

ORDINANCE NO. 596 N. S.

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN
OF TIBURON AMENDING PROVISIONS OF TITLE IV,
CHAPTER 15 OF THE TIBURON MUNICIPAL CODE
(VIEW AND SUNLIGHT OBSTRUCTION FROM TREES)**

The Town Council of the Town of Tiburon does ordain as follows:

Section 1. Findings.

- A. The Town Council adopted its current View and Sunlight Obstruction from Trees regulations in 1991, codified as Title IV, Chapter 15 of the Municipal Code.
- B. The Town Council has received information that there is a need for more detailed information to be provided by a tree claimant about the scope of any tree claim prior to making an offer for mediation. Additional amendments are proposed to the reconciliation provisions and the mediation provisions to address this need and to encourage the parties to resolve any dispute with a third party mediator.
- C. The Town Council held a public hearing on April 20, 2022, and has heard and considered any and all public testimony on this matter.
- D. The Town Council finds that all notices and procedures required by law attendant to the adoption of this Ordinance have been followed.
- E. The Town Council finds that the amendments made by this Ordinance are necessary for the protection of the public health, safety, and welfare, and that the amendments will have no deleterious effect on future use of the regulations for their intended purposes.
- F. The Town Council has found that the amendments made by this Ordinance are consistent with the goals and policies of the Tiburon General Plan and other adopted ordinances and regulations of the Town of Tiburon.
- G. The Town Council finds that adoption of this ordinance is statutorily exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15378 of the CEQA Guidelines in that it does not constitute a project under CEQA, and if it were found to constitute a project, it would be exempt pursuant to the general rule set forth in CEQA Guidelines Section 15061(b)(3).

Section 2. Adoption of Amendments to the Tiburon Municipal Code.

Title IV, Chapter 15 of the Tiburon Municipal Code is amended as follows:

A. Section 15-9 of the Tiburon Municipal Code is hereby amended to read as follows:

The following process shall be used in the resolution of view and sunlight obstruction disputes between parties.

(a)(1) 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. Any such writing shall include, at a minimum, the following information:

- a. A description of the nature and extent of the alleged obstruction;
- b. The location of all trees alleged to cause the obstruction; and
- c. The specific restorative action proposed by the complaining party to resolve the unreasonable obstruction.

(2) 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.

(3) For trees located on town-owned property, see section 15-16.

(b)(1) Mediation. If the initial reconciliation attempt fails, the complaining party shall propose mediation as a timely means to settle the obstruction dispute no earlier than thirty days from providing the notice under subdivision (a)(1) above.

(2) Acceptance of mediation by the tree owner shall be voluntary, but the tree owner shall have no more than thirty 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 twenty days of the acceptance of mediation, or the offer of mediation shall be deemed to have been declined. Should the parties agree to mediation, and the parties sign a waiver as approved by the Town Attorney, the parties may jointly request from the Town a list of recommended mediators. If the Town receives a joint request, the Town will provide a list of three recommended mediators to the parties, and pay for one hour of the selected mediator's time spent attempting to resolve the disputed claim.

(3) It is recommended that the services of a professionally trained mediator be employed.

(4) The mediation meeting may be informal. The mediation process may include the hearing of 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.

(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 reduce the potential for litigation.

B. Section 15-12 of the Tiburon Municipal Code is hereby amended to read as follows:

(a) In those cases where the initial reconciliation process fails, and mediation is either declined by the tree owner or fails, 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 relating to the issues as specified in writing under Section 15-9(a)(1).

(b) The litigant must state in the lawsuit that initial reconciliation failed and that mediation was either declined by the tree owner or failed, and that a copy of the lawsuit was filed with the town attorney. A copy of any order or settlement in the lawsuit shall also be filed with the town attorney.

Section 3. Severability.

If any section, subsection, clause, sentence, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of a Court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Ordinance. The Town Council of the Town of Tiburon hereby declares that it would have passed this Ordinance, any section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases may be declared invalid or unconstitutional.

Section 4. Effective Date.

This ordinance shall be in full force and effect thirty (30) days after the date of adoption. Pursuant to the provisions of the California Government Code, a summary of this ordinance shall be prepared by the Town Attorney. At least five (5) days prior to the Town Council meeting at which adoption of the ordinance is scheduled, the Town Clerk shall (1) publish the summary in a newspaper of general circulation in the Town of Tiburon, and (2) post in the office of the Town Clerk a certified copy of this ordinance. Within fifteen (15) days after the adoption of this ordinance, the Town Clerk shall (1) publish the summary in a newspaper of general circulation in the Town of Tiburon, and (2) post in the office of the Town Clerk a certified copy of the ordinance along with the names of those Council members voting for and against the ordinance.

This ordinance was read and introduced at a regular meeting of the Town Council of the Town of Tiburon, held on April 20, 2022, and was adopted at a regular meeting of the Town Council of the Town of Tiburon, held on May 4, 2022 by the following vote:

AYES: COUNCILMEMBERS: Fredericks, Griffin, Ryan, Welner

NAYS: COUNCILMEMBERS: None

ABSENT: COUNCILMEMBERS: Thier

JON WELNER, MAYOR
TOWN OF TIBURON

ATTEST:

LEA STEFANI, TOWN CLERK