

DATE: December 8, 1994

TO: Members of the Midcoast Community Council

FROM: Members of the Views Subcommittee as indicated on Attachment A

RE: Status of View and Solar Access Ordinance

Attached please find the most recent draft of the View and Solar Access Ordinance as proposed by the Views Subcommittee. The subcommittee was formed in June 1993 and has deliberated on a regular basis for approximately 19 months.

The subcommittee reviewed and drew upon provisions from the following ordinances:

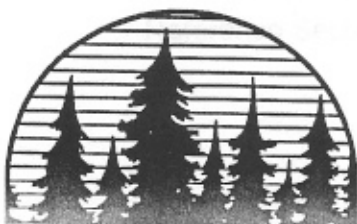
- Oakland
- Tiburon
- Berkeley
- San Francisco
- Hillsborough
- Belvedere (proposed)

and contacted many communities who do have tree related ordinances, but do not address view and solar access issues.

In addition, professional assistance and expert testimony were acquired during the review process. Per the request of the MCC chairperson, San Mateo County trained mediators volunteered to facilitate subcommittee meetings beginning in February 1994. Also, we consulted with the following professionals:

- R. Fimmel Attorney, specializing in real estate law, practicing for 20 years
 Trained real estate mediator and arbitrator
 Member of Alternative Dispute Resolution Committee (ADRC)
- D. Yniguez Certified Arborist
 Attorney, specializing in issues relevant in Urban Forestry
 Co-author of Berkeley Solar Access and View Ordinance (1987)
 Member of ADRC

The makeup of the subcommittee has changed since June 1993 due to the fact that some members did not agree with the direction the revised ordinance has taken. You will notice that the ordinance has changed significantly in an effort to streamline text and to address the issues that were assigned to this subcommittee on December 8, 1993. Comments included in this status memo should be read in conjunction with the revised ordinance (attached). An overview of those issues follow:



in addition to the seven issues above, the subcommittee discussed a number of other significant issues that were related and incorporated those issues into the ordinance.

1. **Limit application to adjacent or directly across from blocking trees**

Reference Section 5.(c)(8) - where applicability has been limited to trees not more than 300 feet away unless clear and convincing evidence demonstrates that that trees beyond this limit cause undue burden on the claimant.

It should be noted that the majority of the subcommittee members agree with this approach. This majority agreed after much discussion over distances ranging from 100 feet to "situational", compromising on 300 feet and including a provision that allows claims concerning trees outside this limitation to be covered under the claim if clear and convincing evidence could be provided that indicated undue burden on behalf of the claimant. One member still feels the ordinance should be situational or limitations should be extended to 450 feet.

2. **Clarify that ordinance will not apply retroactively**

Reference Section 2.(b)(2) - "Establish a right to seek preservation or restoration of a view or sunlight access which existed at the time of purchase of a property or at any time thereafter, subsequent to passage of this ordinance".

3. **Balance view preservation against privacy needs**

Reference Section 2. Purpose and Objectives, also Section 5. - Standards for Resolution of Disputes.

As indicated above, the format of the ordinance has changed considerably and has been fashioned after the Berkeley, San Francisco and proposed Belvedere ordinances which in our opinion better address both view and privacy needs.

4. **Better define "active use area"**

Reference Section 5.(a) - Burdens

The new ordinance eliminates the need for this definition. Instead, the standards for resolution address the extent of the obstruction leaving this issue open to interpretation on a case by case basis and deliberative process.

5. **No application to undeveloped properties**

The subcommittee changed their viewpoint on the application to undeveloped properties, recognizing that similar rights extend to the undeveloped property owners, many of whom have been waiting to build upon obtaining sewer capacity.

6. **Modify / eliminate undesirable tree language**

Reference Section 5.(b) - Benefits

Undesirable tree language, naming specific trees was eliminated and replaced with language concerning tree characteristics. In addition, tree characteristics described in the Heritage and Significant Tree ordinances were incorporated by reference.

7. **Limit application to urban Midcoast**

Reference Section 1. - Title

In addition to the seven issues above, the subcommittee discussed a number of other significant issues that were related and incorporated those issues into the current draft. One significant issue is worth mentioning:

8. **Apportionment of Costs**

A dispute concerning restorative costs arose out of discussions concerning applicability to undeveloped property owners. The reason some subcommittee members felt strongly against applicability to undeveloped property owners was an issue of who pays for restorative action when there is no one on the undeveloped property enjoying the disputed view (i.e. who benefits?).

As a compromise to including applicability to undeveloped properties (item 5), an eighth issue was clarified concerning apportionment of costs.

Reference Section 6.(c)(1) - Pre Ordinance Trees

It should be noted that all of the subcommittee members agree with the apportionment of costs concerning pre-ordinance trees.

Reference Section 6.(c)(2) - Post Ordinance Trees

Concerning post ordinance trees, one member believes that the Tree Owner should bear 100% of subsequent restorative action (maintenance) claiming this is the "good neighbor" thing to do. The majority of subcommittee members felt that no direct benefit is derived by the tree owner, however agreed that in good faith, subsequent maintenance for post ordinance trees should be split 50/50.

In summary, we ask that this ordinance be accepted by the MCC and passed on to the San Mateo County Board of Supervisors for approval.