

MEETING DATE 03/06/06

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

ATTACHMENTS

		<u>Pages</u>
1	City Council Ordinance No 2006-O____, View Preservation Ordinance	1-20
2	Planning Commission Staff Report dated 11/10/04 and Meeting Minutes Excerpt	21-29
3	Map of Hillside Areas in the City	30

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(s)" and hereinafter collectively referred to as Tree(s)) produce a
wide variety of significant psychological and tangible benefits for both
residents and visitors to the community Trees provide privacy modify

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

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

Section 9 12 005 Purpose and Principles

A The purposes of this Chapter are to

1 Establish the right of a residential real property owner,
whose property is located within the affected hillside areas as

depicted in Exhibit A, attached hereto and incorporated herein, to
preserve Preexisting Views from unreasonable obstruction by the
growth of Trees

2 Establish that real property owners are in need of a
process to resolve disputes among themselves concerning Views

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
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21
22 Trees, real property owners and residents should consider the
23 potential for View blockage, both currently and at Tree maturity
24 Persons have the right to seek civil remedies when threatened by
25 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 Views from
3 unreasonable obstruction by the growth of Trees when those Views
4 existed at the time they purchased their property The City shall
5 also establish a list of factors to be considered in determining
6 appropriate actions to restore such Views

7 5 When a Preexisting View obstruction dispute arises,
8 the parties should act reasonably to resolve the dispute through
9 friendly communication thoughtful negotiation compromise, and
10 other traditional means, such as discussions with the appropriate
11 neighborhood or homeowner association Those disputes not
12 resolved through such means shall follow the procedure
13 established herein,
14

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 Tree(s) by overzealous application
19 of provisions of this Chapter and
20

21 7 It is the intent of the City to discourage ill-considered
22 damage to Trees and promote proper use of Trees and
23 landscaping establishment and maintenance

24 **Section 9 12 010 Definitions**

25 For the purpose of this Chapter, the meaning and construction of words
26 and phrases is as follows
27

1 Arbitrator A neutral person who will conduct a process similar to a trial,
2 and who will hear testimony consider evidence and make a binding decision for the
3 disputing parties

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

6 Complainant Any real property owner (or legal occupant with written
7 permission of the property owner) who alleges Trees located within the immediate
8 vicinity and on the property of another person are causing unreasonable obstruction of
9 his or her Preexisting Views
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11 Crown Reduction/Shaping A method of comprehensive trimming that
12 reduces a Tree s height or spread Crown Reduction entails the reduction of the top
13 sides or individual limbs of a Tree by means of removal of leaders or the longest
14 portion of limbs to a lateral large enough to assume the terminal

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

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

22 Preexisting View A View which existed at the time a Complainant
23 became owner or occupant of a property

24 Primary Living Area The portion or portions of a residence from which a
25 View is observed most often by the occupants relative to other portions of the
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1 residence The determination of Primary Living Area is to be made on a case-by-case
2 basis

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

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

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

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

11 Tree(s) Any woody plant with the potential to obstruct views, including
12 but not limited to trees, shrubs, hedges, bushes and other vegetation References to
13 "Tree" shall include the plural

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

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

19 Tree Removal The elimination of any Tree from its present location

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

22 View(s) A scene from the Primary Living Area of a residence The term
23 "View(s)" includes both upslope and down slope scenes but is generally medium or
24 long range in nature as opposed to short range View(s) include but are not limited to

1 skylines, landmarks, distant urban settings distinctive geologic features, hillside
2 terrains ridges and bodies of water The term View(s) does not necessarily include
3 an unobstructed panorama of these features

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

6 **Section 9 12 015 Rights Established**

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

14 B In order to establish such rights pursuant to this Chapter, the
15 person must follow the process established in this Chapter In addition to
16 the above rights private parties have the right to seek remedial action for
17 imminent danger caused by Trees

18 C Nothing contained in this Chapter is intended to provide any
19 authority or process for the permitting of alterations to or the removal of
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22 City owned and maintained Trees

23 **Section 9 12 025 Criteria for Determining Unreasonable Obstruction**

24 The following criteria are to be considered (but are not exclusive) in
25 determining whether unreasonable obstruction has occurred
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- A The extent of obstruction of a Preexisting View from the Primary Living Area of the Complainant both currently and at Tree maturity
- B The quality of the Preexisting Views being obstructed, including obstruction of landmarks vistas, or other unique View features
- C The extent to which the Trees have grown to obscure the enjoyment of the View from the Complainant's property compared with the View which was available at the time the Complainant acquired or occupied his or her home
- D The extent to which the Complainant's Preexisting View has been diminished over time by factors other than Tree growth
- E 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

- A The hazard posed by a Tree to any person or structure on the property of the Complainant Party including, but not limited to, fire danger and the danger of falling limbs or Trees
- B Variety of the Tree its projected rate of growth and maintenance requirements

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

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

E Soil stability provided by the Tree 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 to the Tree Owner and to neighbors

G Energy conservation and or climate control provided by the Tree

H Wildlife habitat provided by the Tree

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

Section 9 12 035 Hierarchy of Restoration Actions

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

Action to be taken Restoration action shall be structured and implemented in accordance with the hierarchy established herein Restoration Action includes but is not limited to the following

1 Trimming

2 Thinning or Windowing,

3 Crown Reduction

4 Topping

5 Removal with replacement plantings, and

6 Removal without replacement plantings

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

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

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

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

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

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

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

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

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22 E *Topping* Topping as a Restorative Action should be used
23 with caution Topping can have deleterious effects on a Tree's health
24 appearance, and cost of maintenance Topping frequently results in
25 Stump Growth Tree Removal, with replacement plantings, may be a
26 preferable alternative
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1 F *Tree Removal* Tree Removal may be required where it is
2 essential to preserve Preexisting Views While normally considered a
3 drastic measure, Tree Removal can be the preferred solution in certain
4 circumstances

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

8 H *Permanence* Conditions of Restorative Action should be
9 memorialized in a recordable document, for all affected properties to help
10 notify subsequent real property owners of their applicability
11

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

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

15 A *Initial Discussions*

16 1 Complainant who believes Tree growth on the
17 property of another has caused unreasonable obstruction of a
18 Preexisting View from the Primary Living Area shall first notify the
19 Tree Owner in writing of such concerns,
20

21 2 The notification should if possible, be accompanied
22 by personal discussions to enable the Complainant and Tree
23 Owner to attempt to reach a mutually agreeable solution and shall
24 be followed up with a written confirmation of any agreed-upon
25 resolution and schedule for the required work of View restoration
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1 If personal discussions fail then neighborhood associations may
2 be willing to assist with the resolution of the obstruction dispute

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

14 4 After the Initial Discussion, if the parties do not agree
15 as to the existence and nature of the Complainant s obstruction or
16 to the appropriate Restoration Action or if the Initial Discussion is
17 refused the Complainant may proceed with the subsequent
18 dispute resolution process outlined herein with respect to Tree
19 Claim preparation, Mediation, Binding Arbitration, and litigation
20

21 B *Tree Claim Preparation*

22 In the event the Initial Discussion process fails to resolve the
23 dispute the Complainant must prepare a Tree Claim and provide a copy
24 to the Tree Owner, in order to pursue Mediation, Binding Arbitration or
25 litigation under the authority established by this Chapter

26 A Tree Claim shall consist of all of the following
27

1 1 *Evidence of Preexisting View* A written description of
2 the nature and extent of the alleged obstruction, including pertinent
3 and documentable physical evidence Evidence may include, but
4 is not limited to photographic prints, negatives or slides as well as
5 written testimony or declarations from residents living in the area
6 Such evidence must prove the absence of the obstruction at any
7 documentable time during the tenure of Complainant Evidence
8 confirming the ownership and the date of property acquisition of the
9 Complainant's property must be included,
10

11 2 *Evidence Regarding Unreasonable Tree Blockage*
12 The location of all Trees alleged to cause the obstruction, the
13 address of the property upon which the Trees are located and the
14 present Tree Owner's name and address,
15

16 3 *Evidence of Attempted Resolution* Evidence that an
17 Initial Discussion, as described in Section 9 12 045 (A), to resolve
18 the dispute has been made and has failed The Complainant must
19 provide physical evidence that written attempts at reconciliation
20 have been made and have failed Evidence may include, but is not
21 limited to, copies of and receipts for certified or registered mail

22 correspondence and

23 4 *Desired Action* Specific View Restoration Actions
24 proposed by the Complainant to resolve the unreasonable View
25 obstruction
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C *Mediation*

1 1 If the Initial Discussion attempt fails then the
2
3 Complainant shall send to the Tree Owner a written request to
4 participate in a Mediation process as a timely means to settle the
5 obstruction dispute,

6 2 Acceptance of Mediation by the Tree Owner shall be
7 voluntary, but the Tree Owner shall have no more than thirty (30)
8 days after service of notice to either accept or reject the offer of
9 Mediation Failure to respond shall be deemed formal refusal of
10 the Mediation process If Mediation is accepted, then the parties
11 shall mutually agree in writing to the selection of a Mediator
12

13 3 It is recommended the services of a professionally
14 trained Mediator be employed,

15 4 The Mediation meeting may be informal The
16 Mediation process may include the hearing of viewpoints of lay or
17 expert witnesses, and shall include a site visit to the properties of
18 the Complainant and the Tree Owner Parties are encouraged to
19 contact immediate neighbors and solicit input, and
20

21 5 The Mediator shall consider the purposes and policies
22 set forth in this Chapter in attempting to help resolve the dispute
23 The Mediator shall not have the power to issue binding orders for
24 Restorative Action, but shall strive to enable the parties to resolve
25 their dispute by written agreement in order to eliminate the need for
26 Binding Arbitration or litigation
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D *Binding Arbitration*

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2 1 In those cases where the Initial Discussion process
3 fails and where Mediation is declined by the Tree Owner or has
4 failed to resolve the Complainant's complaint, the Complainant
5 must offer in writing to submit the dispute to Binding Arbitration

6 2 Acceptance of Binding Arbitration by the Tree Owner
7 shall be voluntary. The Tree Owner shall have thirty -(30) days
8 after service of notice to accept or reject Binding Arbitration.
9 Failure to respond shall be deemed a formal refusal of Binding
10 Arbitration. If accepted, the parties shall agree on a specific
11 Arbitrator and shall indicate such agreement in writing, and

12 3 The Arbitrator shall use the provisions of this Chapter
13 to reach a fair resolution of the Tree Claim and shall submit a
14 complete written report to the Complainant and the Tree Owner.
15 This report shall include the Arbitrator's findings with respect to
16 Sections 9 12 025 and 9 12 030 of this Chapter, a pertinent list of
17 all mandated Restoration Actions with any appropriate conditions
18 concerning such actions, and a schedule by which the actions must
19 be completed. A copy of the Arbitrator's report shall be filed with
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22 the City Clerk upon completion. Any decision of the Arbitrator shall
23 be enforceable pursuant to the provisions of California Code of
24 Civil Procedure Section 1280 et seq

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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.

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

-17-

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2 **Section 9 12 055 Liabilities**

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

7 **Section 9 12 060 Enforcement**

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

12 B Under no circumstances shall the City have any
13 responsibility or obligation to enforce or seek any legal redress, civil or
14 criminal, for any decision made concerning a Tree Claim
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16 **Section 9 12 065 Limitations**

17 A It is not the intent of the City in adopting this Chapter to
18 affect obligations imposed by an existing easement, already existing City
19 Council and/or Planning Commission entitlements or a valid preexisting
20 covenant or agreement
21

22 B It is the intention of the City that all other portions of this
23 Chapter shall remain in effect in the event a portion of it is invalidated by
24 court action
25

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

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

5 SECTION 2 The Mayor of the City shall sign and City Clerk shall
6 attest to the passage of this ordinance The effective Date of this ordinance shall be
7 (30) days from the date of its adoption and prior to the expiration of fifteen (15) days
8 from the adoption hereof the City Clerk, pursuant to Government Code Section
9 36933(c)(1), shall cause a summary of this ordinance to be published in The Culver City
10 News along with the record of the vote for approval and adoption and shall post at City
11 Hall a certified copy of the full text of this Ordinance along with the record of the vote
12 thereon Additionally the City Clerk shall post a summary of this Ordinance in at least
13 three public places within the City pursuant to Section 517 of the City Charter
14

15 APPROVED and ADOPTED this _____ day of _____, 2006
16
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18 _____
19 ALBERT VERA, Mayor
20 City of Culver City California

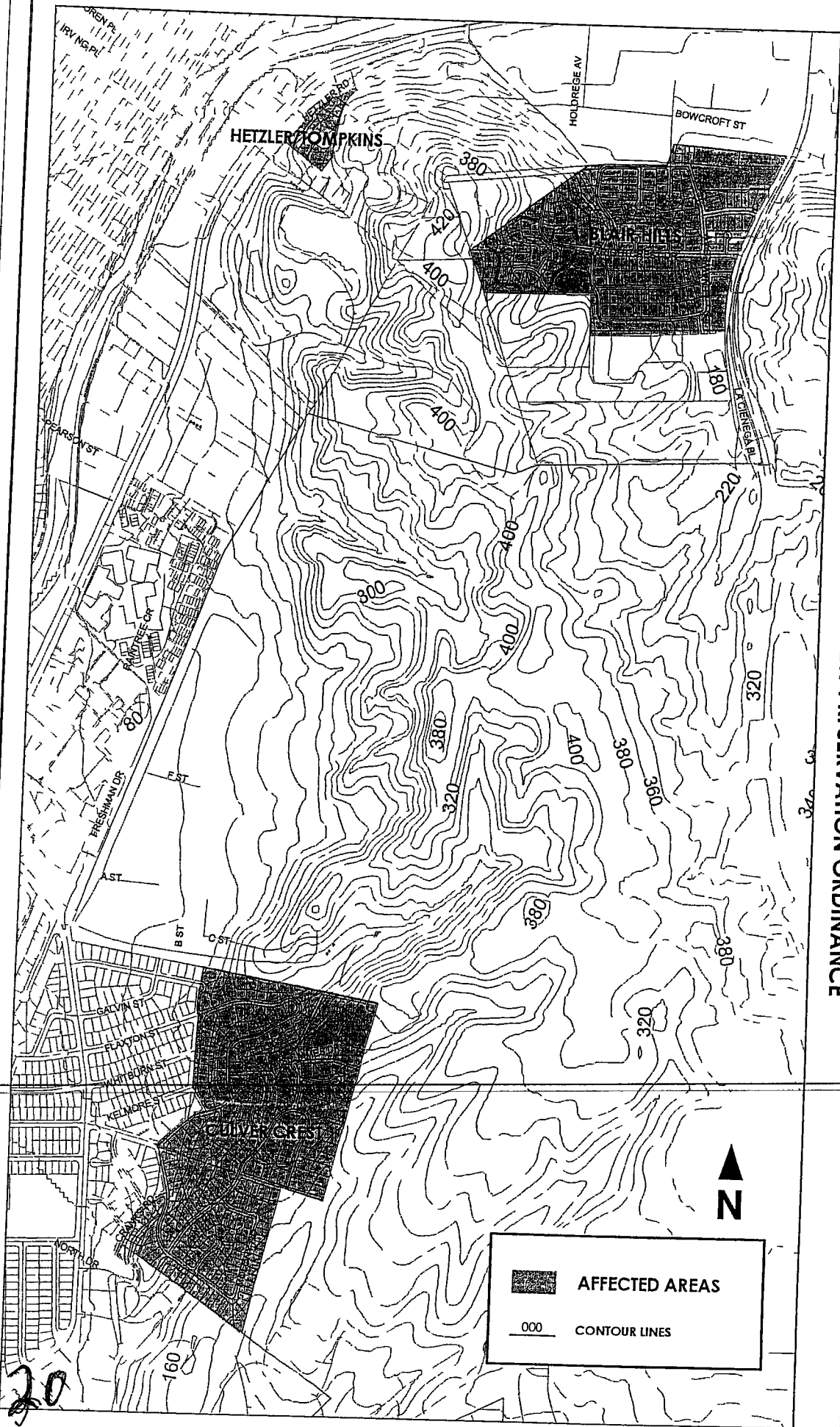
21 ATTEST

APPROVED AS TO FORM

22
23 _____
24 CHRISTOPHER ARMENTA
25 City Clerk
26
27
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CAROL A. SCHWAB
City Attorney

AREAS SUBJECT TO VIEW PRESERVATION ORDINANCE



Attachment No 2

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

AREAS SUBJECT TO VIEW PRESERVATION ORDINANCE

