

The View Dispute Resolution Process

On January 15, 2002, the Santa Barbara City Council adopted an ordinance (*SBMC Section 22.76*) establishing a private process for neighbors to resolve disputes regarding the alleged blockage of private views by trees or vegetation. This document is offered as a guide to help you and your neighbors understand the View Dispute Resolution Process.

Private Views and the Urban Forest

Both views and trees and vegetation contribute to the aesthetic value, quality of life, ambiance, and financial value of properties within the City. Views of the mountains, ocean, canyons or man-made landmarks offer significant benefits to residents. Trees and vegetation provide shade, privacy, cooling, wind screening, and wildlife habitat. Both private views and trees and vegetation may add significant economic value to private property.

Please reference the “*Trees and Views*” brochure for more information on framing views with trees.

What is the Process?

The view dispute resolution process is a voluntary tool available to neighbors to help resolve private view issues related to trees and vegetation. It is a private process that is designed to help foster better communication between neighbors. The City is not involved in mediating disputes, advising neighbors on private views or vegetation issues, or enforcing agreements reached between neighbors.

The intent of the process is to give property owners a communication framework to help restore private views and to encourage the proper maintenance of trees and vegetation. It is hoped that, when necessary, difficult disputes between neighbors will benefit from a third party (mediator or arbitrator) to bring both parties to an agreement.

The process is intended to discourage improper maintenance and removal of trees and vegetation, as trees and vegetation may add aesthetic and economic value to private properties and the community.

View Evaluation Criteria (see View Evaluation Criteria section) will help neighbors determine if a tree or vegetation is *unreasonably* obstructing a private view or sunlight access.

The view dispute resolution process consists of the following steps:

1) *Initial Discussion* – The neighbor seeking to improve a view from his or her property (complainant) is encouraged to communicate with the neighbor owning a tree or vegetation that is obstructing the view. This communication can take the form of a personal visit, a letter or phone call. Neighbors are encouraged to refer to this brochure during this discussion so that both parties are aware of the steps of the process and understand that this is a private and voluntary process.

If the initial discussion does not result in an agreement between neighbors, the complainant can request that a neighbor participate in either mediation (see #2) or arbitration (see #3).

2) *Mediation* – This step consists of the complainant neighbor seeking to restore the view requesting the neighbor with the vegetation to participate in mediation to resolve the dispute. The cost of the mediator would be borne by the complaining homeowner or by both parties if both neighbors agree to share the cost of the service.

A mediator would hear both sides of the issue and would visit the properties to get a better understanding of the view and blockage issues. The mediator would use a list of criteria (See *View*

Evaluation Criteria) to guide the neighbors to determine if a tree or vegetation is an unreasonable view obstruction.

Failure of the owner of the tree or vegetation to respond to a request for mediation within 30 days, constitutes a formal refusal to participate in the mediation process as provided in the ordinance.

- 3) *Arbitration* – This step consists of the complainant neighbor seeking to restore the view requesting the neighbor with the tree or vegetation to participate in arbitration to resolve the dispute. The cost of the arbitrator would be borne by the complaining homeowner or by both parties if both neighbors agree to share the cost of the service.

Failure of the owner of the tree or vegetation to respond to a request for arbitration within 30 days, constitutes a formal refusal to participate in the arbitration process as provided in the ordinance.

- 4) *Litigation* – If all foregoing approaches fail, the complaining homeowner may choose to file a private cause of action in court. A judge may decide to use the Court Appointed Dispute Resolution (**CADRE**) system of Court-appointed mediators to assist in the resolution of the view dispute. Small claims between neighbors can be handled by the **CADRE** system. For more information on using the **CADRE** process to resolve a dispute, visit the **CADRE** web site at www.cadre.org.

View Evaluation Criteria

The following unranked criteria should be considered by neighbors or professionals in evaluating a view or sunlight access dispute:

- The point(s) in the complainant's home from which the view is seen or sunlight accessed *(i.e., is the view from the home's main living space obstructed?)*;
- The extent of the view or sunlight obstruction;
- The quality of the view or sunlight access, including the existence of landmarks or other unique view features, or the extent to which these views or sunlight access are blocked by tree(s) or vegetation;
- The extent to which the view or sunlight access is diminished by factors other than the tree(s) or vegetation;
- The extent to which the tree(s) or vegetation have grown to obscure the enjoyment of view or sunlight access from the complainant's property compared with the view or sunlight access which was available at the time the complainant acquired his or her home;
- The number of existing trees or amount of vegetation in the area, the number of healthy trees that a given parcel of land will support, and the current effects of the tree(s) and their removal on the neighboring vegetation;
- The extent to which the tree(s) or vegetation provide:
 1. Screening or privacy;
 2. Energy conservation or climate control;
 3. Soil stability, as measured by soil structure, degree of slope, and extent of the tree's root system when a tree is proposed for removal;
 4. Aesthetics;
 5. Community or neighborhood quality or significance;
 6. Shade;
 7. Historical context due to the age of the tree/vegetation;

- 8. Rare and interesting botanical species;
 - 9. Habitat value for wildlife; and
 - 10. Blending, buffering or reduction in the scale and mass of adjacent architecture
- The date the complainant purchased his or her property and circumstances which existed at that time with respect to the view;
 - The date the tree/vegetation owner purchased his or her property and circumstances which existed at that time with respect to the view;
 - The distance between the complainant's home and the tree or vegetation Obstruction for which Restoration Action is sought;
 - Whether the tree or vegetation Obstruction is located within a City-designated "High Fire Hazard" zone and is a species not generally encouraged for new residential construction within such zones; and
 - The extent to which the City has an interest in the preservation of an affected tree in its present form due to its unique character, its historical importance, or other specific factors as may be identified by a certified arborist.

Questions and Answers

1. What is the City's involvement in the ordinance?

In response to numerous concerns about protecting private views, the City created this process for neighbors to resolve disputes without the City's involvement. The City does not evaluate neighbor disputes or enforce agreements reached between neighbors.

2. Who is required to pay for the mediation and arbitration services?

The cost of mediation or arbitration are borne by the complainant or shared by agreement of both parties.

3. Who is required to pay for the restorative action (i.e. maintenance of the tree or vegetation)?

When neighbors reach an agreement to perform restorative action on trees or vegetation, the cost of these activities is paid by the complainant or shared by both parties through mutual agreement.

4. Once a request to help restore a view is received, is participation required by law?

The view dispute resolution process is a voluntary process. It is recommended that neighbors respond to requests to discuss a view obstruction and participate in mediation or arbitration to foster good neighbor relations.

5. What if a neighbor refuses to participate in the dispute resolution process?

If a neighbor refuses to participate in the first three steps of the view dispute resolution process (initial discussion, mediation, and arbitration), the ordinance allows for the filing of a Superior Court civil action to restore a view. The case will likely be referred to the CADRE program where court-appointed mediators help resolve the issue. It is important for neighbors to maintain good communication with neighbors and discuss issues regarding property concerns. If a party refuses to discuss these issues or participate in the view dispute resolution process, the neighbor's refusal to participate may be reflected in court proceedings. The complainant is encouraged to provide the Court with the results of the view dispute resolution process, including the outcome of mediation, arbitration, discussions with the neighbor, or refusal to participate in these activities to help resolve the dispute.

6. What is considered an unreasonable obstruction?

To determine whether a tree or vegetation is an unreasonable obstruction to a private view, a list of criteria are provided (see View Evaluation Criteria section) for neighbors to consider. A mediator, arbitrator, or judge will use these criteria to evaluate if the tree or vegetation is unreasonably obstructing a view and to help parties reach an agreement.

7. How does this process affect conditions of approval?

Conditions of approval may be placed on certain development projects as part of the City's development and design review processes. The conditions may require the drawing of a landscape plan so that the appropriate placement of trees and vegetation may be assured. Trees and vegetation that were part of a landscape plan approved through the City's development and design review processes cannot be removed without review and approval by the Architectural Board of Review (ABR) or Planning Commission (PC). For more information on removing a tree or vegetation that was part of an approved landscape plan, contact the City Community Development Department at 564-5470.

8. How does the ordinance apply to historic or specimen trees?

The view dispute resolution process does not apply to Historic or Specimen trees. Historic or Specimen trees on private property cannot be altered without consent from the Historic Landmarks Commission (**HLC**). Some trees located in El Pueblo Viejo (EPV) Landmark District cannot be altered without **HLC** review and approval. If you need help to determine if your tree is a Historic or Specimen tree or if the tree needs **HLC** review, contact the City's Community Development Department at 564-5470.

9. How does the ordinance apply to trees owned and located on State, Federal, Public School or City land?

The process does not apply to trees located on State, Federal or public school owned properties unless the trees are located in a Coastal Zone. The process does not apply to trees located City-owned trees. Parkway trees or trees in the public right-of-way cannot be trimmed without a permit from the City Arborist. The Parks and Recreation Board must approve requests for removal of a City-owned tree. For more information on trimming a City tree, contact the City Arborist at 564-5433.

