

CITY OF OAKLAND



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June 13, 2006

Public Works Committee  
Oakland City Council  
Oakland, California

**RE: An ordinance amending Oakland municipal code chapter 15.52, the view ordinance governing the rights of view and tree owners, to provide that tree ownership includes trees that are allowed to sprout on the owner's land as a result of natural regeneration as well as trees that are planted by the owner**

Dear Members of Public Works Committee:

**SUMMARY**

The accompanying Ordinance Amendment revises the View Ordinance [Chapter 15.52 of the Oakland Municipal Code (OMC)] to include trees that are allowed to sprout and grow on the tree owner's land as a result of natural regeneration in addition to trees that are planted by the owner, which are already covered by the Ordinance. This amendment will fill a gap in the View Ordinance, and ensure that all conflicts between tree owner and view claimants can be fairly resolved. Previous to this amendment, views obstructed by trees that grew from natural regeneration (e.g., not planted by the tree owner) were not subject to the City's process for neighbor to neighbor resolution of tree versus view conflicts.

**FISCAL IMPACT**

Since the View Ordinance is based on a process of voluntary neighbor to neighbor resolution of tree versus view conflicts without substantial City involvement, there is no significant fiscal impact.

**BACKGROUND**

## **BACKGROUND**

The View Ordinance was initially adopted by City Council in 1980 as Ordinance No. 9962 C.M.S. and became Section 7-8.01 through Section 7-8.08 of the Oakland Municipal Code (OMC). Following the Oakland Hills fire, this Ordinance, along with Sections 12 and 13 of Ordinance 10798, were joined into Section 15.52 of the OMC. Since Sections 12 and 13 specifically referred to the “North Oakland Hills Area,” and were codified as the initial part of Section 15.52 within the OMC, and situated in the Section before the tree and view portions, in *Bishop and Bishop vs. Ernest and Okhoo Hanes*, on July 30, 2003, Judge Gordon Baranco in Alameda County Superior Court ruled that the entire Section 15.52 pertained only to the North Oakland Hills Area.

This situation was rectified in July, 2004 by Ordinance No.12620 C.M.S., which clarified that the private right to reconciliation and arbitration established by the View Ordinance applies throughout the City of Oakland. This Ordinance was introduced by Councilmember Quan, who noted at the time that the issue of trees and views was an evolving issue and that some additional legal questions might arise. Now, a subsequent tree and view dispute has brought up a new concern. Namely, as it is currently written, the View Ordinance has been argued to pertain only to planted trees. View Claimants whose views are disrupted by trees that sprout and grow from natural regeneration have not been afforded the same rights as view claimants whose view are disrupted by planted trees.

Some naturally regenerating trees are especially rapidly growing such as species of eucalyptus and acacia. If the tree owner is not willing to control their growth, the view claimant can quickly lose the benefit of a view and the subsequent loss of property value. The attached amendment to the View Ordinance will clarify that the View Ordinance applies to all trees at issue on the tree owner’s property, whether planted or the result of natural regeneration, and will ensure that all Oakland residents concerned with the benefits of trees and views, as well the conflicts that many result from them, are afforded the same protections of the View Ordinance.

## **KEY ISSUES AND IMPACTS**

- Specifically adds trees that are allowed to sprout and grow as a result of natural regeneration to the View Ordinance
- Proposes no other change in the View Ordinance

## **SUSTAINABLE OPPORTUNITIES**

**Economic:** This ordinance amendment will contribute to the maintenance of property values by insuring that views blocked by trees that are allowed to sprout and grow as a result of natural regeneration are afforded the same protections of the View Ordinance as planted trees.

Environmental: This amendment to the View Ordinance will better balance the relationship between tree owners and view claimants without requiring the removal of view blocking trees.

Social Equity: This ordinance amendment will provide equal opportunity to view claimants who views are disrupted by trees that are allowed sprout as a result of natural regeneration in comparison to view claimants whose view are disrupted trees that are planted by the owner.

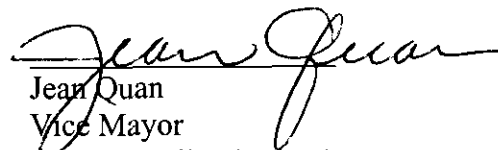
### **DISABILITY AND SENIOR CITIZEN ACCESS**

This amendment to the View Ordinance will have no effect on disability and senior citizen access.

### **RECOMMENDATION**

Councilmember Quan requests that the City Council adopt this amendment to the View Ordinance.

Respectfully submitted,

  
Jean Quan  
Vice Mayor  
City Council, District 4

Prepared by: Richard Cowan  
Chief of Staff  
Vice Mayor Jean Quan,  
City Council, District 4

INTRODUCED BY COUNCIL MEMBER 37

APPROVED AS TO FORM AND LEGALITY

*Gettle C. R. Jackson*  
CITY ATTORNEY

**ORDINANCE NO. \_\_\_\_\_ C.M.S.**

**AN ORDINANCE AMENDING OAKLAND MUNICIPAL CODE CHAPTER 15.52, THE VIEW ORDINANCE GOVERNING THE RIGHTS OF VIEW AND TREE OWNERS, TO PROVIDE THAT TREE OWNERSHIP INCLUDES TREES THAT ARE ALLOWED TO SPROUT ON THE OWNER'S LAND AS A RESULT OF NATURAL REGENERATION AS WELL AS TREES THAT ARE PLANTED BY THE OWNER**

**WHEREAS**, Ordinance No. 9962 C.M.S., adopted by the City Council in 1980, provided comprehensive regulations including a process for preserving views in Oakland through private reconciliation and arbitration; and

**WHEREAS**, Ordinance No. 10798 C.M.S. was subsequently adopted in 1986 which amended portions of the Oakland Zoning Regulations, Municipal Code, Fire Code, and Building Code, to implement the North Oakland Hill Area Specific Plan (NOHASP); and

**WHEREAS**, during the codification of the Oakland Municipal Code, Ordinance No. 9962 C.M.S. and sections 12 and 13 of Ordinance No. 10798 C.M.S. became a part of the View Ordinance, now codified as Chapter 15.52 of the Oakland Municipal Code; and

**WHEREAS**, section 12 of Ordinance No. 10798 is now OMC section 15.52.020 "Protected view corridor" and section 13 of Ordinance No. 10798 is now OMC section 15.52.040 "Obstruction of view corridors;" and

**WHEREAS**, Ordinance No. 12620 C.M.S. was subsequently adopted in 2004 which amended the following sections of the Oakland Municipal Code: sections 15.52.010 and 15.52.020 to clarify that the private right to reconciliation and arbitration established by the View Ordinance applies throughout the City of Oakland; section 15.52.040 to clarify that the provision regarding protected view corridors applies only to limited public views in specific locations in the NOHASP; section 15.52.030 to clarify that categorical tree exemptions applied when the specified tree(s) reached a protected size; and, finally section 15.52.060 to clarify the tree owner is financially responsible for trees planted against the express, written objection of the view claimant.; and

**WHEREAS**, the purpose of this Ordinance is to clarify that the View Ordinance applies to all trees at issue on the tree owner's property, both those planted by the tree owner as well as trees allowed to sprout as a result of natural regeneration; and

**WHEREAS**, these amendments are consistent with the past practice of the Office of Parks and Recreation, Tree Division, in administering the View Ordinance; and

**WHEREAS**, it is in the public interest to adopt these amendments to the View Ordinance, Chapter 15.52 of the Oakland Municipal Code; now therefore

**THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:**

Section 1. The Oakland Municipal Code is hereby amended to add, delete, or modify sections as set forth below (section numbers and titles are indicated in **bold type**; additions are indicated by underscoring and deletes are indicated by ~~strike-through type~~ ~~strikeout text~~; portions of the regulations not cited or not shown in underscoring or strike-through type are not changed).

A. AMEND SECTION 15.52.010 INTENT AND FINDINGS, PARA. D.  
AS FOLLOWS:

**15.52.010 Intent and findings.**

This chapter is enacted in recognition of the following facts and for the following reasons:

a. Among the features that contribute to the attractiveness and livability of the city are its trees, both native and introduced, and its views of the San Francisco Bay area, obtained from the variety of elevations found throughout the city.

b. Trees, whether growing singly, in clusters or in woodland situations, produce a wide variety of significant psychological and tangible benefits for both residents and visitors to the city. Trees contribute to the natural environment of the city by modifying temperatures and winds, replenishing oxygen to the atmosphere and water to the soil, controlling soil erosion, and providing wildlife habitat. Trees contribute to the visual environment of the city by providing scale, color silhouette and mass, and by creating visual screens and buffers to separate land uses, and promote individual privacy. Trees contribute to the economic environment of the city by stabilizing property values and reducing the need for surface drainage systems. Trees contribute to the cultural environment of the city by becoming living landmarks of the city's history and providing a critical element of nature in the midst of urban congestion and settlement.

c. Views, whether of the San Francisco Bay with its vistas of the city of San Francisco, the varied bridges of the Bay Area, numerous islands and ships, or of the Oakland hills with its vistas of trees and the hills themselves, also produce a variety of significant and tangible benefits for both residents and visitors to the city. Views contribute to the economic environment of the city by providing inspiring panoramic vistas, and creating distinctive supplements to

architectural design. Views contribute to the cultural environment of the city by providing a unifying effect, allowing individuals to relate different areas of the city to each other in space and time.

d. It is recognized that trees and views, and the benefits derived from each, may come into conflict. Tree planting locations and species selections may produce both intended beneficial effects on the property where they are planted or occur as a result of natural regeneration and as well as unintended deleterious effects on neighboring properties of equal or higher elevation. It is therefore in the interest of the public welfare, health and safety to establish standards for the resolution of view obstruction claims so as to provide a reasonable balance between tree and view related values.

B. AMEND SECTION 15.52.020 DEFINITIONS, AS FOLLOWS  
(add new definition in appropriate alphabetical placement):

“Natural regeneration” means the process by which trees germinate as a result of natural, not human-directed, events such as the seeding by an established tree or the indiscriminate placement of seed by the wind, rain, birds or other animals.

C. AMEND SECTION 15.52.060 APPORTIONMENT OF COSTS AS FOLLOWS:

**15.52.060 Apportionment of costs.**

The cost of all restorative actions, replacement plantings, and arbitration shall be apportioned between the view claimant and the tree owner as follows:

a. The view claimant and tree owner shall each pay fifty (50) percent of such costs in those cases involving any tree planted or allowed to sprout as a result of natural regeneration by the tree owner subsequent to the effective date of this Chapter (Ordinance No.9962, passed August 5, 1980).

b. The tree owner shall pay one hundred (100) percent of such costs in those cases where:

1. The tree owner has refused to participate in good faith in the initial reconciliation or voluntary arbitration processes (Section 15.52.090B) and where the view claimant has prevailed at trial or judicial arbitration; or

2. In any subsequent dispute between the same parties, to restore any view obstructed by the same tree or trees or any of the plantings substituted for the original offending tree or trees described in subsection A of this section.

3. The tree owner plants a tree(s) against the expressed, written objection of the view claimant and the same tree(s) later become subject of a view claim.

c. In all other cases, the view claimant shall pay one hundred (100) percent of such costs.

Section 2. If any article, section, subsection, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional, the offending portion shall be severed and shall not affect the validity of remaining portions which shall remain in full force and effect.

Section 3. This Ordinance shall be in full force and effect immediately upon its passage as provided by Section 216 of the City Charter, if adopted by at least six members of council, or upon the seventh day after final adoption if adopted by fewer votes.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 2006

**PASSED BY THE FOLLOWING VOTE:**

AYES- BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, and  
PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST: \_\_\_\_\_

LATONDA SIMMONS  
City Clerk and Clerk of the Council  
of the City of Oakland, California

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