

MEETING DATE 01/23/06

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

ATTACHMENTS

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ORDINANCE NO 2006-

ORDINANCE NO 2006-_____

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") 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

1 oxygen to the atmosphere, maintain soil moisture, mitigate soil erosion,
2 and provide wildlife habitat Trees contribute to the visual environment
3 and aesthetics by blending, buffering, and reducing the scale and mass of
4 architecture Trees within the City provide botanical variety and a sense
5 of history Trees also create shade and visual screens and provide a
6 buffer between different land uses The benefits derived from Preexisting
7 Views may sometimes come into conflict with Trees The planting of
8 Trees and other vegetation and their subsequent growth, particularly when
9 such Trees are not properly maintained, can produce unintended harmful
10 effects both on the property on which they are planted and on neighboring
11 properties
12

13 D This ordinance shall be applicable to the affected hillside
14 areas in the City including Hetzler/Tompkins, Blair Hills, and Culver Crest,
15 as shown in gray shading on the map attached hereto and incorporated
16 herein as Exhibit A, and hereby made a part of this ordinance
17

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

19 A The purposes of this Chapter are to

20 1 Establish the right of a residential Real Property
21 Owner, whose property is located within the affected hillside areas
22 as depicted in Exhibit A, attached hereto and incorporated herein
23 to preserve Preexisting Views from unreasonable obstruction by
24 the growth of Trees,

25 2 Establish that Real Property Owners are in need of a
26 process to resolve disputes among themselves concerning Views
27

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

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

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

8 1 The City recognizes the desire of many of its
9 residents and Real Property Owners for beautiful and plentiful
10 landscaping, including Trees The City realizes this desire may
11 sometimes conflict with the preservation of Preexisting Views, and
12 disputes related to Views are inevitable,

13 2 The City also recognizes residents and Real Property
14 Owners cherish their Views of and from the hills of the City The
15 City recognizes Views contribute greatly to the quality of life in the
16 City, and promote the general welfare of the entire community

17 3 Real Property Owners and residents should maintain
18 Trees on their property in a healthy condition for both safety
19 reasons and for preservation of Preexisting Views Before planting
20 Trees, Real Property Owners and residents should consider the
21 potential for View blockage, both currently and at Tree maturity
22 Persons have the right to seek civil remedies when threatened by
23 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

16 6 It is the intent of the City for the provisions of this
17 Chapter to receive thoughtful and reasonable application It is not
18 the intent of the City to encourage clear-cutting or substantial
19 denuding of any property of its Trees by overzealous application of
20 provisions of this Chapter, and
21

22 7 It is the intent of the City to discourage ill-considered
23 damage to Trees and promote proper use of Trees and
24 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 Topping Elimination of the upper portion of a Tree's trunk or main leader

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

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

22 Tree Owner Any person owning real property in the City upon whose
23 land is located a Tree alleged by a Complainant to cause an unreasonable obstruction
24 to a Preexisting View

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

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

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

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

4 B Variety of the Tree, its projected rate of growth and
5 maintenance requirements

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

8 D Location with respect to overall appearance design, or use
9 of the Tree Owner's property (i.e. blending, buffering or reduction in the
10 scale and mass of adjacent architecture)

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

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

15 G Energy conservation and or climate control provided by the
16 Tree

17 H Wildlife habitat provided by the Tree

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

20
21
22 **Section 9 12 035 Hierarchy of Restoration Actions**

23 A If an unreasonable obstruction of a Preexisting View exists,
24 a Mediator shall recommend, or an Arbitrator or Court shall order,
25 Restorative Action based only on this Chapter Restorative Action may
26 include written directions as to appropriate timing for such Restorative
27

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

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

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

Section 9 12 040 City Guidelines Concerning Restoration Action

The City provides the following general guidelines concerning Restorative Actions

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

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

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

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

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

6 F *Tree Removal* Tree Removal may be required where it is
7 essential to preserve Preexisting Views While normally considered a
8 drastic measure, Tree Removal can be the preferred solution in certain
9 circumstances
10

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

14 H *Permanence* Conditions of Restorative Action should be
15 memorialized in a recordable document, for all affected properties, to help
16 notify subsequent heirs and successors-in-interest of their applicability
17

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

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

21 A *Initial Discussions*

22 1 Complainant who believes Tree growth on the
23 property of another has caused unreasonable obstruction of a
24 Preexisting View from the Primary Living Area shall first notify the
25 Tree Owner in writing of such concerns,
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1 2 The notification should, if possible be accompanied
2 by personal discussions to enable the Complainant and Tree
3 Owner to attempt to reach a mutually agreeable solution and shall
4 be followed up with a written confirmation of any agreed-upon
5 resolution and schedule for the required work of View restoration
6 If personal discussions fail, then neighborhood associations may
7 be willing to assist with the resolution of the obstruction dispute,

8 3 The initial notification from the Complainant to the
9 Tree Owner shall provide a copy of this ordinance In the initial
10 notification, the Complainant shall invite the Tree Owner to view the
11 alleged obstruction from the Complainant property and the Tree
12 Owner is urged to invite the Complainant to view the situation from
13 the Tree Owner's property Failure of the Tree Owner to respond
14 to the written request for Initial Discussion within thirty-(30) days
15 after the date of the posting shall be deemed a refusal by the Tree
16 Owner to participate in the Initial Discussion phase of the process,
17 and
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19 4 After the Initial Discussion, if the parties do not agree
20 as to the existence and nature of the Complainant s obstruction or
21 to the appropriate Restoration Action or if the Initial Discussion is
22 refused, the Complainant may proceed with the subsequent
23 dispute resolution process outlined herein with respect to Tree
24 Claim preparation, Mediation, Binding Arbitration, and litigation
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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 of the Preexisting View 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 Trees are 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 that 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
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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 actions must
27

1 be completed A copy of the Arbitrator's report shall be filed with
2 the City Clerk upon completion Any decision of the Arbitrator shall
3 be enforceable pursuant to the provisions of California Code of
4 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 rata 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
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C *Cost of Restorative Action* To be determined by mutual agreement, or through Mediation, Binding Arbitration, court judgment, or settlement

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

Section 9 12 055 Liabilities

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

Section 9 12 060 Enforcement

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

B 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 Tree Claim

Section 9 12 065 Limitations

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

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

Section 9 12 070 Trees Owned and Maintained By the City

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

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

APPROVED and ADOPTED this _____ day of _____ 2005

ALBERT VERA, Mayor
City of Culver City, California

ATTEST

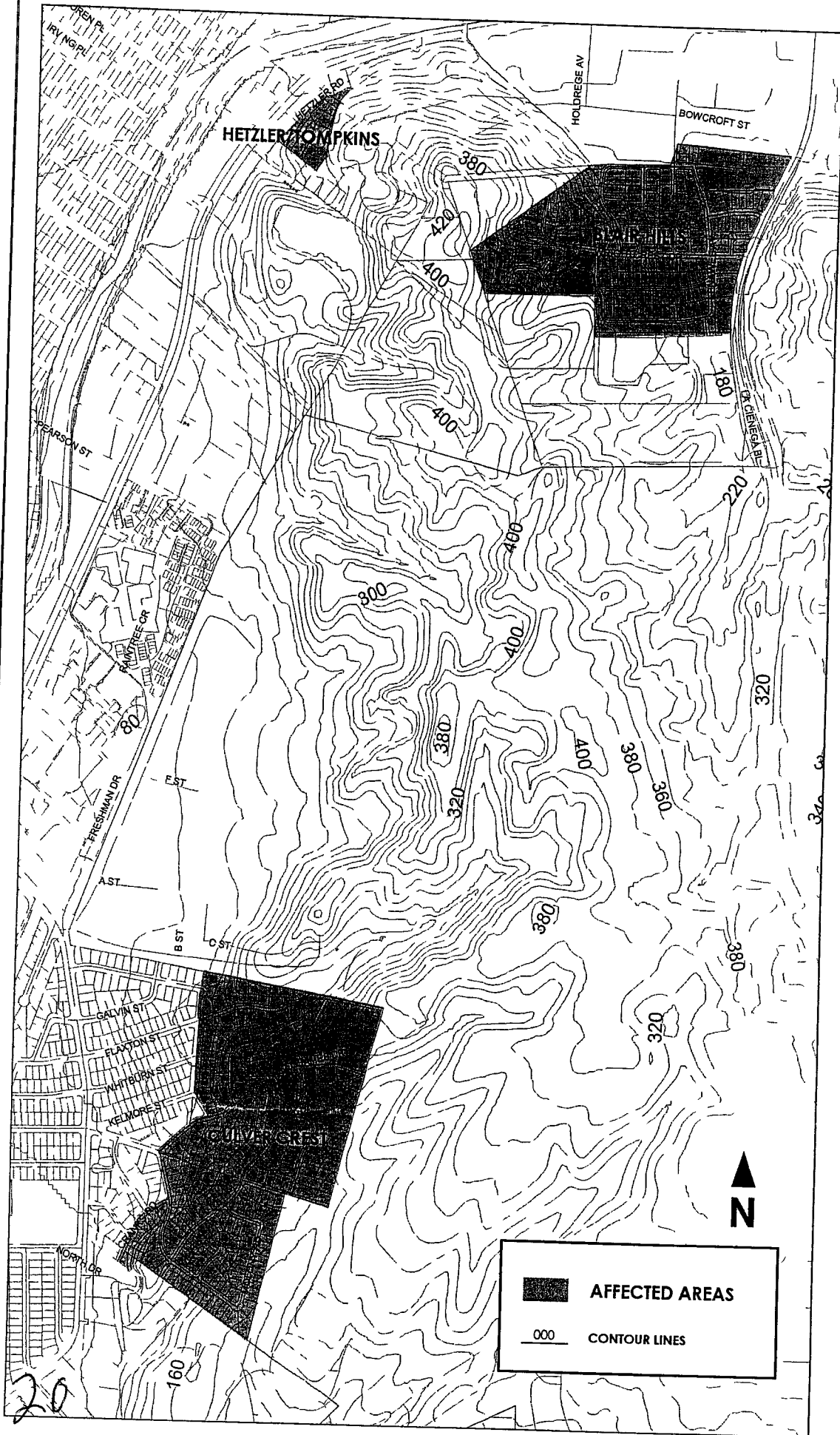
APPROVED AS TO FORM

CHRISTOPHER ARMENTA,
City Clerk

CAROL A SCHWAB,
City Attorney

AREAS SUBJECT TO VIEW PRESERVATION ORDINANCE

Exhibit A



20

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

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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

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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

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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

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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

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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.

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- 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

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- 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

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- 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

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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

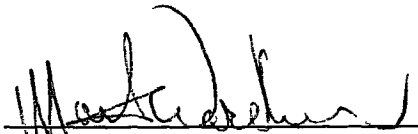
Based on input provided by the Planning Commission, staff anticipates returning to the City Council for a duly noticed Public Hearing on this item

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

- In Section B modify the language 'such evidence must show absence to 'must prove the absence to indicate photographic evidence is not necessary
- What is Culver City's policy if a complaint of this nature is made against it?
- Should trees in the public right-of-way which are part of an orderly program intended to create a specific aesthetic for the City be considered differently from trees that grow in a park?
- The proposed ordinance is reasonable, it places a high value on trees and recognizes view preservation is a fair concept

Mr Wardlaw

- *Staff discussed how to deal with trees in the public right-of-way because street trees provide various benefits to the public good, and a decision was made to exempt the City in that regard*
- *A City park serves a very different purpose, so the trees in public parks should be considered differently than the effects of a private party's trees when considering view impacts*

The consensus of the Commissioners was to forward the discussed revisions to the City Council

7 Other Business

Mr Wardlaw advised the Commission of the upcoming meetings and agenda items

Chair Malsin commended staff for their excellent job presenting some very complicated topics

8 Adjournment

Vice-Chair Lamm moved, seconded by Commissioner Muranaka, to adjourn the meeting at 12 18 a m to **December 8, 2004** at 7 00 p m in the Mike Balkman Council Chambers at City Hall The motion was unanimously approved

D SCOTT MALSIN, CHAIRPERSON
PLANNING COMMISSION
CITY OF CULVER CITY, CALIFORNIA

TITLE IV LAND IMPROVEMENT AND USETown of TiburonChapter 15 VIEW AND SUNLIGHT OBSTRUCTION FROM TREES15-1 Purpose and principles

(a) The purposes of this chapter are to

(1) Establish the right of persons to preserve views or sunlight which existed at any time since they purchased or occupied a property from unreasonable obstruction by the growth of trees

(2) Establish a process by which persons may seek restoration of such views or sunlight when unreasonably obstructed by the growth of trees or other vegetation (see definition of Tree)

(b) The rights and the restorative process are based upon the following general principles

(1) The town recognizes that residents property owners and businesses cherish their outward views from the Tiburon Peninsula and that they also cherish the benefits of plentiful sunlight reaching their buildings and yards. The town recognizes that both outward views and plentiful sunlight reaching property contribute greatly to the quality of life in Tiburon and promote the general welfare of the entire community

(2) The town also recognizes the desire of many of its residents property owners and businesses for beautiful and plentiful landscaping including trees. The town realizes that this desire may sometimes conflict with the preservation of views and sunlight and that disputes related to view or sunlight obstruction are inevitable

(3) Owners and residents should maintain trees on their property in a healthy condition for both safety reasons and for preservation of sunlight and outward views. Before planting trees owners and residents should consider view and sunlight blockage potential both currently and at tree maturity. Persons have the right to seek civil remedies when threatened by dangerous tree growth

(4) The town shall establish a process by which persons may seek to preserve and restore views or sunlight which existed at any time since they purchased or occupied property from unreasonable obstruction by the growth of trees. The town shall also establish a list of factors to be considered in determining appropriate actions to restore views or sunlight

(5) When a view or sunlight obstruction dispute arises the parties should act reasonably to resolve the dispute through friendly communication thoughtful negotiation compromise and other traditional means such as discussions with the appropriate neighborhood or homeowner association. Those disputes which are not resolved through such means shall follow the procedure established herein

(6) It is the intent of the town that the provisions of this chapter receive thoughtful and reasonable application. It is not the intent of the town to encourage clear cutting or substantial denuding of any property of its trees by overzealous application of provisions of this chapter (Ord No 379 N S § 3 (part))

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TITLE IV LAND IMPROVEMENT AND USE

Chapter 15 VIEW AND SUNLIGHT OBSTRUCTION FROM TREES

15.2 Definitions

For the purpose of this chapter the meaning and construction of words and phrases is as follows

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

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

Binding arbitration means a legal procedure as set forth in section 1280 et seq of the Code of Civil Procedure

Complaining party means any property owner (or legal occupant with written permission of the property owner) who alleges that trees located on the property of another person are causing unreasonable obstruction of his or her pre existing views or sunlight

Mediator means a neutral objective third person who assists people in finding mutually satisfactory solutions to their problem

Person means any individual corporation partnership firm or other legal entity excluding the Town of Tiburon

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

Protected tree means any of the following

Heritage tree meaning any tree which has a trunk with a circumference exceeding sixty inches measured twenty four inches above the ground level

Oak tree including coast live oak blue oak California black oak interior live oak canyon live oak Engelmann oak or valley oak tree

Dedicated tree meaning a tree of special significance so designated by resolution of the town council

Removal means the elimination of any tree from its present location

Restorative action means any specific requirement to resolve a tree dispute

Stump growth means new growth from the remaining portion of the tree trunk the main portion of which has been cut off

Sunlight means the availability of direct or indirect sunlight to the primary living area of a residence

Thinning means the selective removal of entire branches from a tree so as to improve visibility through the tree and/or improve the tree's structural condition

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

Tree means any woody plant with the potential to obstruct views or sunlight including but not limited to trees shrubs hedges and bushes References to tree shall include the plural

Tree claim means the written basis for arbitration or court action under the provisions of this chapter

Tree owner means any person owning real property in Tiburon upon whose land is located a tree or trees alleged by a complaining party to cause an unreasonable obstruction

Trimming means the selective removal of portions of branches from a tree so as to modify the tree(s) shape or profile or alter the tree's appearance

View means a scene from the primary living area of a residence or the active use areas of a nonresidential building The term view includes both upslope and downslope scenes but is

generally medium or long range in nature as opposed to short range. Views include but are not limited to skylines, bridges, landmarks, distant cities, distinctive geologic features, hillside terrains, wooded canyons, ridges and bodies of water.

Some additional examples are:

- (1) San Francisco Bay (including San Pablo Bay, Richardson Bay, and islands therein)
- (2) The San Francisco-Oakland Bay Bridge
- (3) The Golden Gate Bridge
- (4) The Richmond-San Rafael Bridge
- (5) Mount Tamalpais
- (6) The Tiburon Peninsula or surrounding communities (including the city of San Francisco)

Windowing means a form of thinning by which openings or "windows" are created to restore views and/or sunlight. (Ord. No. 379 N.S. § 3 (part))

TITLE IV LAND IMPROVEMENT AND USE

Chapter 15 VIEW AND SUNLIGHT OBSTRUCTION FROM TREES

15.3 Rights established

(a) Persons shall have the right to preserve and seek restoration of views or sunlight which existed at any time since they purchased or occupied a property when such views or sunlight are from the primary living area or active use area and have subsequently been unreasonably obstructed by the growth of trees

(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) All persons are advised that the alteration, removal and planting of certain trees requires a permit under chapter 15A of the Tiburon Municipal Code (Trees). The applicability of chapter 15A should be determined prior to any action on trees. (Ord. No. 379 N.S. § 3 (part))

TITLE IV LAND IMPROVEMENT AND USEChapter 15 VIEW AND SUNLIGHT OBSTRUCTION FROM TREES

15.4 Unreasonable obstruction prohibited

(a) No person shall plant, maintain or permit to grow any tree which unreasonably obstructs the view from or sunlight reaching the primary living area or active use area of any other parcel of property within the Town of Tiburon.

(b) Because the maintenance of views and sunlight benefits the general welfare of the entire town, any unreasonable obstruction of views or sunlight from the primary living area or active use area shall also constitute a public nuisance. (Ord. No. 379 N.S. § 3 (part))

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15.5 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 pre-existing views from or sunlight reaching the primary living area or active use area of the complaining party both currently and at tree maturity
- (b) The quality of the pre-existing views being obstructed including obstruction of landmarks, vistas, or other unique features
- (c) The extent to which the trees interfere with efficient operation of a complaining party's pre-existing solar energy systems
- (d) The extent to which the complaining party's view and/or sunlight has been diminished over time by factors other than tree growth (Ord. No. 379 N.S. § 3 (part))

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15-6 Criteria for determining appropriate restorative action

When it has been determined that unreasonable obstruction has occurred then the following unweighted factors shall be considered in determining appropriate restorative action

- (a) The hazard posed by a tree or trees to persons or structures on the property of the complaining party including but not limited to fire danger and the danger of falling limbs or trees
- (b) The variety of tree its projected rate of growth and maintenance requirements
- (c) Aesthetic quality of the tree(s) including but not limited to species characteristics size growth form and vigor
- (d) Location with respect to overall appearance design or use of the tree owner's property
- (e) Soil stability provided by the tree(s) considering soil structure degree of slope and extent of the tree's root system
- (f) Privacy (visual and auditory) and wind screening provided by the tree(s) to the tree owner and to neighbors
- (g) Energy conservation and or climate control provided by the tree(s)
- (h) Wildlife habitat provided by the tree(s)
- (i) Whether trees are protected trees as defined in section 15.2 of this chapter (Ord. No. 379 N.S. § 3 (part))

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15 7 Types of restorative action

(a) Restorative actions include but are not limited to the following

(1) Trimming

(2) Thinning or windowing

(3) Topping

(4) Removal with replacement plantings

(5) Removal without replacement plantings

(b) In all cases the documentable extent of view or sunlight existing at any time during the tenure of the present owner or legal occupant is the maximum limit of restorative action which may be required

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

(d) In cases where trimming, windowing or other restorative action may affect the health of a tree which is to be preserved, such actions should be carried out in accordance with standards established by the International Society of Arboriculture for use in the state of California (Ord No 379 N S § 3 (part))

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15.8 Town guidelines concerning restorative action

The Town of Tiburon provides the following general guidelines concerning restorative actions

(a) **Undesirable trees** By reason of their tall height at maturity rapid growth dense foliage shallow root structure flammability breakability or invasiveness certain types of trees have been deemed undesirable by the town including Blue Gum Eucalyptus Coast Redwood Monterey Pine Monterey Cypress trees or any other tree which generally grows more than three feet per year in height and is capable of reaching a height of over thirty five feet at maturity When considering restorative action for undesirable trees aggressive action is preferred

(b) **Protected trees** The Town of Tiburon has designated certain trees to be protected trees defined in section 15.2 Any alteration or removal of protected trees will require a permit from the town's planning director pursuant to chapter 15A of the Tiburon Municipal Code

(c) **Stump growth** Stump growth generally results in the hazard of weak limbs and its protection is not desirable When considering restorative action for stump growth aggressive action is preferred Restorative action which will result in future stump growth should be avoided

(d) **Trimming** Trimming is the most minor form of physical restorative action This option is recommended when minor unreasonable obstruction has occurred provided that ongoing maintenance is guaranteed

(e) **Thinning or windowing** When simple trimming will not resolve the unreasonable obstruction thinning or windowing may be necessary These should be supervised by a certified arborist

(f) **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

(g) **Removal** Tree removal may be required where such removal is essential to preserve pre-existing views or sunlight While normally considered a drastic measure tree removal can be the preferred solution in many circumstances

(h) **Maintenance** Ongoing tree maintenance requirements are strongly recommended as part of restorative action in order to achieve lasting preservation of pre-existing views or sunlight

(i) **Permanence** Conditions of restorative action should be recorded and run with the land to help guarantee permanent preservation of pre-existing views and sunlight (Ord. No. 379 N.S. § 3 (part))

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