

ORDINANCE NO. 2022-XX **DRAFT**

AMENDING THE TREE OBSTRUCTION OF VIEWS COMBINING DISTRICT
ORDINANCE TO ESTABLISH TREE ARBITRATION BOARDS

The Contra Costa County Board of Supervisors ordains as follows (omitting the parenthetical footnotes from the official text of the enacted or amended provisions of the County Ordinance Code):

SECTION I. SUMMARY. This ordinance amends Ordinance Code chapter 816-2, the Tree Obstruction of Views Combining District ordinance, to provide a method for private property owners to gain restoration of views and sunlight lost due to tree growth by another private property owner. This ordinance authorizes the Board of Supervisors to establish one or more tree arbitration boards that would, at the request of the parties, hear view claim disputes and issue either binding or advisory decisions.

SECTION II. Chapter 816-2 of the County Ordinance Code is amended to read:

Chapter 816-2
TREE OBSTRUCTION OF VIEWS (-TOV) COMBINING DISTRICT

Article 816-2.2
General

816-2.202 Tree obstruction of views (-TOV) combining district. All land within a land use district combined with a tree obstruction of views (-TOV) combining district is subject to the provisions of this chapter. (Ords. 2022-XX § 2, 84-3).

816-2.204 Purpose and intent. The purpose of this chapter is to provide a method for private property owners to gain restoration of views and sunlight lost due to tree growth by another private property owner. It is not intended by this chapter to create any greater right to a view or access to sunlight than existed at the time any claimant purchased their property. (Ords. 2022-XX § 2, 84-3).

816-2.206 Objectives. The objectives of, and the justification for, this chapter are to:

- (a) Preserve and promote the aesthetic benefits provided by trees, views of surrounding locale, and access to light.
- (b) Preserve and promote the beneficial use and enjoyment of privately owned land within the county.
- (c) Preserve, maintain, and enhance property values within the county.

- (d) Discourage the planting of tree species and maintenance of trees in a manner that may provide excessive shade and unduly diminish desirable views. (Ords. 2022-XX § 2, 84-3).

816-2.208 Definitions. For purposes of this chapter, the following terms have the following meanings:

- (a) “Arborist” means:
 - (1) A certified arborist who is certified by the International Society of Arboriculture; or
 - (2) A consulting arborist who is listed as a member of the American Society of Consulting Arborists.
- (b) “Arborist’s report” means a written report prepared by an arborist that evaluates the feasibility and impact of a proposed restorative action or actions.
- (c) “Claimant” means any owner of real property who believes in good faith that the growth, maintenance, or location of one or more trees situated on the property of another diminishes the beneficial use, economic value, or enjoyment of the claimant’s property, and who files a view claim under this chapter.
- (d) “Obstruction” means any blocking or diminishing of a view or sunlight by tree growth, maintenance, or location.
- (e) “Thinning” means the selective removal of entire branches from a tree so as to improve visibility through the tree or improve the tree's structural condition.
- (f) “Topping” means the removal of the upper portion of a tree's trunk or primary leader.
- (g) “Tree” means a live woody plant with a single perennial stem or multiple perennial stems.
- (h) “Tree owner” means the owner of real property where one or more trees that form the basis for a view claim filed under this chapter are situated.
- (i) “Tree removal” means the destruction and removal of any tree by cutting. Tree removal need not include removal of the tree stump or roots, but any remaining portion of the tree may not exceed three feet above grade.
- (j) “Trimming” means the selective removal of portions of branches from a tree to modify the tree's form, shape, or profile, or improve the tree's appearance.

- (k) “View” means a range of sight including pleasing vistas or scenes from the primary living areas of a residence. The term “view” includes both up-slope and down-slope vistas or scenes, but is distant or panoramic range in nature, as opposed to short range. Views include but are not limited to vistas or scenes of skylines, bridges, distant cities, distinctive geologic features, hillside terrain, wooded canyons, ridges, and bodies of water. **[NOTE: Determine whether the term “view” also includes a range of sight from a deck connected to a residence.]**
- (l) “View claim” means a claimant's verified written basis for arbitration or court action under this chapter.
- (m) “Windowing” means the creation of a limited horizontal viewing plane through the head of a tree or trees. (Ords. 2022-XX § 2, 84-3).

Article 816-2.4 Standards

816-2.402 General. This article establishes standards for resolving view claim disputes. (Ords. 2022-XX § 2, 84-3).

816-2.404 Rights. A claimant has no right greater than that which existed when the claimant acquired the property involved in the view claim. The claimant shall provide evidence to prove the extent of that original view and right. (Ords. 2022-XX § 2, 84-3).

816-2.406 View character. The character of a view is determined by evaluating the following:

- (a) The vantage point(s) from which the view is obtained.
- (b) The existence of landmarks or other unique features in the view.
- (c) The extent to which the view is diminished by factors other than the tree(s) involved in the claim. (Ords. 2022-XX § 2, 84-3).

816-2.408 Obstruction character. The character of the view obstruction is determined by evaluating the following:

- (a) The extent of the alleged view obstruction expressed as a percentage of the total view, as calculated by means of a surveyor’s transit or photography or both.
- (b) The extent to which landmarks or other unique features in the view are obstructed. (Ords. 2022-XX § 2, 84-3).

816-2.410 Benefits and burdens. The extent of benefits and burdens derived from the alleged view obstruction is determined by considering the contribution of the tree(s) to the following factors:

- (a) Visual screening.
- (b) Wildlife habitat.
- (c) Soil stability, as measured by soil structure, degree of slope, and the extent of the tree root system.
- (d) Energy conservation and climate control.
- (e) Interference in efficient operations of a claimant's solar energy systems.
- (f) Effects on neighboring vegetation.
- (g) Visual quality of the tree(s), including but not limited to species characteristics, size, form, texture, color, vigor, and location.
- (h) The economic value of the tree(s), as measured by criteria developed by the American Society of Landscape Architects.
- (i) Other tree-related factors, including but not limited to indigenous tree species, specimen tree quality, rare tree species, tree flammability, tree health, and historical value. (Ords. 2022-XX § 2, 84-3).

816-2.412 Evaluation of restorative actions. A restorative action is evaluated based on the standards of this article and by considering the following:

- (a) The effectiveness of the restorative action in reducing the view obstruction.
- (b) Any adverse impact of the restorative action on the benefits derived from the tree(s) in question.
- (c) The structural and biological effects of the restorative action on the tree(s) in question.
- (d) The cost of the restorative action, as determined by consultation with licensed landscape architects. (Ords. 2022-XX § 2, 84-3).

816-2.414 Limits on restorative actions. Restorative actions are limited to the following:

- (a) Trimming.

- (b) Thinning.
- (c) Windowing.
- (d) Topping.
- (e) Tree removal with necessary replacement planting.
- (f) No action. (Ords. 2022-XX § 2, 84-3).

816-2.416 Implementation of restorative actions. All restorative actions must be undertaken subject to all of the following:

- (a) Restorative actions must be consistent with all applicable statutes, ordinances, and regulations. A restorative action involving a protected tree must comply with Chapter 816-6, the County Tree Protection and Preservation Ordinance.
- (b) Where possible, restorative actions are limited to the trimming or thinning of branches, but when trimming or thinning is not a feasible solution, windowing is the preferable solution.
- (c) Topping may be considered only if thinning, trimming, or windowing of branches is not a feasible solution.
- (d) Tree removal may only be considered when all other restorative actions are judged to be ineffective. Tree removal must be accompanied by replacement plantings of appropriate plant material necessary to restore the maximum level of benefits lost due to tree removal. Replacement plantings can be required on the tree owner's or the claimant's property. If tree removal will eliminate or significantly reduce the tree owner's benefits of shading, visual screening, or privacy, replacement screen plantings shall, at the tree owner's option, be established before tree removal occurs.
- (e) A tree owner may choose tree removal with replacement plantings as an alternative to trimming, thinning, windowing, or topping.
- (f) All trimming, thinning, windowing, topping, or removal required under this chapter must be performed by a qualified tree trimmer or as approved by the tree arbitration board. (Ords. 2022-XX § 2, 84-3).

Article 816-2.6 Procedures

816-2.602 Initial reconciliation. If a claimant believes in good faith that the growth, maintenance, or location of one or more trees situated on the property of another diminishes the beneficial use or economic value of, or sunlight or enjoyment of views naturally accruing to, the

claimant's property, the claimant shall notify the tree owner in writing of those concerns. When a claimant notifies a tree owner of those concerns, the claimant should also attempt to discuss those concerns in person with the tree owner, if possible, to enable the claimant and the tree owner to attempt to reach a mutually agreeable solution to the alleged view obstruction in accordance with the provisions of this chapter. (Ords. 2022-XX § 2, 84-3).

816-2.604 Voluntary mediation.

- (a) If the initial reconciliation attempt is unsuccessful, the claimant may propose mediation by serving on the tree owner a written request for mediation. Acceptance of mediation is voluntary, but the tree owner has no more than 30 days after being served with a written request for mediation to accept or reject the offer of mediation, unless otherwise extended by the claimant. If mediation is accepted, the parties shall mutually agree upon a mediator within 10 days after mediation is accepted.
- (b) It is recommended that the services of a professionally trained mediator or mediation service be employed. The Department of Conservation and Development will provide, upon request, a list of mediators and mediation services, accompanied by their qualifications, that the parties may review and consider for selection. The fee for mediation services will be determined by the mediator and the parties. The mediator will not have the power to issue binding orders for restorative action but must strive to enable the parties to resolve their dispute at this stage to eliminate the need for binding arbitration, a fact-finding and advisory decision, or litigation. (Ords. 2022-XX § 2, 84-3).

816-2.606 Arbitration before a tree arbitration board.

- (a) The Board of Supervisors may establish or designate one or more tree arbitration boards.
- (b) If the parties are unable to reach agreement through the initial reconciliation process or with the assistance of a mediator, either the claimant or the tree owner may offer in writing to the other party to submit the dispute to binding arbitration before a tree arbitration board. The initiating party shall serve on the other party by personal service or certified mail, return receipt requested, an agreement executed by the initiating party to submit the dispute to binding arbitration. If the non-initiating party concurs, the non-initiating party shall execute the agreement within 30 days after service. Failure to execute the agreement within 30 days after service is a rejection of binding arbitration.
- (c) If the agreement is accepted, the initiating party shall submit a view claim to the Department of Conservation and Development. The filing fee for a view claim will be established by the Board of Supervisors. An arborist's report must be submitted with the view claim.
- (d) A view claim must clearly establish all of the following:

- (1) The precise nature and extent of the alleged view obstruction and the manner in which it diminishes the beneficial use, economic value, or enjoyment of the claimant's property, including all pertinent corroborating evidence available.
 - (2) The exact location of all trees alleged to cause a view obstruction, the address of the property upon which the trees are located, and the present tree owner's name and address. This requirement may be satisfied by including the tree location, property address, and tree owner information on a valid property survey or plot plan submitted with the view claim.
 - (3) Any mitigating actions proposed by the parties involved to resolve the alleged view claim.
 - (4) A showing that personal communication between the claimant and the tree owner to resolve the alleged view obstruction as set forth in this chapter failed. The claimant must provide physical evidence that written attempts at reconciliation were made. This evidence may include, but is not limited to, copies of and receipts for certified or registered mail correspondence to the tree owner.
- (e) The tree arbitration board will review the view claim at a noticed public meeting. At least 10 days before the arbitration meeting, notice will be mailed to the affected parties and to the owners of any property within a radius of 300 feet of the boundaries of the property where the trees are located.
 - (f) The arbitration proceeding will be based on available evidence and testimony. Either party to the action may be represented by an arborist or present an arborist's report to the tree arbitration board. The tree arbitration board may recommend the services of other experts to the parties. Each party may present witnesses and question witnesses presented by the other party.
 - (g) The tree arbitration board will issue a written decision to the parties. The decision will include the tree arbitration board's findings with respect to the standards listed in Article 816-2.4, required restorative actions, and an allocation of all costs. All mandated restorative actions must be initiated within 30 days after the arbitration decision is issued, unless otherwise specified in the decision.
 - (h) The decision of the tree arbitration board is final and binding and enforceable under Code of Civil Procedure Section 1280 et seq. The Department of Conservation and Development will record in the County Recorder's office any final decision of the tree arbitration board that provides for limitations on the property of a tree owner. (Ords. 2022-XX § 2, 84-3).

816-2.608 Fact-finding and advisory decision by a tree arbitration board.

- (a) If the parties are unable to reach agreement through the initial reconciliation process or with the assistance of a mediator, or do not agree to binding arbitration, the claimant or the tree owner may elect fact-finding and an advisory decision of the tree arbitration board.
- (b) To begin the fact-finding and advisory decision process, the initiating party must submit a view claim to the Department of Conservation and Development. The view claim must establish all of the items specified in section 816-2.606(d). An arborist's report must be submitted with the view claim.
- (c) The tree arbitration board is the fact-finding board and will render an advisory decision to the parties. The tree arbitration board will review the view claim at a noticed public meeting. At least 10 days before the meeting, notice will be mailed to the affected parties and to the owners of any property within a radius of 300 feet of the boundaries of the property where the trees are located.
- (d) The proceeding will be based on available evidence and testimony. Either party to the action may be represented by an arborist or present an arborist's written report to the tree arbitration board. The tree arbitration board may recommend the services of other experts to the parties. Each party may present witnesses and question witnesses presented by the other party.
- (e) The proceeding need not be postponed if any party refuses permission to inspect the premises, refuses to participate in the proceeding, or fails to produce evidence.
- (f) The tree arbitration board will issue a written advisory decision to the parties. The decision will include the tree arbitration board's factual findings with respect to the standards listed in Article 816-2.4, recommended restorative actions, and a recommended allocation of all costs.
- (g) If litigation is required to enforce the decision of the tree arbitration board, there is a rebuttable presumption in favor of the tree arbitration board's decision. The party bringing any private civil action under this chapter must promptly notify the Department of Conservation and Development in writing of the action. (Ords. 2022-XX § 2, 84-3).

816-2.610 Litigation. If the initial reconciliation process or mediation fails to resolve the view claim, and if the parties do not choose binding arbitration, the claimant may pursue civil legal action. (Ords. 2022-XX § 2, 84-3).

Article 816-2.8 Liability, Costs and Enforcement

ORDINANCE NO. 2022-XX DRAFT

816-2.802 Liability. The issuance of a decision by the tree arbitration board does not establish any public use or access not already in existence with regard to the property for which the decision is issued, and does not create any liability for the county or any other public agency or entity with regard to any restorative actions or replacement plantings to be performed. (Ords. 2022-XX § 2, 84-3).

816-2.804 Costs. The costs of arbitration and all mandated restorative actions and replacement plantings shall be apportioned between the claimant and the tree owner as mutually agreed to, or in the absence of an agreement, as follows:

- (a) The claimant and tree owner shall each pay 50 percent of all costs in those cases involving any tree planted by the tree owner after March 1, 1984.
- (b) In all other cases, the claimant shall pay 100 percent of all costs. (Ords. 2022-XX § 2, 84-3).

816-2.806 Enforcement.

- (a) Violations of this chapter are not misdemeanors or infractions. Enforcement of this chapter is by the involved private parties. A claimant may seek to enforce any restorative action mandated pursuant to this chapter through ordinary legal proceedings.
- (b) This chapter does not preclude any person from separately enforcing, if applicable, the provisions of the Solar Shade Control Act, Public Resources Code sections 25980 through 25986. (Ords. 2022-XX § 2, 84-3).

SECTION III. EFFECTIVE DATE. This ordinance becomes effective 30 days after passage, and within 15 days after passage shall be published once with the names of supervisors voting for or against it in the East Bay Times, a newspaper published in this County.

PASSED on _____, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST: MONICA NINO, _____
 Clerk of the Board of Supervisors Board Chair
 and County Administrator

By: _____ [SEAL]
 Deputy