

CHAPTER 8.13
View and Sunlight Preservation

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8.13.010 Purposes.

The purposes of this Chapter are to:

- A. Establish a person's right to preserve or restore the view or sunlight which existed at the time of that person's purchase or initial occupation of the property (or at the time which is thirty years prior to the person's claiming said right, whichever is later) from unreasonable obstruction by the growth of a tree; and
- B. Establish a process by which one may seek restoration of such view or sunlight when unreasonably obstructed by the growth of a tree.

8.13.020 Definitions.

For the purposes of this chapter, the meaning and construction of words and phrases hereinafter set forth shall apply:

- A. "Arbitrator" is a neutral person who conducts a process similar to a trial, and who hears testimony, considers evidence, and makes a binding decision for the disputing parties;
- B. "Binding arbitration" is the legal procedure set forth in the provisions of the Code of Civil Procedure section 1280 et seq. The decision which results from "binding arbitration" shall be final and not subject to appeal, review or attack, except as provided in said sections of the Code of Civil Procedure;

- C. "Claimant" is a 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;
- D. "Crown reduction" is minimal cut back of branch crown. It should not destroy the visual proportions of the tree, adversely affect the tree's growth pattern or health, or otherwise constitute a detriment to the tree(s) in question;
- E. "Mediator" is a neutral, objective, professionally trained third person who assists people in finding a mutually satisfactory solution to a problem;
- F. "Pre-existing view or sunlight" is the view or sunlight (i) that existed at the time the property was first purchased by the current property owner, (ii) that existed at the time the property was first lawfully possessed by the current occupant or (iii) that existed any time during the year thirty (30) years prior to the date upon which the property owner or occupier ("claimant") first makes his/her claim that he/she is entitled to the view and/or sunlight rights established herein, whichever is later (the "view/sunlight right establishment date");
- G. "Primary living areas" are those portions of a residence from which views are observed most often by the occupants relative to other portions of the residence. Primary living areas include decks or other permanent, human-made structures (i) immediately adjacent to the main residence and (ii) occupied or regularly used by the occupants of the main residence. The determination of primary living area is made on a case-by-case basis;
- H. "Protected tree" is a tree which has been so designated in accordance with section 8.12.020 of the Martinez Municipal Code;
- I. "Replacement planting" is tree removal accompanied by replacement planting of appropriate plant materials to restore, to the extent feasible, the maximum level of benefits lost due to tree removal;
- J. "Restorative action" is a task, obligation or undertaking required to resolve a tree dispute;
- K. "Stand thinning" is the removal of a small percentage of the total number of trees from a grove of trees without any replacement planting;
- L. "Thinning" is the selective removal of entire branches from a tree to improve visibility through the tree or improve the tree's structural condition;
- M. "Topping" is elimination of the upper portion of a tree's trunk or main leader. 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. Tree removal, with replacement

plantings, may be a preferable alternative;

- N. "Tree" is a woody plant with the potential to obstruct a view or sunlight, including but not limited to a tree, shrub, hedge, and bush, which exceeds 15 feet in height;
- O. "Tree owner" is a person owning real property upon whose land is located a tree alleged by a claimant to cause an unreasonable obstruction;
- P. "Tree removal" is the elimination of a tree from its present location. While normally considered a drastic measure, tree removal may be the preferred solution in many circumstances;
- Q. "Trimming" is the selective removal of portions of branches from a tree so as to alter the tree's shape or appearance. Trimming is recommended when minor unreasonable obstruction has occurred, provided that ongoing maintenance is guaranteed;
- R. "Unreasonable obstruction" means the obstruction of a view or sunlight, or both, which is determined to be unreasonable applying the criteria set forth in section 8.13.040. An unreasonable obstruction shall be further defined as an impairment, diminution, obscuring, interference and/or blocking of a view from or sunlight to a primary living area which, when analyzed using the criteria set forth in section 8.13.040, is determined to (i) materially and adversely affect said views and/or sunlight and (ii) so affect views and/or sunlight which have a character or quality which outweighs the benefits derived by the tree(s) which are causing the obstruction;
- S. "View" is a scene from the primary living area of a residence. The term "view" includes both upslope and downslope scenes, but is generally medium or long range in nature, as opposed to short range. View includes but is not limited to distinctive geologic features, hillside terrains, wooded canyons, ridges, and bodies of water;
- T. "Windowing" is a form of thinning by which opening or "windows" are created to restore a view or sunlight.

8.13.021 Rights Established.

Persons shall have the right to preserve and seek restoration of pre-existing views and/or sunlight which existed on or after the "view/sunlight right establishment date", when such views or sunlight are from the primary living area and have subsequently been unreasonably obstructed by the growth of trees.

In order to establish such rights pursuant to this Chapter, the person (claimant) 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.

8.13.030 Process for Resolution of Claims.

To establish view and sunlight rights recognized and established herein, the claimant must follow the process established by this chapter. First, the claimant must complete the “initial discussion” process described below. Second, if that process does not yield a result mutually satisfactory to the claimant and the tree owner, then the claimant must seek to mediate his/her view/sunlight claim in accordance with this chapter. If the tree owner refuses to mediate or if the mediation is unsuccessful in resolving their differences, then the claimant must attempt to initiate arbitration as set forth hereinafter. If arbitration is not accepted by the tree owner, and the initial discussion and mediation have proved unsuccessful in resolving the view/sunlight claim, the claimant may then initiate litigation to determine his/her view/sunlight claim rights. Except in instances regarding City owned property, no City action or decisions are required to establish or exercise a claimant’s view/sunlight rights.

- A. Initial Discussion. A claimant who believes that tree growth, maintenance or location on another person’s property diminishes the beneficial use, economic value and enjoyment of views of his/her property shall first notify the tree owner in writing of such concerns. The notification should be accompanied by personal discussions to work towards a mutually agreeable solution.
 - 1. If the Parties Agree: Following the initial discussion, if agreement is reached between the parties as to the existence and nature of the claimant’s rights and on what restorative action is to be taken on the tree(s) in question, that agreement shall be reduced to writing and executed by all parties concerned. Said agreement must set forth the following:
 - a. Establishing the claimant’s right under section 8.13.021;
 - b. Specifying the detail of said right; and
 - c. Specifying the nature and timing of the action and the parties responsible for performing said action required to effectuate the said rights so established.
 - 2. If the Parties Do Not Agree: If the parties do not agree as to the rights in question and what action should be taken regarding the tree(s) in question, the claimant must prepare and provide the tree owner a view/sunlight claim and provide a copy of the view/sunlight claim to the City.
- B. View/Sunlight Claim A “View Sunlight claim” shall consist 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. The evidence must show absence of the obstruction at a point in time during the tenure of the claimant's ownership or occupancy of the claimant's property. Evidence to show the date of property acquisition or occupancy by the claimant must be included;

2. The location of each tree alleged to cause the obstruction, the address of the property upon which the tree is located, and the present tree owner's name and address;
3. Evidence of the failure of initial reconciliation, (section 8.13.030 A) to resolve the dispute. The claimant must provide physical evidence that a written attempt at reconciliation has been made and failed. Evidence may include a copy of and receipt for certified or registered mail correspondence;
4. Specific restorative action proposed by the claimant to resolve the unreasonable obstruction.

C. View Sunlight Claim Process

1. Mediation. If the initial discussion fails to achieve agreement between the tree owner and the claimant, then the claimant, in order to preserve and perfect his/her rights hereunder, shall prepare and deliver to the tree owner a written offer ("offer notice") to submit the dispute to mediation to settle the dispute. Acceptance of mediation by the tree owner shall be voluntary, but the tree owner shall have no more than thirty days from service of the offer notice either to accept or to reject the offer of mediation. Failure to respond within 30 days after the service of the claimant's offer notice shall be deemed rejection of the offer of mediation. If mediation is accepted, the parties shall mutually agree upon a mediator within twenty-one days of the date the tree owner's acceptance of the offer notice, and should commence mediation within sixty days after the tree owner's acceptance of the offer notice.

The mediator shall use and be governed by this chapter in attempting to help resolve the dispute. The mediator does not have the power to issue binding orders for view or sunlight restorative action, but shall strive to enable the parties to resolve their dispute by written agreement in order to eliminate the need for arbitration or litigation.

2. Binding arbitration. Where the initial reconciliation and mediation are declined or fail, the claimant shall submit to the tree owner a written offer to propose binding arbitration ("arbitration notice"). The acceptance of binding arbitration by the tree owner is voluntary. The tree owner has thirty days from service of the

arbitration notice to either accept or reject binding arbitration. Failure to respond within said 30 days shall be deemed to be a rejection of the offer of arbitration. If binding arbitration is accepted, the parties shall agree on a specific arbitrator within twenty-one days of the date of the tree owner's acceptance, and shall indicate such agreement in writing. If the parties do not agree on a specific arbitrator within said thirty days, either party may petition the court to appoint an arbitrator.

The arbitrator shall use and be governed by this Chapter to reach a fair resolution of the View Sunlight claim and shall submit a complete written decision to the claimant and the tree owner. This decision shall include the arbitrator's findings with respect to the applicable provisions of sections 8.13.040 and 8.13.050 of this Chapter, a pertinent list of all mandated restorative actions with any appropriate conditions concerning such actions, and a schedule by which the mandated actions must be completed. The decision of the arbitrator is enforceable under the California Code of Civil Procedure. A copy of the arbitrator's decision shall be submitted by the claimant to the Community Development Department immediately after it is received by the claimant.

3. Litigation. If arbitration is declined by the tree owner, the claimant may pursue civil action for resolution of his/her view/sunlight claim rights. The litigation must state in the lawsuit that arbitration was offered and not accepted. The litigating claimant shall file a copy of the lawsuit with the City Community Development Department.
4. Authority to order subsequent restorative actions. Under no circumstances shall an arbitrator or the court have the authority, absent an agreement consensually entered into between the claimant and tree owner, to compel a tree owner to pay for restorative actions effected after the initial restorative actions.

8.13.040 Criteria for Determining Extent of View/Sunlight Rights and Unreasonableness of Obstruction.

The following criteria are to be considered (but are not exclusive) in determining the (i) existence and nature of claimant's alleged rights hereunder and (ii) unreasonableness of the obstruction at issue in the dispute:

- A. No view or sunlight right may be based upon and no view or sunlight right may be exercised with respect to any tree located more than five hundred (500) feet from any boundary of claimant's real property.

- B. The claimant shall not have a right to a greater view or access to sunlight than existed on or after the view/sunlight right establishment date.
- C. In determining whether the claimant possesses the rights established under Section 8.13.021, the nature thereof, and/or the extent to which the claimant may exercise said rights, the character of the subject view and/or sunlight and the benefits and burdens of the subject tree(s) shall be considered.
- D. The character of the view shall be determined by evaluating:
1. The vantage point(s) from which the view is obtained;
 2. The extent of the view and/or sunlight obstruction;
 3. The quality of the view being obstructed, such as the obstruction of vistas, ridge lines, or other unique features;
 4. The view or sunlight and the size and quality of the tree(s) which existed at the time the claimant first occupied the property;
 5. The added value the view affords to the claimant's residence; and
 6. The length of time the claimant party has resided on the property.
- E. The benefit derived by the tree shall be determined by evaluating:
1. The extent to which the tree(s) provide:
 - a. Privacy, screening, sound buffering;
 - b. Energy conservation and/or climate control;
 - c. Soil stability, as measured by soil structure, degree of slope and extent of tree(s) root system;
 - d. Wildlife habitat.
 - e. Screening of nearby residences or other structures and, if the tree(s) is restored as proposed by the claimant, the effect such restoration would have on views of the tree owner.
 - f. Visually pleasing settings or qualities in their own right.
 2. Visual quality of the tree including but not limited to, species, size, growth, aesthetic form, vigor, location;
 3. Potential for replacement of removed trees and the number of trees existing in the area;

4. The variety of tree, whether the tree is a protected tree or has historic value;
5. Economic value of the tree as measured by the International Society of Arboriculture; and
6. The hazard posed by a tree to a person or structure on the property of the claimant including, but not limited to, fire danger and the danger of falling limbs or trees.

8.13.050 Guidelines Concerning Restorative Action.

The following general guidelines shall apply to restorative action:

- A. View and/or sunlight restorative actions must be consistent with all other provisions of this chapter.
- B. All tree work authorized by this chapter shall be performed, supervised or reviewed by a certified arborist.
- C. Ongoing maintenance requirements are recommended as part of the restorative action.
- D. By reason of tall height at maturity, rapid growth, dense foliage, shallow root structure, flammability, breakability, or invasiveness, the City has determined that certain types of trees are "undesirable," including but not limited to Blue Gum Eucalyptus, Monterey Pine, Monterey Cypress trees and other trees which generally grow more than 3 feet per year and are capable of reaching a height of over 35 feet at maturity. When considering restorative action for "undesirable" trees, aggressive action is preferred.
- E. The City has designated certain trees to be "protected trees" as set forth in Chapter 8.12. The alteration or removal of a protected tree requires a permit from the Community Development Department.
- F. Restorative action shall be limited to the following, typically in order of preference:
 1. Trimming;
 2. Thinning or Windowing;
 3. Crown Reduction;
 4. Stand Thinning;
 5. Topping;

6. Tree Removal, with Replacement Plantings;
 7. Removal.
- G. In selecting the restorative action deemed best suited to the resolution of a View Sunlight claim, the effectiveness of the proposed restorative action shall be balanced against its cost.

8.13.060 Apportionment of Costs.

- A. Cost of mediation and arbitration. The claimant and tree owner shall each pay 50% of mediation or arbitration fees and costs, unless they agree otherwise or allow the mediator or arbitrator discretion to allocate fees and costs.
- B. Cost of Litigation. The costs of litigation is determined by the court or through a settlement.
- C. Cost of Restorative Action. The claimant shall have the responsibility for paying for initial restorative actions. After this initial action, the parties are encouraged to reach agreement on sharing the cost of subsequent restorative actions.

8.13.070 Liabilities and Limitations.

- A. The City shall not be liable for any damages, injury, costs or expenses which are the result of any decision made by the City or any other person (e.g., mediator, arbitrator or judge) concerning a View Sunlight claim or a claimant's assertions pertaining to views or sunlight rights granted or conferred in this chapter.
- B. Failure of the City to enforce this chapter does not give rise to civil or criminal liability on the part of the City.
- C. It is not the intent of the City in adopting this Chapter to affect obligations imposed by an existing easement or a valid pre-existing covenant or agreement.

8.13.080 Enforcement.

- A. Violations of this chapter are not misdemeanors or infractions. Enforcement of this chapter shall be by the involved private parties. Any claimant may seek to enforce any restorative action mandated pursuant to this chapter through ordinary legal proceedings.

- B. Under no circumstances shall the City have any responsibility or liability to enforce or seek any legal redress, civil or criminal, for any decision it or any other person (except in a case where the City is a named party and is subject to a lawful order of a court of competent jurisdiction) makes concerning a View Sunlight claim.

8.13.090 Properties Subject to Ordinance Regulations.

- A. Except as provided in subsection (B) below, any and all trees located on any property situated in any district in the City of Martinez are subject to this chapter and the rights established herein.
- B. Trees located on the following described property owned by or in which the City has an interest shall be exempt from this chapter: (i) public rights-of-way; (ii) parks, and (iii) open spaces. Requests or complaints regarding trees located on property in which the City has an interest other than those listed above shall be made in writing to the Superintendent of Public Works.
- C. To the extent a claimant and/or a predecessor in interest to the claimant, by recorded instrument or other document about which the claimant has actual knowledge, has waived the right to a view and/or sunlight as to trees located on property which is the subject of the waiver, said claimant shall enjoy no rights under this Chapter.