

within the immediate vicinity of their property that are unreasonably obstructed by the growth of Trees and

3 Establish a process and evaluation criteria by which
Real Property Owners may seek mutually acceptable resolution of
such View disputes

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

1 The City recognizes the desire of many of its
residents and Real Property Owners for beautiful and plentiful
landscaping including Trees The City realizes this desire may
sometimes conflict with the preservation of Preexisting Views and
disputes related to Views are inevitable

2 The City also recognizes residents and Real Property
Owners cherish their Views of and from the hills of the City The
City recognizes Views contribute greatly to the quality of life in the
City and promote the general welfare of the entire community

3 Real Property Owners and residents should maintain
Trees on their property in a healthy condition for both safety
reasons and for preservation of Preexisting Views Before planting
Trees Real Property Owners and residents should consider the
potential for View blockage both currently and at Tree maturity
Persons have the right to seek civil remedies when threatened by
dangerous Tree growth

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1 4 The City shall establish a process by which a Real
2 Property Owner may seek to preserve and restore Preexisting
3 Views from unreasonable obstruction by the growth of Trees,
4 including Views from the lot when it was first created or at the time
5 the Real Property Owner purchased or inherited the property. The
6 City shall also establish a list of factors to be considered in
7 determining appropriate actions to restore such Views

8 5 When a Preexisting View obstruction dispute arises
9 the parties should act reasonably to resolve the dispute through
10 friendly communication thoughtful negotiation compromise and
11 other traditional means such as discussions with the appropriate
12 neighborhood or homeowner association Those disputes not
13 resolved through such means shall follow the procedure
14 established herein

15 6 It is the intent of the City for the provisions of this
16 Chapter to receive thoughtful and reasonable application It is not
17 the intent of the City to encourage clear cutting or substantial
18 denuding of any property of its Trees by overzealous application of
19 provisions of this Chapter and

20 7 It is the intent of the City to discourage ill considered
21 damage to Trees and promote proper use of Trees and
22 landscaping establishment and maintenance
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1 **Section 9 12 010 Definitions**

2 For the purpose of this Chapter the meaning and construction of words
3 and phrases is as follows

4 Arbitrator A neutral person who will conduct a process similar to a trial
5 and who will hear testimony consider evidence and make a binding decision for the
6 disputing parties

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

9 Complainant Any Real Property Owner (including subsequent heirs,
10 successors in interest and subsequent bona fide purchasers or legal occupant with
11 written permission of the property owner) who alleges Trees located within the
12 immediate vicinity and on the property of another person are causing unreasonable
13 obstruction of his or her Preexisting Views

14 Crown Reduction/Shaping A method of comprehensive trimming that
15 reduces a Tree s height or spread Crown Reduction entails the reduction of the top
16 sides or individual limbs of a Tree by means of removal of leaders or the longest
17 portion of limbs to a lateral large enough to assume the terminal
18

19 Mediation A process in which a neutral third person or persons facilitate
20 communication between the disputants to assist them in reaching a mutually
21 acceptable agreement as further defined in Section 1775 et seq of the California Code
22 of Civil Procedure

23 Mediator A neutral objective third person that assists people in finding
24 mutually satisfactory solutions to their problem
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1 Preexisting View ~~A View which existed from the time the lot with the View~~
2 ~~was first created or from the time a Complainant became owner or occupant of the~~
3 ~~property or lot with the View~~

4 Primary Living Area The portion or portions of a residence from which a
5 View is observed most often by the occupants relative to other portions of the
6 residence The determination of Primary Living Area is to be made on a case by case
7 basis

8 Real Property Owner An owner of real property, including bona fide
9 ~~purchasers, subsequent heirs and successors in interest~~

10 Restoration Action(s) Any specific requirement to resolve a Tree dispute
11 as discussed in this Chapter

12 Stump Growth New growth from the remaining portion of the Tree trunk
13 the main portion of which has been cut off

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

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

19 Tree(s) Any woody plant with the potential to obstruct views including
20 but not limited to trees shrubs hedges and bushes

21 Tree Claim The written basis for Mediation Binding Arbitration or court
22 action under the provisions of this Chapter

23 Tree Owner Any person owning real property in the City upon whose
24 land is located a Tree alleged by a Complainant to cause an unreasonable obstruction
25 to a Preexisting View
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Tree Removal The elimination of any Tree from its present location

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

View(s) A scene from the Primary Living Area of a residence The term View(s) includes both upslope and down slope scenes but is generally medium or long range in nature as opposed to short range View(s) include but are not limited to skylines landmarks distant urban settings distinctive geologic features hillside terrains ridges and bodies of water The term View(s) does not necessarily include an unobstructed panorama of these features

Windowing A form of Thinning by which openings or windows are created to restore Views

Section 9 12 015 Rights Established

A A Real Property Owner shall have the right to preserve and seek restoration of a Preexisting View when such View is from the Primary Living Area and has subsequently been unreasonably obstructed by the growth of one or more Trees provided that such action has not been initiated against the same real property by the Complainant with respect to the same Tree within a two year time period prior to the initiation of the most recent action

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

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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.

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 the View from the Complainant's property compared with the Preexisting View which was available at this property.

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

E The deleterious effect of the Trees upon the Complainant's vegetation through loss of heat and light except that the dropping of leaves or maintenance factors shall not be considered a criterion under this Chapter

Section 9 12 030 Criteria for Determining Appropriate Restorative Action

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Deleted at the time the Complainant acquired or occupied his or her home

1 When it has been determined per Section 9 12 025 of this Chapter that an
2 unreasonable obstruction has occurred the following unweighted factors shall be
3 considered in determining the appropriate Restoration Action

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

7 B Variety of the Tree its projected rate of growth and
8 maintenance requirements

9 C Aesthetic quality of the Tree including but not limited to
10 species characteristics size growth form and vigor

11 D Location with respect to overall appearance design or use
12 of the Tree Owner s property (i e blending buffering or reduction in the
13 scale and mass of adjacent architecture)

14 E Soil stability provided by the Tree considering soil structure
15 degree of slope and extent of the Tree s root system

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

18 G Energy conservation and or climate control provided by the
19 Tree

20 H Wildlife habitat provided by the Tree

21 I The extent to which the Tree provides historical context due
22 to the age of the Tree and rare and interesting botanical species

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26 **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 Tree Removal is required replacement by appropriate species should be considered The Tree Owner may elect Tree Removal with replacement plantings as an alternative to Trimming Thinning and Topping

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

5 E A Tree which has been the subject to Restorative Action
6 under the terms of this Chapter is exempt from being part of another Tree
7 claim for a period of two years after the date of the satisfactory completion
8 of the Restorative Action

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

11 The City provides the following general guidelines concerning Restorative
12 Actions

13 A *Stump Growth* Stump Growth generally results in the
14 hazard of weak limbs and its protection is not desirable When
15 considering Restorative Action for Stump Growth aggressive action is
16 preferred Restorative Action which will result in future Stump Growth
17 should be avoided

18 B *Trimming* Trimming is the most minor form of physical
19 Restorative Action This option is recommended when minor
20 unreasonable obstruction has occurred provided that ongoing
21 maintenance is guaranteed

22 C *Thinning or Windowing* When simple Trimming will not
23 resolve the unreasonable obstruction Thinning or Windowing may be
24 necessary This action should be supervised by a certified arborist
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D *Crown Reduction* Crown Reduction may be necessary when Thinning and Windowing will not resolve the unreasonable obstruction. However, as with Thinning and Windowing, Crown Reduction should be supervised by a certified arborist.

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

F *Tree Removal* Tree Removal may be required where it is essential to preserve Preexisting Views. While normally considered a drastic measure, Tree Removal can be the preferred solution in certain circumstances.

G *Maintenance* Ongoing Tree maintenance requirements are strongly recommended as part of Restorative Action in order to achieve lasting preservation of Preexisting Views

H *Permanence* Conditions of Restorative Action should be memorialized in a recordable document, for all affected properties, to help notify subsequent heirs and successors in interest of their applicability

SECTION 9 12 045 Process For Resolution Of Obstruction Disputes

The following process shall be used in the resolution of Preexisting View disputes between parties

A Initial Discussions

1 Complainant who believes Tree growth on the property of another has caused unreasonable obstruction of a Preexisting View from the Primary Living Area shall first notify the Tree Owner in writing of such concerns

2 The notification should if possible be accompanied by personal discussions to enable the Complainant and Tree 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. If personal discussions fail then neighborhood associations may be willing to assist with the resolution of the obstruction dispute.

3 The initial notification from the Complainant to the Tree Owner shall provide a copy of this ordinance. In the initial notification the Complainant shall invite the Tree Owner to view the alleged obstruction from the Complainant property and the Tree Owner is urged to invite the Complainant to view the situation from the Tree Owner's property. Failure of the Tree Owner to respond to the written request for Initial Discussion within thirty (30) days after the date of the posting shall be deemed a refusal by the Tree Owner to participate in the Initial Discussion phase of the process and

4 After the Initial Discussion if the parties do not agree
as to the existence and nature of the Complainant's obstruction or

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1 to the appropriate Restoration Action or if the Initial Discussion is
2 refused the Complainant may proceed with the subsequent
3 dispute resolution process outlined herein with respect to Tree
4 Claim preparation Mediation Binding Arbitration and litigation

5
6 B *Tree Claim Preparation*

7 In the event the Initial Discussion process fails to resolve the
8 dispute the Complainant must prepare a Tree Claim and provide a copy
9 to the Tree Owner in order to pursue Mediation Binding Arbitration or
10 litigation under the authority established by this Chapter

11 A Tree Claim shall consist of all of the following

12
13 1 *Evidence of Preexisting View* A written description of
14 the nature and extent of the alleged obstruction including pertinent
15 and documentable physical evidence Evidence may include but
16 is not limited to photographic prints negatives or slides as well as
17 written testimony or declarations from residents living in the area
18 Such evidence must prove the absence of the obstruction of the
19 Preexisting View Evidence confirming the ownership and the
20 date of property acquisition of the Complainant's property must be
21 included
22

Deleted at any documentable time
during the tenure of Complainant

23 2 *Evidence Regarding Unreasonable Tree Blockage*
24 The location of all Trees alleged to cause the obstruction the
25 address of the property upon which the Trees are located and the
26 present Tree Owner's name and address
27

1 3 *Evidence of Attempted Resolution* Evidence that an
2 Initial Discussion as described in Section 9 12 045 to resolve the
3 dispute has been made and has failed The Complainant must
4 provide physical evidence that written attempts at reconciliation
5 have been made and have failed Evidence may include but is not
6 limited to copies of and receipts for certified or registered mail
7 correspondence and

8 4 *Desired Action* Specific View Restoration Actions
9 proposed by the Complainant to resolve the unreasonable View
10 obstruction
11

12 C *Mediation*

13 1 If the Initial Discussion attempt fails then the
14 Complainant shall send to the Tree Owner a written request to
15 participate in a Mediation process as a timely means to settle the
16 obstruction dispute

17 2 Acceptance of Mediation by the Tree Owner shall be
18 voluntary but the Tree Owner shall have no more than thirty (30)
19 days after service of notice to either accept or reject the offer of
20 Mediation Failure to respond shall be deemed formal refusal of
21 the Mediation process If Mediation is accepted then the parties
22 shall mutually agree in writing to the selection of a Mediator
23

24 3 It is recommended the services of a professionally
25 trained Mediator be employed
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1 4 The Mediation meeting may be informal. The
2 Mediation process may include the hearing of viewpoints of lay or
3 expert witnesses and shall include a site visit to the properties of
4 the Complainant and the Tree Owner. Parties are encouraged to
5 contact immediate neighbors and solicit input and

6 5 The Mediator shall consider the purposes and policies
7 set forth in this Chapter in attempting to help resolve the dispute.
8 The Mediator shall not have the power to issue binding orders for
9 Restorative Action but shall strive to enable the parties to resolve
10 their dispute by written agreement in order to eliminate the need for
11 Binding Arbitration or litigation.

12 D *Binding Arbitration*

13 1 In those cases where the Initial Discussion process
14 fails and where Mediation is declined by the Tree Owner or has
15 failed to resolve the Complainant's complaint, the Complainant
16 must offer in writing to submit the dispute to Binding Arbitration.

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

23 3 The Arbitrator shall use the provisions of this Chapter
24 to reach a fair resolution of the Tree Claim and shall submit a
25

complete written report to the Complainant and the Tree Owner
This report shall include the Arbitrator's findings with respect to
Sections 9 12 025 and 9 12 030 of this Chapter a pertinent list of
all mandated Restoration Actions with any appropriate conditions
concerning such actions and a schedule by which the actions must
be completed A copy of the Arbitrator s report shall be filed with
the City Clerk upon completion Any decision of the Arbitrator shall
be enforceable pursuant to the provisions of California Code of
Civil Procedure Section 1280 et seq

E *Litigation*

1 In those cases where Binding Arbitration is declined
by the Tree Owner then civil action may be pursued by the
Complainant for resolution of the View obstruction dispute under
the rights and provisions of this Chapter and

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

Section 9 12 050 Apportionment of Costs

A *Cost of Mediation and Arbitration* Unless the parties agree
otherwise the costs and fees for Mediation and Arbitration shall be
subject to provisions of section 1284 2 of the California Code of Civil
Procedure which states among other things that parties to an arbitration

1 should pay their own costs and a pro rata share of the Arbitrator's fees
2 and costs

3 B *Cost of Litigation* To be determined by the Court or through
4 a settlement

5 C *Cost of Restorative Action* To be determined by mutual
6 agreement or through Mediation Binding Arbitration court judgment or
7 settlement

8 D Nothing in this chapter shall be construed to deny
9 compensation to a Tree Owner to which a Tree Owner would be entitled
10 under any other provision of law
11

12 **Section 9 12 055 Liabilities**

13 The issuance of Mediation findings a Binding Arbitration report or a court
14 decision shall not create any liability of the City with regard to the Restorative Actions to
15 be performed Failure of the City to enforce provisions of this Chapter shall not give
16 rise to any civil or criminal liabilities by or against the City
17

18 **Section 9 12 060 Enforcement**

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

23 B Under no circumstances shall the City have any
24 responsibility or obligation to enforce or seek any legal redress civil or
25 criminal for any decision made concerning a Tree Claim
26

27 **Section 9 12 065 Limitations**

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

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

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

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

14 SECTION 2 The Mayor of the City shall sign and City Clerk shall
15 attest to the passage of this ordinance The effective Date of this ordinance shall be
16 (30) days from the date of its adoption and prior to the expiration of fifteen (15) days
17 from the adoption hereof the City Clerk pursuant to Government Code Section
18 36933(c)(1) shall cause a summary of this ordinance to be published in The Culver City
19 News along with the record of the vote for approval and adoption and shall post at City
20 Hall a certified copy of the full text of this Ordinance along with the record of the vote
21 thereon Additionally the City Clerk shall post a summary of this Ordinance in at least
22 three public places within the City pursuant to Section 517 of the City Charter
23

24 APPROVED and ADOPTED this _____ day of _____ 2005
25

ALBERT VERA Mayor
City of Culver City California

ATTEST

APPROVED AS TO FORM

CHRISTOPHER ARMENTA
City Clerk

A05 00063

jm

CAROL A SCHWAB
City Attorney

WHITBURN ST

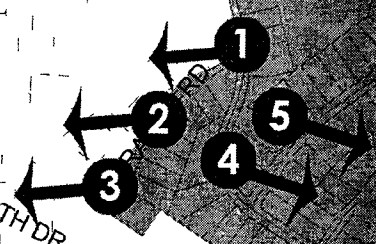
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