view seeker).

Private Right of Action - Views Obstructed by Buildings

Staff did not find a sample ordinance where a City granted a private right of action process for views obstructed by buildings or structures. In consulting with both the City Attorney for Culver City and offices of the City Attorney for various other cities, it was determined that a private right of action process for views obstructed by buildings would cause numerous problems for the City as it could be seen as ceding an aspect of the City's police powers.

The California Constitution grants cities certain police powers such as control of zoning regulations, issuance of building permits, and the right to establish regulations defining property maintenance standards. The Civil Code and the Code of Civil Procedure of the State defines how and when disputes between neighbors can be adjudicated.

Unless a City uses its police powers to define views as important to the City as a whole, obstruction of views is not a violation of law. If a City law does not specifically provide for private enforcement of that law, then even if that City adopts regulations that prohibit view obstruction, no civil action between neighbors can be initiated based on the City ordinance. Legal action against a City can be initiated in an attempt to compel it to enforce its own regulations.

Theoretically, an ordinance with a private right of action process could be created related to buildings. However, an applicant for a building permit relies on a City's proper use of its police powers when a building permit is issued. It would create tremendous problems if the City, in good faith, issued a building permit, and a

neighbor had the right to sue the builder, due to view obstruction after the building was built

Many cities control the issue of views blocked by buildings through the development review process a process which can be quite contentious Culver City has a major emphasis on speedy permit processing which could be obviated by adding view protection review to that process Therefore, the City Council did not seem inclined to add any new steps to permit processing

GENERAL PLAN CONSISTENCY

The Land Use and Open Space Elements of the General Plan contain various policy statements reflecting the need to protect the views from and of hillside property Two examples of these policies include

- The Open Space Element, Objective 6, Policy 6A
Establish view shed guidelines which protect the views of and from Culver City Park, Blair Hills, and Culver Crest
- The Land Use Element, Objective 26, Policy 26E "Protect views of and from Culver Crest by establishing view shed guidelines "

These policies call for the City to take action to establish view shed guidelines, in part, the proposed ordinance implements some of these policies

ENVIRONMENTAL DETERMINATION

The proposed View Preservation ordinance is not a project as defined by Section 15378 of the CEQA Guidelines The proposed activity is general procedure making and will not result in issuance of entitlements The activity does not have the potential for resulting in direct physical change in the environment Therefore the proposed View Preservation ordinance is not subject to CEQA and no environmental analysis is required

PUBLIC NOTIFICATION

This Study Session was noticed in the Culver City News and postcards were mailed to homeowners associations property owners and occupants within Culver Crest and Blair Hills area and other parties who have expressed interest in this topic. In addition, Ms Bobbi Gold a resident of Blair Hills has expressed an interest in this subject and has submitted her comments (Attachment No 7)

CONFLICT OF INTEREST

Commissioner Sheila Thomas has a conflict of interest on this item as she is a property owner within 500 feet of the limited area that this ordinance would apply

NEXT STEPS

Based on input provided by the Planning Commission, staff anticipates returning to the City Council for a duly noticed Public Hearing on this item

Prepared by



Susan Yun
Associate Planner
(310) 253-5755

Approved by



Mark Wardlaw
Deputy Community Development
Director

Attachments

- 1 Town of Tiburon regulations
- 2 City of Santa Barbara regulations
- 3 City of Berkeley regulations
- 4 Proposed City of Culver City View Preservation Ordinance
- 5 Photographs of Views in Blair Hills and Culver Crest
- 6 Map of Hillside Areas in the City
- 7 Email comments from Ms Bobbi Gold Resident dated 9/20/04

Commissioner Muranaka

- C-2 Definitions Arterial Street might include an opening sentence that indicates an arterial street includes both primary and secondary arterial streets
- Clarify the language in 1-a of Street Wall Requirements

Chair Malsin

- Clarify the language under Use Regulations to indicate permitted uses shall be subject to all requisite entitlement processes

Vice-Chair Lamm

- The entire commercial stretch on Jefferson between Overland and Sepulveda and the area along East Washington with larger parcels that are not adjoining residences should be considered for addition
- Advisable to mention affordable housing to help eliminate questions and criticisms and remind people it is a consideration

Approval of Planning Commission Resolution No 2004-P007

Vice-Chair Lamm moved, seconded by Commissioner Muranaka, to adopt Resolution No 2004-P007 as amended

The motion carried on the following roll call vote

AYES	Tiggs, Muranaka, Lamm, Malsin
NOES	None
ABSENT	Thomas

6 Study Session Discussion of Proposed View Preservation Ordinance

Ms Yun presented the staff report and introduced Brian McNabb, Planning Consultant who assisted with the project

Chair Malsin called on persons who submitted comment cards

Bobbi Gold

- Trees have certain important functions that sometimes supersede the supposed right to a view
- Suggested the language be balanced between the rights of tree owners as well as view holders

Charles Stephens

- Indicated trees are destroying people's views and there is currently no way to address the problem

Chair Malsin read correspondence from the following authors

Betty Tolin, Elston and Bertha Bernly, and Ed Ensleer expressed support for the proposed ordinance to protect people who own view properties from view obstruction caused by foliage and landscaping

Joddy Boyer and Howard Glickman expressed concerns about view obstruction related to second-story additions and decks

Chair Malsin requested comments from staff

Ms Yun

- *Clarified that this ordinance deals specifically with views obstructed by landscaping not those impacted by buildings or structures*

Vice-Chair Lamm

- A hillside ordinance to supplement the City's existing building and zoning codes is worth considering
- The basic approach should be to establish a process including a series of steps beginning with neighbors trying to resolve the issue on their own before proceeding to mediation, et cetera
- The value of trees should be front and center along with the value of views
- Supportive of starting with the least drastic measures such as trimming and thinning
- Suggested reversing Nos 1 and 2 on Page 2 of 10 to provide recognition of the value of good landscaping
- Initially was concerned trees were not being adequately considered, but the proposed ordinance as discussed seems to be a reasonable approach

Commissioner Muranaka

- Include language to indicate the least drastic measures can accommodate restoration of an obstructed view
- The reference to 'active use area' should be removed throughout the entire ordinance
- A provision for voluntary agreement between the parties should be included
- Under A-3 suggested less invasive methods of view restoration such as crown reduction be employed since topping is sometimes very destructive to trees
- The tree claim preparation should apply immediately after the initial reconciliation process fails

Chair Malsin

- The ordinance seems very reasonable
- Appropriate to provide property owners a mechanism to protect a valuable part of the experience of their homes
- Language should be included to emphasize that trees are a great benefit to the community
- The least aggressive solutions should be attempted before demanding removal of trees