

MEETING DATE 03/27/06

AGENDA ITEM Adoption 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____,<br>View Preservation Ordinance | 1-20         |

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The City Council of the City of Culver City, California, DOES HEREBY  
ORDAIN as follows

## CHAPTER 9 12 VIEW PRESERVATION (OBSTRUCTION FROM TREES)

**The City Council finds and declares as follows**

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

-1-

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

11  
12 D This ordinance shall be applicable to the affected hillside  
13 areas in the City, including Hetzler/Tompkins, Blair Hills, and Culver Crest,  
14 as shown in gray shading on the map attached hereto and incorporated  
15 herein as Exhibit A, and hereby made a part of this ordinance

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

17 A The purposes of this Chapter are to

18  
19 1 Establish the right of a residential real property owner  
20 whose property is located within the affected hillside areas as  
21 depicted in Exhibit A, attached hereto and incorporated herein to  
22 preserve Preexisting Views from unreasonable obstruction by the  
23 growth of Trees

24 2 Establish that real property owners are in need of a  
25 process to resolve disputes among themselves concerning Views  
26

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

14 2 The City also recognizes residents and real property  
15 owners cherish their Views of and from the hills of the City The  
16 City recognizes Views contribute greatly to the quality of life in the  
17 City, and promote the general welfare of the entire community,

19 3 Real property owners and residents should maintain  
20 Trees on their property in a healthy condition for both safety  
21 reasons and for preservation of Preexisting Views Before planting  
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                  6       It is the intent of the City for the provisions of this  
15                  Chapter to receive thoughtful and reasonable application It is not  
16                  the intent of the City to encourage clear-cutting or substantial  
17                  denuding of any property of its Tree(s) by overzealous application  
18                  of provisions of this Chapter and  
19                  of provisions of this Chapter and

20                  7       It is the intent of the City to discourage ill-considered  
21                  damage to Trees and promote proper use of Trees and  
22                  landscaping establishment and maintenance  
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                       

28       4

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

10           Crown Reduction/Shaping A method of comprehensive trimming that  
11 reduces a Tree s height or spread Crown Reduction entails the reduction of the top  
12 sides, or individual limbs of a Tree by means of removal of leaders or the longest  
13 portion of limbs to a lateral large enough to assume the terminal

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

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

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

22           Primary Living Area The portion or portions of a residence from which a  
23 View is observed most often by the occupants relative to other portions of the  
24

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  
20 City owned and maintained Trees

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

22 The following criteria are to be considered (but are not exclusive) in  
23 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

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

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

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

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

10 G Energy conservation and or climate control provided by the  
11 Tree

12 H Wildlife habitat provided by the Tree

13 I The extent to which the Tree provides historical context due  
14 to the age of the Tree and rare and interesting botanical species  
15

16 **Section 9 12 035 Hierarchy of Restoration Actions**

17 A If an unreasonable obstruction of a Preexisting View exists,  
18 a Mediator shall recommend or an Arbitrator or Court shall order  
19 Restorative Action based only on this Chapter Restorative Action may  
20 include written directions as to appropriate timing for such Restorative  
21 Action to be taken Restoration action shall be structured and  
22 implemented in accordance with the hierarchy established herein  
23 Restoration Action includes but is not limited to the following  
24

25 1 Trimming

26 2 Thinning or Windowing,  
27

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

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

1                   F     *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

27 A Tree Claim shall consist of all of the following  
28

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                   3       *Evidence of Attempted Resolution* Evidence that an  
16 Initial Discussion as described in Section 9 12 045 (A), to resolve  
17 the dispute has been made and has failed The Complainant must  
18 provide physical evidence that written attempts at reconciliation  
19 have been made and have failed Evidence may include but is not  
20 limited to, copies of and receipts for certified or registered mail  
21 correspondence, and  
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23                   4       *Desired Action* Specific View Restoration Actions  
24 proposed by the Complainant to resolve the unreasonable View  
25 obstruction  
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5 The Mediator shall consider the purposes and policies set forth in this Chapter in attempting to help resolve the dispute. The Mediator shall not have the power to issue binding orders for Restorative Action but shall strive to enable the parties to resolve their dispute by written agreement in order to eliminate the need for Binding Arbitration or litigation.

D *Binding Arbitration*

1  
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  
20 the City Clerk upon completion. Any decision of the Arbitrator shall  
21 be enforceable pursuant to the provisions of California Code of  
22 Civil Procedure Section 1280 et seq

E     *Litigation*

1                     1     In those cases where Binding Arbitration is declined  
2  
3     by the Tree Owner, then civil action may be pursued by the  
4     Complainant for resolution of the View obstruction dispute under  
5     the rights and provisions of this Chapter, and

6                     2     The litigant must state in the lawsuit Binding  
7     Arbitration was offered and not accepted, and a copy of the lawsuit  
8     was filed with the City Clerk. A copy of any order or settlement in  
9     the lawsuit shall also be filed with the City Clerk

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

12                    A     *Cost of Mediation and Arbitration*   Unless the parties agree  
13     otherwise the costs and fees for Mediation and Arbitration shall be  
14     subject to provisions of section 1284 2 of the California Code of Civil  
15     Procedure which states among other things, that parties to an arbitration  
16     should pay their own costs and a pro rata share of the Arbitrator' s fees  
17     and costs

18                    B     *Cost of Litigation*   To be determined by the Court or through  
19     a settlement

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

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

1  
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  
15

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           B     It is the intention of the City that all other portions of this  
22 Chapter shall remain in effect in the event a portion of it is invalidated by  
23 court action  
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1 **Section 9 12 070 Trees Owned and Maintained By the City**

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

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

16  
17 APPROVED and ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_ 2006

18  
19 \_\_\_\_\_  
20 ALBERT VERA, Mayor  
City of Culver City California

21 ATTEST

22 APPROVED AS TO FORM

23  
24 \_\_\_\_\_  
25 CHRISTOPHER ARMENTA,  
City Clerk

26 \_\_\_\_\_  
27 CAROL A SCHWAB,  
City Attorney

28 A06 00090

AREAS SUBJECT TO VIEW PRESERVATION ORDINANCE

Exhibit A

