

City of Culver City, California
City Council Agenda Item Report

Meeting Date: 01/23/06		Item Number: <u>A-3</u>	
AGENDA ITEM: Introduction and First Reading of an Ordinance to Amend Municipal Code Title 9, General Regulations, Regarding View Preservation (Obstruction from Trees).			
Contact Person/Dept: Jose Mendivil/CDD		Phone Number: (310) 253-5757	
Fiscal Impact: Yes ☐ No ☒		General Fund: Yes ☐ No ☒	
Public Hearing: ☐		Action Item: ☒ Attachments: ☒	
Public Notification: On 01/09/06, a postcard notice was mailed to all residents and property owners within and generally adjacent to Baldwin Hills (including Hetzler Road, Tomkins Way, Blair Hills, Culver Crest, and Youngsworth Property Owners). A postcard notice was also sent to Marta Zaragosa, Tom Camarella, the Chamber of Commerce, Downtown Business Association and all Culver City Homeowners Associations. On 01/09/06, email notification was sent to the Real Estate Advisory Brokers List and the Master Notification List. On 01/05/06, a notice was published in the Culver City News.			
Department Approval: Susan Evans (01/19/06)		CAO Approval: Martin R. Cole for Jerry B. Fulwood (01/19/06)	
City Controller Approval: N/A			

RECOMMENDATION:

That the City Council introduce, for first reading, Ordinance No. 2006-O____, to amend Title 9, General Regulations of the Culver City Municipal Code (CCMC) by adding Chapter 9.12 to include procedures for View Preservation (Obstruction from Trees).

BACKGROUND:

On October 24, 2005, the City Council received public comments on this item. However, they continued this item to November 7, 2005. At the November 7th City Council meeting, the Council continued the item to a date uncertain after they requested that staff make revisions to the ordinance. Before the Council today is a revised ordinance that staff believes addresses the Council's comments.

This item was originally scheduled for the February 14, 2005, City Council meeting but was taken off the agenda due to the landslides that occurred in the Culver Crest area. It was decided that due to the sensitivity of this issue and the landslides, it would be best to postpone the first reading of the view preservation ordinance.

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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 various options for City Council consideration (Attachment 2).

At the conclusion of the discussion, City Council directed staff to 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 trees through a "private right of action" process (Attachment 1).

A "private right of action" process is established through a City Ordinance, which enables property owners to resolve disputes among themselves pertaining to views obstructed by trees as well as provides judicial enforcement without direct City involvement.

In regards to views blocked by buildings or structures, the City Council felt the existing Zoning Code development standards that limit height and bulk of buildings was sufficient to address views obstructed by buildings. However, the City Council also directed staff to investigate the possibility of this same "private right of action" process related to views obstructed by buildings.

Pursuant to Council direction, Planning Division staff conducted further research on the issue of private right of action pertaining to both landscaping and buildings and the Planning Commission ("Commission") held a Study Session on November 10, 2004 to discuss staff's research, review the draft ordinance and provide input (Attachment 3).

DISCUSSION:

Private Right of Action

View Ordinances with a "private right of action" process were found in the Cities of Tiburon, Santa Barbara, and Berkeley and were used as the basis in formulating the proposed View Preservation Ordinance (Attachments 4, 5, and 6).

The primary concept of the proposed View Preservation Ordinance is that it establishes a process or series of steps, for handling view disputes and provides property owners the ability to seek legal redress in accordance to this defined process. The View Preservation Ordinance sets out procedures for initial discussions, mediation and arbitration (and possible litigation), but with the absence of any participation on the part of the City itself.

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The Ordinance requires that view “complainant” first approach the neighboring tree owner informally in a procedure called “Initial Discussion”. The complainant 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 preparing a tree claim, mediation and arbitration (voluntary on the part of the respondent) and finally, for litigation. At no point does the City become directly involved. The complainants are responsible for finding and paying for a mediation or arbitration service and for providing any expert information required, such as arborists reports.

The Ordinance also provides evaluation criteria to determine when an “unreasonable obstruction” has occurred by the growth of trees. A hierarchy of the types of restoration actions is also listed that discourages wholesale tree removal or cutting when less invasive methods such as trimming, thinning or crown reduction is possible (Attachment 1).

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. 8). The hillside areas to be governed by this ordinance are illustrated on the attached map (Attachment No. 9).

Planning Commission Comments

At the Study Session, the Planning Commission indicated that overall, the proposed View Preservation Ordinance was reasonable, fair and appropriate. The following revisions and input provided by the Planning Commission were incorporated to the proposed Ordinance:

- *Value of Trees.* Emphasize the value of trees along with the value of views at the beginning of Ordinance. Emphasize that trees are a great benefit to the community;
- *Landscaping and Maintenance.* Recognize the value of good landscaping and maintenance;
- *Hierarchy of Restoration Actions.* Prioritize “Restoration Actions” starting with the least drastic measures such as trimming and thinning;
- *Crown Reduction.* Incorporate less invasive methods of view restoration such as crown reduction since topping is sometimes very destructive to trees;

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- *Preexisting Views.* Clarify language throughout the Ordinance that view preservation applies only to views, which existed at the time the resident acquired their home. It would not apply to newly-gained views due to removal of an existing tree;
- *Tree Claim.* The tree claim preparation should apply immediately after the initial discussion process fails;
- *Emphasis on Initial Discussions.* Basic approach should be to establish a process including a series of steps beginning with the neighbors trying to resolve the issue on their own before proceeding to mediation, arbitration and litigation; and,
- *Various clarifications and corrections.* Delete references to “active use area” throughout the entire Ordinance and include provision for voluntary agreement between the parties.

Inheritors and View Lots

At the November 7th Council meeting, members of the public asked that the ordinance be revised to allow the transfer of a view restoration (resulting from a tree claim) in cases where a property is passed to a named inheritor so that the inheritor can take benefit of the view restoration action. The ordinance presented at the November 7th Council meeting only addressed successors in interest or purchasers. The issue of “view lots” was also mentioned at the Council meeting and public testimony included a request to further revise the ordinance to allow for the restoration of views at the time a particular property or lot was created. The Council requested changes to the ordinance that would grant heirs, as well as successors in interest or purchasers, the benefits of a view restoration action on the property to be transferred. The Council further asked that staff review how the ordinance could be changed to address the restoration of views that existed at the time a lot was created.

The ordinance before the Council (Attachment No. 1) addresses these issues and Attachment No. 7 is the ordinance in strike-out/underline form so that the Council can see how it was revised. The revised ordinance still allows the processing of tree claims for views that existed at the time of purchase. Not all claimants may have the evidence to prove that a view existed at the time their lots were created. Therefore, under such circumstances the ordinance would allow such claimants to re-establish a view, but re-establish the view which existed at the time of purchase.

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It will potentially be easier to demonstrate evidence of a view established at the time of purchase as opposed to a view which was established at the time of lot creation. With regard to the ordinance applying to views established at the time of lot creation, the benefit of the revisions to the ordinance is that by using the ordinance's criteria for determining unreasonable obstruction and restorative action and the hierarchy and guidelines for restorative actions, a process is established that potentially restores views that existed at time of lot creation. Conversely, the ability for individuals to provide proof that views existed when lots were first subdivided will be problematic as photographs or other forms of evidence may not exist. Further, if a tree claim to restore views at time of lot creation reaches the courts (through the process established under the ordinance), a judge could be put in a position to potentially rule in favor of the complainant which could lead to an increase in the complainant's property value (restoration of a view lot) with no compensation to the tree owner whose loss of trees caused the value increase.

Research on Private Right of Action on 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 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 define 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 commencement of construction or completion of the building.

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Many cities control the issue of views blocked by buildings through the development review (neighborhood compatibility) 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.

Meeting with Culver Crest Homeowners Association

At the request of the Culver Crest Homeowner's Association, representatives of the City Attorney's office and Planning staff attended their meeting on January 19, 2005 to provide an overview and to answer questions regarding the subject matter.

Some of the residents expressed an interest for the City to take on a more active role in the ordinance. They requested that an Advisory Committee be created that would include staff and residents to provide input and possibly mediation assistance.

Additional Comments by the Public

In March of 2005, after the first reading of the ordinance was postponed, two Culver City residents expressed concern over specifics in the proposed language. One resident thought that the cost of mediation and arbitration should be shared between the disputing parties (Section 9.12.050). Another resident stated that the limitation language (Section 9.12.065) did not take into account pre-existing Planning Commission entitlements with conditions that could conflict with restoration actions (the View Preservation Ordinance should not be used to override conditions for entitlements already existing). Staff agrees with both comments and they have been incorporated into the draft ordinance (Attachment No. 1).

Environmental Determination

The proposed View Preservation Ordinance is not a project as defined by Section 15378 of the CEQA Guidelines. Also, 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.

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ATTACHMENTS:

1. City Council Ordinance No. 2005-O____, View Preservation Ordinance
2. City Council Staff Report dated 7/26/04 and Meeting Minutes Excerpt
3. Planning Commission Staff Report dated 11/10/04 and Meeting Minutes Excerpt
4. Town of Tiburon regulations
5. City of Santa Barbara regulations
6. City of Berkeley regulations
7. City Council Ordinance No. 2005-O____, in Strikeout/Underline Format
8. Photographs of Views in Blair Hills and Culver Crest
9. Map of Hillside Areas in the City

MOTION:

That the City Council:

Introduce, for first reading, Ordinance No. 2005-O____, to amend Title 9, General Regulations of the Culver City Municipal Code (CCMC) by adding Chapter 9.12 to include procedures for View Preservation (Obstruction from Trees).