

INTRODUCED BY COUNCILMEMBER _____

APPROVED AS TO FORM AND LEGALITY

Margaret Taylor
OFFICE OF THE CITY CLERK
OAKLAND

ORDINANCE NO. 12620 - - C.M.S. 2004 NOV -2 PM 3:30

AN ORDINANCE AMENDING OAKLAND MUNICIPAL CODE SECTION 15.52 (VIEW ORDINANCE) TO CLARIFY APPLICATION TO PROPERTIES IN THE ENTIRE CITY OF OAKLAND AND THAT THE PRIVATE RIGHT TO RECONCILIATION AND ARBITRATION ESTABLISHED BY THE VIEW ORDINANCE IS NOT AFFECTED BY THE PROVISIONS OF SECTION 15.52.040, PROTECTED VIEW CORRIDORS IN THE NORTH OAKLAND HILL AREA SPECIFIC PLAN

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 and sections 12 and 13 of Ordinance No. 10798 became a part of the View Ordinance, now Section 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, the view protection language and related language prohibiting the blocking of such views in section 15.52.040 applies only to certain views in specific areas within the protected view corridor, but because this section was made a part of the View Ordinance, it has caused misunderstanding regarding the availability of the private right to reconciliation and arbitration established by Ordinance No. 9962; and

WHEREAS, the purpose of this Ordinance is to clarify that the private right to reconciliation and arbitration established by the View Ordinance, OMC section 15.52, applies throughout the City of Oakland and further clarifies that the provisions of OMC section 15.52.040 regarding protected view corridors applies only to limited public views in specific locations in the NOHASP; and

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

WHEREAS, it is in the public interest to adopt these amendments and additional minor amendments to the View Ordinance, section 15.52 of the Oakland Municipal Code; now therefore be it

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

AMEND SECTION 15.52.010 INTENT AND FINDINGS, PARA. D
(Added language is underscored)

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, and 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 for both private views and protected public view corridors.

AMEND SECTION 15.52.020 DEFINITIONS

“Claimant” means any individual owning real property in the city who files a bona fide claim as required by the terms and provisions of this chapter.

“Protected public view corridor” means only the wedged-shaped view, afforded by a specific vantage point and designated on the Site Development Map of the North Oakland Hill Area Specific Plan.

“Private view claim” means the written basis for arbitration or court action under the terms and conditions of this chapter, submitted by the claimant, which clearly establishes the following.

“View” means a distant vista or panoramic range of sight of Oakland, neighboring areas, or the San Francisco Bay that existed at the time a claimant acquired any property in the city of Oakland. Views include, but are not limited to, skylines, bridges, distant cities, geologic features, hillside terrains and wooded canyons or ridges.

AMEND SECTION 15.52.030 EXEMPTIONS

The following classes of trees, upon reaching a protected size in accordance with section 12.36.020 of the OMC, are categorically exempt from the provisions of this chapter.

AMEND SECTION 15.52.040 OBSTRUCTION OF PROTECTED PUBLIC VIEW CORRIDORS; RE-NUMBER SECTION 15.52.040 TO SECTION 15.52.130 AND PLACE IT AT THE END OF THIS CHAPTER

The planting of vegetation which will obstruct the view plane from the road within any protected public view corridor is prohibited. Trees or vegetation which obstruct a protected public view corridor shall be removed or altered to eliminate or minimize view obstruction in conjunction with development of said property per the vegetation management prescriptions for the North Oakland Hill Area Specific Plan.

For parklands, preserves or other types of open spaces, obstructions of protected public view corridors shall be eliminated or minimized in accordance with said management prescriptions. (Prior code section 7-8.035, Ordinance No. 10798, passed November 10, 1986)

AMEND SECTION 15.52.060 APPORTIONMENT OF COSTS

The view claimant and the tree owner shall each pay fifty (50) percent of such costs in those cases involving any tree planted by the tree owner subsequent to the effective date of this chapter (Ordinance No. 9962, passed August 5, 1980.

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

Introduction Date: JUL 06 2004

IN COUNCIL, OAKLAND, CALIFORNIA, JUL 20, 2004

PASSED BY THE FOLLOWING VOTE: *Quan*

AYES- BROOKS, BRUNNER, CHANG, NADEL, ~~██████████~~, WAN, and PRESIDENT DE LA FUENTE *-7*

NOES- *0*

ABSENT- *Reid-1*

ABSTENTION- *0*

ATTEST: *C. Tonda Simmons for*
CEDA FLOYD
City Clerk and Clerk of the Council
of the City of Oakland, California

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FILED
OFFICE OF THE CITY CLERK
OAKLAND

NOTICE AND DIGEST

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This ordinance amends Oakland Municipal Code Section 15.52 (View Ordinance) to clarify that the View Ordinance applies to the entire City of Oakland and is not affected by the provisions of Section 15.52.040 regarding protected view corridors in the North Oakland Hill Area Specific Plan.