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I have been trying to locate some ordinances that regulate or restrict the use of property in order to preserve a view from a neighboring property. It seems that such regulations are relatively rare probably, at least in part, by adopting such an ordinance, the governmental entity is placing itself in the middle of a somewhat private dispute. The general law is that a property owner does not have the right to any sort of view across a neighbor's property. Therefore, in an effort to preserve a view for one property owner, the rights of the adjoining owner are necessarily impacted. Some current thoughts are as follows:

- If the Town adopts an Impact Review Ordinance, the placement of buildings can potentially be addressed in an effort to preserve views. Again, however, attempting to protect the view from a neighboring property will affect the development potential on the property seeking a building permit.
- A new Landscape Code or Ordinance could be adopted to regulate the placement of trees and landscaping in rear yard areas of waterfront properties in an effort to preserve views. The Code could regulate landscaping on new construction as well as the addition of landscaping to existing homes.
- The maximum height of wall and fences could be lowered in rear yards of waterfront properties.
- I ran across an interesting Ordinance from El Cerrito, California. (a copy is attached) The Ordinance is interesting in that it sets up a mediation/ arbitration/ litigation procedure but keeps it as a private matter between property owners without the involvement of the Town.

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Chapter 10.90 - OBSTRUCTION OF VIEWS BY TREES ON PRIVATE PROPERTY*

Sections:

10.90.110 - Principles.

This Chapter is enacted in recognition of the following findings:

- A. The attractiveness and livability of the city are enhanced by its trees and its views of surrounding areas obtained from the range of elevations found in the city;
- B. Both views and trees contribute to the quality of life in El Cerrito and promote the general welfare of the entire community;
- C. Views and trees contribute to both the economic and the aesthetic value as well as the public health benefits to the community;
- D. When disputes arise over views obstructed by trees, neighbors are expected to make every effort to come to agreement among themselves and maintain positive relationships within the community;
- E. When all efforts have failed to produce an agreement, it is the intent of this chapter to provide a method to resolve disputes between neighbors and to allow the balancing of the benefits of both treescapes and beautiful views.

(Ord. 2004-1 Div. 1 (part), 2004)

10.90.120 - Purpose.

The ordinance codified in this chapter is enacted to:

- A. Promote the public health, safety and welfare;
- B. Preserve and promote the views which existed at the time a person purchased or acquired a property, from unreasonable obstruction by the growth of trees;
- C. Preserve and promote the aesthetic benefits provided by trees;
- D. Establish a process for the resolution of disputes between private property owners relating to the restoration of views when unreasonably obstructed by the growth of trees;
- E. Encourage the maintenance of trees in such a manner that the growth of the trees will not unduly diminish desirable views or pose a hazard to neighboring properties;
- F. Discourage the overzealous application of the provisions of this chapter in a manner that results in an unreasonable loss of trees;
- G. Encourage the thoughtful and reasonable application of the provisions of this chapter so as to balance the benefits of trees and views;
- H. Prohibit the planting of certain species of trees that, because of their rapid growth, height at maturity, dense foliage, shallow root structure, flammability, breakability and/or invasiveness, are inappropriate in an urban environment.

(Ord. 2004-1 Div. 1 (part), 2004)

10.90.130 - Definitions.

Unless otherwise specifically provided, or required by the context, the following terms shall have these meanings for the purpose of this chapter:

"Arbitrator" means a neutral person trained in conducting a process similar to a trial which includes the hearing of testimony, consideration of evidence and rendering of a decision for the claimant and tree owner.

"Binding arbitration" means the procedure set forth in California Code of Civil Procedure section 1280 et seq.

"Claimant" means any owner of real property who believes in good faith that the growth, maintenance or location of trees situated on the property of another diminishes views from his or her property and thereby the beneficial use or enjoyment of his or her property.

"Mediator" means any trained and experienced mediator acceptable to both claimant and tree owner to mediate a tree dispute.

"Person" means any individual, corporation, partnership, firm or other legal entity, excluding the city of El Cerrito.

"Primary living area" means the portion or portions of the primary residence structure from which a view is observed. The determination of primary living area is to be made on a case-by-case basis, by mutual agreement or by a mediator, arbitrator or judge.

"Qualified arborist" means an arborist possessing the appropriate California Contractor's License or certification as an arborist.

"Removal" means the elimination of any tree from its current location.

"Restorative action" means the thinning, trimming, topping, removal, or removal with necessary replacement planting, of any tree.

"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 removal of the upper portion of a tree's trunk or primary leader.

"Tree" means any woody perennial plant, usually with one main trunk, obtaining a height of at least fifteen feet at maturity. The term tree includes the plural and the term trees includes the singular.

"Tree owner" means the owner of real property, excluding the city of El Cerrito, on which are situated trees whose growth, maintenance or location allegedly diminishes the beneficial use and enjoyment of the property of another.

"Trimming" means the selective removal of portions of branches from a tree so as to modify the tree's form, shape or profile and/or improve the tree's appearance.

"Unreasonable obstruction" means the substantial blocking or diminishing of views from the primary living area that existed at the time of purchase or acquisition of the view claimant's property, due to the growth or maintenance of trees on private property and shall be determined pursuant to the criteria listed in Section 10.90.160.

"View" means a range of sight, distant or panoramic in nature, from a primary living area of a residence including upslope or downslope pleasing vistas, prospects or scenes. Views include, but are not limited to, the sight of distinctive geologic features, bays, oceans, skylines, hillside terrains, treescapes, bridges, landmarks and distant cities.

"View claim" means the claimant's verified written basis for action under this chapter, which clearly establishes all of the following:

1. The precise nature and extent of the alleged view obstruction and particulars of the manner in which it diminishes the beneficial use or enjoyment of the claimant's property, including all pertinent corroborating physical evidence available. Such evidence must show the date of property purchase or acquisition as well as absence of the obstruction at that time;
2. The exact location and description of all trees alleged to cause a view obstruction, the address of the property on which the trees are located, and the present tree owner's name and address. This requirement may be satisfied by the inclusion of tree location, property address and tree owner information on a valid property survey or plot plan;
3. Any mitigating actions proposed by the parties involved to resolve the alleged obstruction;
4. The failure of personal communication, initial reconciliation and mediation between the claimant and the tree owner to resolve the alleged view obstruction as set forth in this chapter. The claimant must provide physical evidence that written attempts to resolve the dispute pursuant to the provisions of this chapter have been made and failed. Such evidence may include, but is not limited to, copies of and receipts for certified mail correspondence.

"Windowing" means the creation of openings or windows through the thinning of trees in order to restore or preserve views.

(Ord. 2004-1 Div. 1 (part), 2004)

10.90.140 - View obstruction prohibited.

No person shall allow a tree to unreasonably obstruct, as defined, the view from the primary living area of any other parcel of property within the city of El Cerrito.

To establish a view claim, a person shall follow the process established in this chapter. Additionally, persons shall have the right to seek restorative action from imminent danger caused by trees.

(Ord. 2004-1 Div. 1 (part), 2004)

10.90.150 - Procedure for resolution of disputes.

The following process shall be used in the resolution of view obstruction disputes between tree owners and claimants:

- A. Initial Reconciliation. The claimant first shall attempt to notify the tree owner verbally of his or her concerns regarding the obstruction of views from trees on the tree owner's property. The parties shall attempt to resolve their concerns to the satisfaction of both parties while maintaining a spirit of compromise.
- B. Mediation. If the initial reconciliation fails to result in an agreement regarding restorative action, the claimant shall notify the tree owner in writing of his or her desire to present the dispute to a mediator for resolution. Acceptance of mediation by the tree owner is voluntary, but the tree owner shall have no more than thirty days from service of the notice to either accept or reject the offer of mediation. If the tree owner accepts mediation, he or she shall do so in writing. The parties shall have fifteen days from service of notice of the tree owner's acceptance of mediation to select a mutually agreeable mediator.

Mediation shall be an informal process that may include the hearing of viewpoints of lay or expert witnesses and site visits to the properties of the claimant and tree owner. The mediator shall consider the provisions of this chapter in attempting to help the parties resolve their dispute. The mediator shall not have the authority to issue binding orders for restorative action, rather the mediator shall strive to aid the parties in resolving their dispute through a written agreement that eliminates the need for binding arbitration or litigation.

Unless the parties mutually agree otherwise, mediation shall be completed no later than sixty days from selection of a mediator.

- C. Binding Arbitration. Should initial reconciliation fail and mediation is either declined by the tree owner, the tree owner fails to respond to the claimant's proposal of mediation, the parties are unable to mutually agree on a mediator or mediation is not completed within the time allowed pursuant to this chapter or by mutual agreement of the parties, the claimant shall prepare a view claim as defined by this chapter.

The claimant shall serve the view claim on the tree owner along with a request to submit the dispute to binding arbitration. The tree owner shall have thirty days from service of the view claim to accept or reject the offer of binding arbitration. Such acceptance shall be in writing and shall be served on the claimant. If accepted, the parties shall agree on an arbitrator within twenty-one days of service of the tree owner's acceptance of binding arbitration. Such agreement shall be in writing.

The arbitrator shall use the provisions of this chapter to resolve the dispute in a fair and equitable manner. The arbitrator's final written report shall include findings, a list of mandated restorative actions and a timeframe within which the restorative action shall be completed. The report shall be submitted to the parties and shall be enforceable pursuant to the provisions of California Code of Civil Procedure section 1280 et seq.

- D. Litigation. Should binding arbitration be declined by the tree owner or the tree owner fails to accept the claimant's request to submit the dispute to binding arbitration within thirty days of service of the request for arbitration, civil action may be pursued by the claimant for resolution of the view obstruction dispute pursuant to the provisions of this chapter, provided however, that any such action must be commenced within nine months of the date arbitration is declined or not accepted pursuant to the time allowed by this chapter.

(Ord. 2004-1 Div. 1 (part), 2004)

10.90.151 - Service of notices.

Notices required to be provided pursuant to the provisions of this chapter shall be in writing and service is deemed effective upon either 1) personal service, 2) delivery by U.S. Mail, if certified and return receipt requested, or 3) other next day or second day delivery service provided proof of delivery is provided to the sender.

(Ord. 2004-1 Div. 1 (part), 2004)

10.90.160 - Criteria for resolution of disputes.

In adjudicating all disputes, unless otherwise specifically provided, the provisions of this chapter are to be used to resolve view claim disputes.

- A. View Character. The character of a view shall be determined by evaluating:
1. The vantage point(s) from which the view is obtained;
 2. The existence of landmarks or other unique features in the view;
 3. The extent to which the view is diminished by factors other than the tree involved in the claim; and
 4. Whether the view is from the primary living area of the claimant's property.
- B. View Obstruction. The existence and character of the view obstruction shall be determined by evaluating:
1. The extent of the alleged view obstruction, expressed as a percentage of the total view, and calculated by means of a surveyor's transit or by photography or both; and
 2. The extent to which landmarks or other unique features in the view are obstructed.
- C. Benefits and Burdens. The extent of benefits and/or burdens derived from the trees alleged to be obstructing the claimant's view shall be determined with consideration given to the contribution of the trees to the following factors:
1. Visual and auditory screening, privacy, wind screening, and shade provided to the tree owner and neighboring properties;
 2. Wildlife habitat provided by the trees;
 3. Soil stability, as determined by soil structure, degree of slope and extent of the tree's root system;
 4. Energy conservation and/or climate control, and/or interference in the efficient operations of claimant's solar energy system that was operating prior to the obstruction;
 5. Effects on neighboring vegetation;
 6. Visual and aesthetic quality of the trees, including, but not limited to, species characteristics, size, form, texture, color, vigor and location;
 7. The hazard posed by the trees to persons or structures on the claimant's property, including but not limited to, fire danger or the danger of falling limbs or trees;
 8. Other tree-related factors, including, but not limited to, indigenous tree species, specimen tree quality, rare tree species and historical value; and
 9. Degree of interference with sunlight reaching claimant's property.
- D. Restoration Evaluation. Any restorative action shall be evaluated based on the standards of this chapter and in consideration of the following:

1. The effectiveness of the restorative action in reducing the view obstruction;
 2. Any adverse impact of the restorative action on the benefits derived from the trees in question;
 3. The structural and biological effects of the restorative action on the trees in question;
 4. The cost of the restorative action, as determined by consultation with licensed landscape architects or professional tree removal companies; and
 5. Effects upon the privacy of the tree owner.
- E. Restoration Limits. Restorative actions may include the following:
1. Trimming;
 2. Thinning;
 3. Windowing;
 4. Topping;
 5. Tree removal with necessary replacement planting; and/or
 6. No action.
- F. Restoration Implementation. Restorative actions shall be undertaken subject to the following:
1. Restorative actions must be consistent with all applicable statutes, ordinances and regulations;
 2. Where possible, restorative actions shall be limited to the trimming and/or thinning of branches; but, when such is not a feasible solution, windowing is the preferable solution;
 3. When thinning, trimming and windowing of branches is not a feasible solution, topping shall be considered;
 4. Topping shall be employed as a restorative measure only when it would not compromise the viability and stability of the tree and where it is species appropriate as determined by the International Society of Arboriculture;
 5. Restorative action including thinning, trimming, windowing and/or topping shall be accomplished with consideration given to the proper time of the year for such actions and in accordance with standards established by the International Society of Arboriculture for use in the State of California.
 6. Removal shall be considered only when all other restorative actions are judged to be ineffective and shall be accompanied by replacement plantings of appropriate plant material necessary to restore the maximum level of benefits lost due to the removal of the trees. At the tree owner's option, replacement plantings shall be required on the tree owner's or the claimant's property;
 7. In those cases where removal eliminates or significantly reduces the tree owner's visual screening of privacy, replacement screen plantings shall, at the tree owner's option, be established;
 8. The tree owner may choose tree removal with replacement plantings as an alternative to trimming, thinning, windowing or topping;
 9. All trimming, thinning, windowing, topping or removal required under this chapter shall be performed pursuant to the recommendations of a qualified arborist; and
 10. Restorative action may include written conditions concerning ongoing maintenance and should be recorded, made to run with the land and apply to successors in interest.

(Ord. 2004-1 Div. 1 (part), 2004)

10.90.170 - Apportionment of costs.

A. Costs Associated with Procedures for Resolution of Disputes.

1. Mediation. Unless the parties agree otherwise, the costs of a mediator shall be shared equally between the claimant and the tree owner. The parties shall be responsible for their own costs of individual counsel or experts.
2. Binding Arbitration. Apportionment of the costs of an arbitrator shall be determined by mutual agreement of the parties or by the arbitrator.
3. Litigation. In the event a claimant's view claim is denied, or no restorative action is ordered by the court, in addition to his or her own attorney fees, the claimant shall be required to pay the tree owner's reasonable attorney fees. If that is not the case, the costs associated with litigation shall be determined by mutual agreement, settlement or by the court.

B. Costs of Restorative Action. The parties may determine the apportionment of the costs of restorative action by mutual agreement or a mediator, arbitrator or judge may apportion such costs.

(Ord. 2004-1 Div. 1 (part), 2004)

10.90.180 - Liability.

The issuance of mediation findings, an arbitration report or a court decision shall not create any liability on the part of the city of El Cerrito with regard to restorative action to be performed. With the exception of Section 10.90.190, the city undertakes no enforcement responsibility or authority regarding the provisions of this chapter.

(Ord. 2004-1 Div. 1 (part), 2004)

10.90.190 - Planting of certain trees prohibited.

Due to their rapid growth, height at maturity, dense foliage, shallow root structure, flammability, breakability or invasiveness, no person shall plant or allow a new tree that results from the sprouting or other self-propagation, on private property within the city, from any Monterey Pine, Monterey Cypress, Coast Redwood, Red Gum Eucalyptus or Blue Gum Eucalyptus.

(Ord. 2004-1 Div. 1 (part), 2004)

10.90.200 - Limitations.

The provisions of this chapter are not intended to affect obligations imposed by any easement, covenant or agreement.

(Ord. 2004-1 Div. 1 (part), 2004)

10.90.210 - Enforcement.

The enforcement of rights granted by this chapter shall be by the private parties involved. The claimant shall have the right to bring injunctive action to enforce any order made pursuant to this chapter.

The planting or permitting of any new tree from the sprouting or other self-propagation in violation of Section 10.90.190 of this chapter shall be deemed a public nuisance and may be prosecuted as a misdemeanor.

(Ord. 2004-1 Div. 1 (part), 2004)