

ORDINANCE NO. O-2012-7

**AN ORDINANCE AMENDING TITLE 6 OF THE
GENERAL ORDINANCE CODE OF THE COUNTY OF ALAMEDA
RELATING TO PROTECTING VIEWS AND SUNLIGHT IN THE FAIRVIEW DISTRICT**

The Board of Supervisors of the County of Alameda ordains as follows:

SECTION I

Title 6 of the General Ordinance Code of the County of Alameda is amended by adding the following new Chapter 6.66:

CHAPTER 6.66 – VIEWS AND SUNLIGHT—FAIRVIEW DISTRICT

Sections:

6.66.010 – Purpose and Principles

This Chapter 6.66 is applicable only to the Fairview Area, as defined in Section 6.66.020. This Chapter is adopted by the County of Alameda for the following purposes:

- A. To 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.;
- B. To 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. The rights and the restorative process are based upon the following general principles:
 - 1. The County recognizes that residents and property owners cherish their outward views from the Hayward Hills, and that they also cherish the benefits of plentiful sunlight reaching their buildings and yards. The County recognizes that both outward views and plentiful sunlight reaching property contribute greatly to the quality of life in the Fairview area, and promote the general welfare of the entire community.
 - 2. The County also recognizes the desire of many of its residents and property owners for beautiful and plentiful landscaping, including trees. The County 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 County 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 County 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 County that the provisions of this Chapter receive thoughtful and reasonable application. It is not the intent of the County to encourage clear-cutting or substantial denuding of any property of its trees by overzealous application of provisions of this Chapter.

6.66.020 - Definitions

For the purpose of this Chapter 6.66, the meaning and construction of words and phrases shall be as follows:

“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.

“Benefitting Party” means a property owner who will gain from the increase in value (aesthetic or monetary) created by restorative action.

“Binding Arbitration” means a legal procedure as set forth in Section 1280 et seq. of the California 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.

“Fairview Area” means the portion of the unincorporated area of Alameda County that is coterminous with the current boundaries of the Fairview Fire

Protection District, excluding the Five Canyons development, as shown on the map on file with the Alameda County Planning Department.

“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 County of Alameda.

“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.

“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 the 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 the Fairview Area of unincorporated Alameda County 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. 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 include: (1) San Francisco Bay; (2) The San Mateo Bridge; (3) The San Francisco-Oakland Bay Bridge; (4) Mt. Diablo; (5) The Golden Gate Bridge; (6) Mt. Tamalpais; (7) East Bay/Pleasanton Hills.

“Windowing” means a form of thinning by which openings or "windows" are created to restore views and or sunlight.

6.66.030 – Rights Established.

A. Persons shall have the right to preserve and seek restoration of views or sunlight meeting all of the following criteria:

1. The views or sunlight must have existed at any time since the Complaining Party purchased or occupied a property;
2. The views or sunlight must have existed following the enactment of this Chapter;
3. The views or sunlight are from the primary living 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. Because this Chapter shall only be applicable to views or sunlight that existed following the enactment of this Chapter, the following protections exist for owners of trees that are blocking views or sunlight at the time of the enactment of this Chapter:

1. Owners of trees that are blocking views or sunlight at the time of the enactment of this Chapter shall have the right to grant or to refuse to grant the removal of any part of a tree which existed in the view or blocked the sunlight of any neighbor prior to the passage of this Chapter.

2. The granting of the right to remove, trim, top, or thin a tree that is blocking a view or sunlight at the time of the passage of the Chapter does not create an on-going right to the view or sunlight because the view was nonexistent at the time of the passage of this Chapter. This applies to any surrounding property or to property purchased after the passage of this Chapter. It is the responsibility of the seller of any property to inform any new buyer and their real estate agent about existing view rights.

3. Owners of trees that are blocking views or sunlight at the time of the enactment of this Chapter shall have no responsibility for the cost of the removal, trimming, topping, or thinning of a tree for any preexisting view or sunlight obstruction.

6.66.040 – Unreasonable Obstruction Prohibited

Within the Fairview Area of unincorporated Alameda County, no person shall plant, maintain, or permit to grow any tree which unreasonably obstructs the view from, or sunlight reaching, the primary living area of any other property.

6.66.050 – 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.

6.66.060 – Criteria for Determining Appropriate Restorative

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. The financial burden created by the costs of the restorative action. :

6.66.070 – Types of Restorative Action

- A. Restorative actions include, but are not limited to, the following:
 - 1. Trimming
 - Thinning or windowing
 - 3. Topping
 - 4. Removal with 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. Removal of trees shall be discouraged and shall be a last resort. Where removal is required, replacement by appropriate species shall 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 and an arborist report may be required.

6.66.080 – County Guidelines Concerning Restorative Action

The County of Alameda 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 County, including Blue Gum Eucalyptus, Monterey Pine, Monterey Cypress trees, or any other tree which generally grows more than 3 feet per year in height and is capable of reaching a height of over 35 feet at maturity. When considering restorative action for "undesirable" trees, aggressive action is preferred.

B. 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.

C. 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.

D. 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.

E. Topping. Topping as a restorative action should be used with caution. Topping can have deleterious effects on a tree's health, appearance, and cost of maintenance. Topping frequently results in stump growth. Tree removal, with replacement plantings, may be a preferable alternative.

F. 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 some circumstances.

G. 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.

H. Permanence. Conditions of Restorative Action should be recorded and run with the land to help guarantee permanent preservation of pre-existing views and sunlight.

6.66.090 – Process for Resolution of Obstruction Disputes

The following process shall be used in the resolution of view and sunlight obstruction disputes between parties, recognizing that the Complaining Party has the burden of proof for determining view impacts.

A. Initial Reconciliation: A Complaining Party who believes that tree growth on the property of another has caused unreasonable obstruction of views or sunlight from the primary living area or active use area shall notify the Tree Owner in writing of such concerns.

The notification should, if possible, be accompanied by personal discussions to enable the Complaining Party and Tree Owner to attempt to reach a mutually agreeable solution. If personal discussions fail, neighborhood associations may be willing to assist with the resolution of the obstruction dispute.

B. Mediation: If the initial reconciliation attempt fails, the Complaining Party shall propose mediation as a timely means to settle the obstruction dispute.

1. Acceptance of mediation by the Tree Owner shall be voluntary, but the Tree Owner shall have no more than 30 days from service of notice to either accept or reject the offer of mediation. If mediation is accepted, the parties shall mutually agree upon a Mediator within 30 days. It is recommended that the services of a professionally trained mediator be employed. The County of Alameda Planning Department can provide a list of mediators.

2. The mediation meeting may be informal. The mediation process shall include the option to hear viewpoints of lay or expert witnesses, and shall include a site visit to the properties of the Complaining Party and the Tree Owner. Parties are encouraged to contact immediate neighbors and solicit input.

3. 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.

C. Tree Claim Preparation. In the event that the Initial Reconciliation process fails, and mediation either is declined by the Tree Owner or fails, the Complaining Party must prepare a Tree Claim, and provide a copy to the Tree Owner, in order to pursue either binding arbitration or litigation under the authority established by this Chapter.

A Tree Claim shall consist of all of the following:

1. A description of the nature and extent of the alleged obstruction, including pertinent and corroborating physical evidence. Evidence may include, but is not limited to photographic prints, negatives or slides. Such evidence must show absence of the obstruction at any documentable time during the tenure of the Complaining Party. Evidence to show the date of property acquisition or occupancy by the Complaining Party must be included. Such evidence may include, but is not limited to, photographic prints that are date stamped.
2. The location of all trees alleged to cause the obstruction, the address of the property upon which the tree(s) are located, and the present tree owner's name and address.
3. Evidence of the failure of initial reconciliation, as described herein, to resolve the dispute. The Complaining Party must provide physical evidence that written attempts at reconciliation have been made and have failed. Evidence may include, but is not limited to, copies of and receipts for certified or registered mail correspondence.
4. Evidence that mediation, as described herein, has been attempted and has failed, or has been declined by the Tree Owner.
5. Specific restorative actions proposed by the Complaining Party to resolve the unreasonable obstruction.

D. Binding Arbitration. In those cases where the initial reconciliation process fails and where mediation is declined by the Tree Owner or has failed, the Complaining Party must offer in writing to submit the dispute to binding arbitration, and the Tree Owner may elect binding arbitration.

1. The Tree Owner shall have 30 days from service of notice to accept or reject binding arbitration. If accepted, the parties shall agree on a specific Arbitrator within 30 days, and shall indicate such agreement in writing. The County of Alameda Planning Department can provide a list of arbitrators.
2. The Arbitrator shall use the provisions of this Chapter to reach a fair resolution of the Tree Claim and shall submit a complete written report to the Complaining Party and the Tree Owner. This report shall include the Arbitrator's findings, a pertinent list of all mandated Restorative Actions with any appropriate conditions concerning such actions, and a schedule by which the mandates must be completed. A copy of the Arbitrator's report shall be filed with County Counsel and the Planning Director upon completion. Any decision of the Arbitrator shall be enforceable pursuant to the provisions of California Code of Civil Procedure Section 1280 et seq.

E. Litigation. In those cases where binding arbitration is declined by the Tree Owner, then civil action may be pursued by the Complaining Party for resolution of the view or sunlight obstruction dispute under the rights and provisions of this Chapter.

The litigant must state in the lawsuit that arbitration was offered and not accepted, and that a copy of the lawsuit was filed with County Counsel and the Planning Director.

6.66.100 – Apportionment of Costs

A. Cost of Restorative Action: The Complaining Party shall bear all costs of the Restorative Action when it is clear that the Complaining Party is a Benefiting Party, and the Tree Owner is a willing participant in the restorative process, and the Tree Owner provides reasonable access allowing the Complaining Party to complete the Restorative Action.

If there is a dispute between the parties as to the need or type of Restorative Action, and the parties cannot resolve their differences quickly and efficiently and must rely on mediation, arbitration, or litigation pursuant to Section 6.66.090, then the costs of any Restorative Action will be apportioned in a fair and reasonable manner, taking into account, among other relevant factors, the financial burden of the costs of the Restorative Action and whether the Complaining Party is a Benefiting Party.

B. Cost of Mediation and Arbitration: The Complaining Party and the Tree Owner shall equally pay the cost of Mediation or Arbitration fees, unless they agree otherwise or allow the Mediator or Arbitrator discretion for allocating costs.

C. Cost of Litigation: To be determined by the Court or through a settlement.

6.66.110 – Liabilities.

The issuance of mediation findings, an arbitration report or a court decision shall not create any liability of the County with regard to the Restorative Actions to be performed.

Failure of the County to enforce provisions of this Chapter shall not give rise to any civil or criminal liabilities on the part of the County.

6.66.120 – Limitations.

It is not the intent of the County in adopting this Chapter to affect obligations imposed by an existing easement or a valid pre-existing covenant or agreement.

6.66.130 – Trees on County-owned Property.

Requests or complaints regarding trees located on County-owned property should be made in writing to the Planning Director for consideration in accordance with policies adopted by the County.

SECTION II

This ordinance shall take effect and be in force thirty (30) days from and after the date of passage and before the expiration of fifteen days after its passage it shall be published once with the names of the members voting for and against the same in the Inter-City Express, a newspaper published in the County of Alameda.

Adopted by the Board of Supervisors of the County of Alameda, State of California, on 28th day of February, 2012 by the following called vote:

AYES: Supervisors Carson, Chan, and President Miley - 3
NOES: None
EXCUSED: Supervisors Haggerty and Lockyer - 2

NATE MILEY
President of the Board of Supervisors
County of Alameda, State of California

ATTEST: Crystal Hishida Graff
Clerk of the Board of Supervisors, County of Alameda

Approved as to Form
DONNA R. ZIEGLER, County Counsel

By: BRIAN WASHINGTON