

VIEW AND SOLAR ACCESS ORDINANCE

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SEC. 1. TITLE. This ordinance shall be known as the Midcoast Community View and Solar Access Ordinance. The ordinance applies to the area described as the unincorporated area of San Mateo County line between Half Moon Bay and Pacifica, west of the coastal mountain ranges.

SEC. 2. PURPOSE AND OBJECTIVES.

(a) The purpose of this chapter is to set forth a procedure for the resolution of disputes between private property owners relating to the restoration of views or sunlight lost due to the growth of trees. Nothing in this chapter is meant to replace the peaceful, sensible and just resolution of differences between neighbors acting in good faith. It is not a purpose of this ordinance to facilitate or encumber the transmission of radio or television signals or impair obligations imposed by an existing easement of a valid pre-existing enforceable covenant or agreement.

(b) The objectives of this chapter are to:

- (1) Reduce community discord over tree-related disputes;
- (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 the passage of this ordinance;
- (3) Promote all feasible means of energy conservation and all feasible uses of alternative energy supply sources;
- (4) Encourage the use of solar energy for heat and light, encourage food production in private gardens, and increase access to light and views of surrounding locale;
- (5) Discourage ill-considered harm to, or destruction of, trees;
- (6) Preserve the aesthetic and practical benefits which trees provide, and;
- (7) Preserve and enhance property tax values.

SEC 3. DEFINITIONS. For the purposes of this ordinance, the following definitions shall apply:

- (a) "Arbitrator" shall mean any trained and experienced arbitrator acceptable to both Claimant and Tree Owner who will arbitrate a tree dispute.
- (b) "Certified Arborist" shall mean an arborist who holds a current certification from the International Society of Arboriculture.
- (c) "Claimant" shall mean any property owner who wishes to alter or remove a tree on the property of another which creates an obstruction to his or her access to sunlight or view.
- (d) "Crown Reduction" shall mean a procedure for lowering the height of a tree using pruning techniques that do not have the aesthetic and functional drawbacks of topping.
- (e) "Mediator" shall mean any trained and experienced mediator acceptable to both Claimant and Tree Owner who will facilitate both parties' efforts to resolve a tree dispute. Parties are encouraged to use the San Mateo County Mediation Program.
- (f) "Obstruction" shall mean any view or access to sunlight which is blocked or diminished by the growth, maintenance or location of a tree.
- (g) "Restorative Action" shall mean any specific requirement to resolve a tree dispute.
- (h) "Solar access" shall mean the availability of sunlight to a property.
- (i) "Thinning" shall mean 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.
- (j) "Topping" shall mean elimination of the upper portion of a tree's trunk or main leader.
- (k) "Tree" shall mean any woody perennial plant, usually with one or more major trunks attaining a height of at least fifteen feet at maturity; as used in this ordinance, the singular shall include the plural and the plural shall include the singular.
- (l) "Tree claim" shall mean the written basis for arbitration or court action under the provisions of this chapter which includes the following:
 - (1) 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 Claimant. Evidence to show the date of acquisition must be included.
 - (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) A specific proposal of the work required to resolve the dispute.
 - (4) The identity of a licensed and insured arborist that the Claimant would agree to employ in the event the work is to proceed.
 - (5) The date of delivery or service of the tree claim on the Tree Owner.

- (6) The Claimant must provide physical evidence that written attempts at conciliation have been made and failed, and that mediation was offered and was rejected or unproductive. Evidence may include, but is not limited to, copies of and receipts for certified or registered mail correspondence.
- (m) "Tree Owner" shall mean any individual owning real property in the Midcoast area as described above in Section 1 upon whose land is located a tree alleged by a Claimant to cause an obstruction.
- (n) "Tree Removal" shall mean the elimination of any tree from its present location.
- (o) "Trimming" shall mean 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.
- (p) "Views" shall mean a vista or range of sight which includes, but is not limited to oceans, skylines, bridges, distant cities, geologic features, hillside terrains, and wooded canyons or ridges.
- (q) "Windowing" shall mean the creation of a limited viewing plane through the crown of a tree.

SEC. 4. PROCEDURES. The procedures described in this Section shall be followed in the resolution of tree disputes between private parties.

(a) **Initial Reconciliation.** A Claimant who believes in good faith that the growth, maintenance or location of a tree on the private property of a Tree Owner diminishes the beneficial use or economic value of his or her property because the tree interferes with the access to sunlight or views from the property, shall notify the Tree Owner in writing of these concerns. The notification should, if possible, be accompanied by personal discussions to enable the Claimant and Tree Owner to attempt to reach a mutually agreeable solution.

(b) **Mediation.** If the initial reconciliation attempt fails, the Claimant shall propose mediation as a means to settle the dispute. Acceptance of mediation by the Tree Owner shall be voluntary. The mediator shall be acceptable to both parties.

The mediation meeting may be informal, and no written record is necessary unless desired by the parties. The mediation process may include the hearing of lay or expert witnesses, and shall include a site visit to the properties of the Claimant and the Tree Owner. Parties may give notice to neighbors and solicit input. The mediator shall consider the objectives, benefits and burdens set forth in this chapter in attempting to help both parties resolve their differences. 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 at this stage to eliminate the need for binding arbitration or litigation.

(c) **Tree Claim Preparation.** If the initial reconciliation process fails and mediation is either not elected or fails, the Claimant must prepare a tree claim (as defined in Section 3 (l)), and deliver a copy to the Tree Owner either by certified mail or registered process

server, in order to pursue either arbitration or litigation. This process constitutes the filing of a tree claim. No arbitration or litigation may proceed in the absence of the filing of a tree claim.

(d) Binding Arbitration. If initial reconciliation fails and mediation has not resolved the dispute, the Claimant must offer in writing to submit the tree claim to binding arbitration, and the Tree Owner may voluntarily elect binding arbitration. Both parties must agree in writing upon the identity of an arbitrator. If agreement can not be reached, each parties' selected arbitrator shall meet to select a mutually acceptable arbitrator. Each party shall have the right to present lay and/or expert witnesses and to question witnesses presented by any other party. The arbitration shall include a site visit to the properties of the Claimant and the Tree Owner. The arbitrator shall follow the provisions of this chapter to reach a fair resolution of the tree claim, and shall submit a complete written report to both parties. The report shall respond to all standards listed in Section 5 (Standards for Resolution of Disputes), and shall include a list of all mandated restorative actions with any appropriate conditions and timetables. Such actions must be completed with due regard for the health of the tree.

(e) Litigation. In those cases where initial reconciliation fails and binding arbitration is not elected, civil action may be pursued by the Claimant for resolution of the tree claim under the standards of this chapter. The litigant must state in the complaint that arbitration was offered and not accepted.

SEC. 5. STANDARDS FOR RESOLUTION OF DISPUTES. In resolving the tree dispute, the tree arbitrator or court shall consider the benefits and burdens derived from the alleged obstruction within the framework of the purposes and objectives of this chapter as set forth in Section 2 (Purpose and Objectives) in determining what restorative actions, if any, are appropriate. In proposing any given restorative action the Claimant shall have the burden of proving that the burdens posed by the Tree Owner's trees outweigh the benefits provided by the trees with respect to the proposed restorative action.

(a) Burdens.

(1) The extent to which the tree diminishes the amount of sunlight available to the garden or home of the Claimant.

(2) The extent to which the tree interferes with efficient operation of a Claimant's pre-existing solar energy system.

(3) The existence of landmarks, vistas, or other unique features which cannot be seen because of growth of trees since the acquisition of the property.

(4) The extent to which the alleged obstruction interferes with sunlight or view. The degree of obstruction shall be determined by means of a measuring instrument or photography.

(5) The extent to which solar access or the view is diminished by factors other than trees.

(6) Deleterious effect of the tree upon the Claimant's vegetation through loss of heat and light except that the dropping of leaves or maintenance factors shall not be a burden under this ordinance.

(b) Benefits.

(1) Visual quality of the tree, including but not limited to, species characteristics, size, growth, form, and vigor.

(2) Location with respect to overall appearance, design, and/or use of the Tree Owner's property.

(3) Soil stability provided by the tree considering soil structure, degree of slope, and extent of the tree's root system.

(4) Visual, auditory and wind screening provided by the tree to the Tree Owner and to neighbors.

(5) Energy conservation and/or climate control provided by the tree.

(6) Wildlife habitat provided by the tree.

(7) The economic value of the tree as measured by criteria developed by the International Society of Arboriculture and the economic value of the property as a result of the tree.

(8) Other tree-related factors, including, but not limited to:

- The degree to which the species is native to the local region or area;
- Indigenous nature of the species to which the tree belongs;
- Specimen tree quality;
- Rare tree species, and the frequency of new planting of a tree;
- Heritage and Significant tree designation, as determined pursuant to **<current code or ordinances>**

(c) Restorative Actions.

(1) The mediator shall recommend or the arbitrator or court shall order restorative action according to Section 5 (Standard for Resolution of Disputes). Restorative actions may include written directions as to appropriate timing of trimming, thinning, windowing, crown reduction, topping, or removal. Ongoing tree maintenance requirements may be included in restorative actions taken to preserve pre-existing views or sunlight. Such restorative actions are to apply only to current parties to the agreement, unless mutually agreed upon in writing by both parties. The mediator may allow, and the arbitrator or court may require compensation to the Tree Owner for value lost due to restorative actions.

(2) Possible restorative actions may include:

- No action
- Thinning
- Trimming
- Windowing
- Crown reduction

- Topping
- Delayed trimming or thinning
- Tree removal, possibly with required replacement plantings.

(3) Restorative actions shall be limited to thinning, trimming, windowing, and crown reduction where possible and practical. Thinning, trimming and windowing may be delayed, providing time for the top of the tree to grow above the point where it obstructs sunlight or view.

(4) When thinning, trimming, windowing and/or crown reduction is not a feasible solution, the impact on the health of the tree shall be considered before topping may be mandated.

(5) When tree removal would eliminate or significantly reduce the Tree Owner's benefits, appropriate required replacement plantings shall at the Tree Owner's option be set forth in writing prior to the tree removal. The Tree Owner may elect tree removal with replacement plantings, as an alternative to thinning, trimming, windowing, crown reduction and/or topping.

(6) All tree work mandated under this chapter shall be performed by a person or firm selected by the Tree Owner, with the concurrence of the Claimant. Fees charged for restorative actions must fairly reflect prevailing local fees for the performance of similarly competent arboricultural services. The use of a Certified Arborist for such work is encouraged, but not required.

(7) The extent of solar access or view available and documentable as present at any time during the tenure of the Claimant is the limit of restorative action which may be required.

(8) No restorative action may be required concerning any tree the base of which is more than 300 feet from the immediate vicinity of the dwelling of the Claimant's property unless the Claimant can demonstrate clear and convincing evidence of a burden as described in Section 5 (a). If no dwelling exists, the distance shall be determined from the most likely dwelling site upon the property or from the geographical center of the property at the discretion of the arbitrator or court as appropriate.

(9) A tree which has been the subject of restorative action under the terms of this ordinance is exempted from other property owners' claims for a period of five years from date of filing of a tree claim.

(10) Nothing in this ordinance shall be construed to affect, diminish, or replace existing laws.

(c) Failure to enforce on the part of the County of San Mateo will not give rise to any

SEC. 6. APPORTIONMENT OF COSTS.

(a) Cost of mediation and arbitration.

(1) The Claimant shall pay all costs, if any, of the mediator.

(2) The Claimant and the Tree Owner shall each pay fifty percent of the arbitrator's personal fee, if any.

(b) Cost of litigation. The parties may agree at any time between themselves, in writing, as to the allocation of the costs of litigation. If such an agreement is not reached, the following shall apply:

(1) The Claimant shall pay 100 percent of both parties' reasonable attorney's fees in the event that his or her claim is finally denied, or no restorative action is ordered, unless the Tree Owner had refused to participate in mediation after the failure of Initial Reconciliation.

(2) In all other cases, each party shall pay his or her own attorney's fees.

(3) Court costs shall be allocated to the parties at the court's discretion.

(c) Cost of restorative actions. The parties may agree at any time between themselves, in writing, as to the allocation of the costs of restorative action. If such an agreement is not reached, the following shall apply:

(1) As to trees planted prior to the effective date of this ordinance the Claimant shall pay the cost of initial restorative action and subsequent restorative action as a result of the same obstruction.

(2) As to trees planted subsequent to the effective date of this chapter the Tree Owner and the Claimant shall each be responsible for 50 percent of the costs of restorative action and subsequent recurrence of the same obstruction, in the absence of circumstances which clearly demonstrate that this allocation of costs is unfair to either party.

SEC. 7. LIABILITIES.

(a) The issuance of a mediation agreement, an arbitration report or a court decision shall not create any liability of the County of San Mateo with regard to the restorative actions to be performed.

(b) The Claimant shall indemnify and hold harmless the Tree Owner with respect to any damages or liability incurred by said owner arising out of the performance of any work at the behest of the Claimant as follows:

(1) With respect to trees planted prior to the effective date of this ordinance, the Claimant shall indemnify the Tree Owner as to 100 percent of any such damages or liability.

(2) With respect to trees planted after the effective date of the ordinance, the Claimant shall indemnify the Tree Owner as to 50 percent of any such damages or liability.

(c) Failure to enforce on the part of the County of San Mateo will not give rise to any civil or criminal liabilities.

SEC. 8. ENFORCEMENT. A violation of this chapter is not a misdemeanor, and the enforcement of this chapter shall be made by private parties involved. The Claimant shall have the right to bring injunctive action to enforce any restorative action ordered pursuant to this ordinance.

SEC. 9. SEVERABILITY. If any portion of this ordinance or its application to any person or circumstances is held invalid, the remainder of the ordinance, including its application to other persons or circumstances shall remain in effect.

SEC. 1. TITLE. This ordinance shall be known and may be cited as the

Order Addressing

area of San Mateo

ordinance number