TIBURON MUNICIPAL CODE

TITLE IV

Chapter 15: VIEW AND SUNLIGHT OBSTRUCTION FROM TREES

Section 15-1 Purpose and Principles

Section 15-2 Definitions

Section 15-3 Rights Established

Section 15-4 Unreasonable Obstruction Prohibited

Section 15-5 Criteria for Determining Unreasonable Obstruction

Section 15-6 Criteria for Determining Appropriate Restorative Action

Section 15-7 Types of Restorative Action

Section 15-8 Town Guidelines Concerning Restorative Action

Section 15-9 Process for Resolution of Obstruction Disputes

Section 15-10 Tree Claim Preparation

Section 15-11 Binding Arbitration

Section 15-12 Litigation

Section 15-13 Apportionment of Costs

Section 15-14 Liabilities

Section 15-15 Limitations

Section 15-16 Trees on Town-Owned Property

Section 15-1 Purpose and Principles.

(a) The purposes of this chapter are to:

(1) 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.

(2) 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 (see definition of "Tree").

(b) The rights and the restorative process are based upon the following general principles:

(1) The Town recognizes that residents, property owners and businesses cherish their outward views from the Tiburon Peninsula, and that they also cherish the benefits of plentiful sunlight reaching their buildings and yards. The Town recognizes that both outward views and plentiful sunlight reaching property contribute greatly to the quality of life in Tiburon, and promote the general welfare of the entire community.

(2) The Town also recognizes the desire of many of its residents, property owners and businesses for beautiful and plentiful landscaping, including trees. The Town 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 Town 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 Town 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 Town that the provisions of this chapter receive thoughtful and reasonable application. It is not the intent of the Town to encourage clear-cutting or substantial denuding of any property of its trees by overzealous application of provisions of this chapter.

Section 15-2 Definitions.

For the purpose of this chapter, the meaning and construction of words and phrases is as follows:

"Active Use Area" means the most frequently occupied portion or portions of a commercial building from which views are available.

"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.

"Binding Arbitration" means a legal procedure as set forth in section 1280 et seq. of the 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.

"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 Town of Tiburon.

"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. The determination of primary living area is to be made on a case-by-case basis.

"Protected Tree" means any of the following:

"**Heritage Tree,"** meaning any tree which has a trunk with a circumference exceeding sixty inches, measured twenty-four inches above the ground level.

"Oak Tree," including coast live oak, blue oak, California black oak, interior live oak, canyon live oak, Engelmann oak or valley oak tree.

"Dedicated Tree," meaning a tree of special significance so designated by

resolution of the Town Council.

”**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 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 Tiburon 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 or the active use areas of a nonresidential building. 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 are:

(1) San Francisco Bay (including San Pablo Bay, Richardson Bay, and islands therein);
(2) The San Francisco-Oakland Bay Bridge

(3) The Golden Gate Bridge;

(4) The Richmond-San Rafael Bridge;
(5) Mount Tamalpais;
(6) The Tiburon Peninsula or surrounding communities (including the city of San Francisco).

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

Section 15-3 Rights Established.

(a) Persons shall have the right to preserve and seek restoration of views or sunlight which existed at any time since they purchased or occupied a property, when such views or sunlight are from the primary living area or active use 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) All persons are advised that the alteration, removal, and planting of certain trees requires a permit under chapter 15A of the Tiburon Municipal Code (Trees). The applicability of chapter 15A should be determined prior to any action on trees.

Section 15-4 Unreasonable Obstruction Prohibited.

(a) No person shall plant, maintain or permit to grow any tree which unreasonably obstructs the view from, or sunlight reaching, the primary living area or active use area of any other parcel of property within the Town of Tiburon.

(b) Because the maintenance of views and sunlight benefits the general welfare of the entire Town, any unreasonable obstruction of views or sunlight from the primary living area or active use area shall also constitute a public nuisance.

Section 15-5 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.

Section 15-6 Criteria for Determining Appropriate Restorative Action.

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) Whether trees are "protected trees," as defined in section 15-2 of this chapter.

Section 15-7 Types of Restorative Action.

(a) Restorative actions include but are not limited to the following:

(1) Trimming;
(2) Thinning or windowing;

(3) Topping;

(4) Removal with replacement plantings;
(5) Removal without 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. Where removal is required, replacement by appropriate species should 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

Section 15-8 Town Guidelines Concerning Restorative Action.

The Town of Tiburon 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 Town, including Blue Gum Eucalyptus, Coast Redwood, Monterey Pine, Monterey Cypress trees, or any other tree which generally grows more than three feet per year in height and in capable of reaching a height of over thirty-five feet at maturity. When considering restorative action for “undesirable” trees, aggressive action is preferred

(b) Protected trees. The Town of Tiburon has designated certain trees to be “protected trees,” defined in section 15-2. Any alteration or removal of protected trees will require a permit from the Town's Planning Director pursuant to chapter 15A of the Tiburon Municipal Code.

(c) 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.

(d) 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.

(e) 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.

(f) 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.

(g) 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 many circumstances.

(h) 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.

(i) Permanence. Conditions of restorative action should be recorded and run with the land to help guarantee permanent preservation of pre-existing views and sunlight.

15-9 Process for Resolution of Obstruction Disputes.

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.

(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.

(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 ten days.

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

employed. The county of Marin provides professional mediation services at a nominal cost.

(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 eliminate the need for binding arbitration or litigation.

Section 15-10 Tree Claim Preparation.

(a) 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.

(b) 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;

(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 in section 15-9, 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 in section 15-9, 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.

Section 15-11 Binding Arbitration.

(a) 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.

(b) The tree owner shall have thirty days from service of notice to accept or reject binding arbitration. If accepted, the parties shall agree on a specific arbitrator within twenty-one days, and shall indicate such agreement in writing.

(c) 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 with respect to sections 15-5 and 15-6 of this chapter, 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 the Town attorney upon completion. Any decision of the arbitrator shall be enforceable pursuant to the provisions of Code of Civil Procedure section 1280 et seq.

Section 15-12 Litigation.

(a) 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.

(b) The litigant must state in the lawsuit that arbitration was offered and not accepted, 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 15-13 Apportionment of Costs.

Cost of mediation and arbitration. The complaining party and tree owner shall each pay fifty percent of mediation or arbitration fees, unless they agree otherwise or allow the mediator or arbitrator discretion for allocating costs.

Cost of litigation. To be determined by the court or through a settlement.

Cost of restorative action. To be determined by mutual agreement, or through mediation, arbitration, court judgment or settlement.

Section 15-14 Liabilities.

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

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

Section 15-15 Limitations

It is not the intent of the Town in adopting this chapter to affect obligations imposed by an existing easement or a valid preexisting covenant or agreement.

Section 15-16 Trees on Town-Owned Property.

Trees located on Town-owned property are exempt from the provisions of this chapter. Requests or complaints regarding trees located on Town-owned property should be made in writing to the superintendent of public works for consideration in accordance with policies adopted by the Town.