

CITY OF VENTURA

CITY ATTORNEY LEGAL REPORT

November 6, 2013

Honorable City Council
City of San Buenaventura, California

Attention: Tree Advisory Committee

Re: Proposed View Dispute Resolution Ordinance

Dear Members of the Council:

On February 11, 2013, Council directed this office to "proceed with development of a View Dispute Resolution Ordinance and explore the option of not exempting the City." This report refers the proposed ordinance to the Tree Advisory Committee (TAC) so that the TAC may gather public testimony and make recommendations to Council on the proposal.

The proposed ordinance is modeled on Santa Barbara's view dispute resolution system. We have, in conjunction with the City's Urban Forestry Coordinator Nathan Slack, made significant changes to the Santa Barbara model which will be explained below.

The proposed ordinance sets up a system for property owners, typically but not necessarily adjoining neighbors, to discuss, mediate, arbitrate and ultimately litigate in court to resolve disputes about trees and vegetation that *unreasonably* block views or sunlight. One key to the Santa Barbara model is that the City is not involved in any manner – the ordinance authorizes a *private* right of action between *private* property owners. Thus, the ordinance empowers owners whose views or sunlight have been obstructed to take action against their neighbors if cooperation doesn't solve the problem. There are no City hearings, advisories or other intervention of any kind.

The ordinance lays out a four-step process beginning with preparation of a view or sunlight restoration dispute resolution process claim. The claim includes details as to the prior view, the unreasonable tree or vegetation blockage claimed, and the desired action. The claimant must also make an initial contact with the obstructing owner to discuss the matter. If discussions are not successful, the complainant must invite the tree or vegetation owner to come view the blockage from the impacted property.

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If no agreement results, the complainant may proceed to mediation as the second step. Mediation is by definition a voluntary process; the tree or vegetation owner need not accept the request to mediate. If mediation is agreed upon, the parties select a mediator (paid for by the complainant or split by agreement). The mediator's actions are to be guided by the claim evaluation criteria and hierarchy of restoration actions set forth in the ordinance in sections 8.900.110 and 8.900.120. The criteria and restoration actions set up priorities for the kinds of tree or vegetation pruning actions that may take place. The TAC should carefully review these criteria and actions.

The third step escalates the dispute to a formal arbitration proceeding using the same criteria for decision making as are used under the mediation process. Arbitration may also be refused, but that refusal may be brought to the attention of the court if litigation results.

Finally, the fourth step allows a complainant to go to court to ask for judicial resolution of the view or sunlight blockage claim. The Santa Barbara ordinance is relatively "fuzzy" on what standard of review the court should apply. We modified the ordinance to provide that view obstructions must be "unreasonable" in order to support a private right of action. (Section 8.900.090 A.) This standard of review will provide guidance to property owners and neighbors as to which kinds of view obstructions may be subject to resolution under the ordinance.

In addition to emphasizing the need for "unreasonable" obstruction as a foundational requirement to action under the ordinance, we also made other changes in the Santa Barbara model. For example, we have used "industry-standard" definitions of key terms such as "canopy," "crown," "heading," "thinning," and "topping" based upon the terms used in the American National Standard Publication ANSI A300 (Part1)-2001 Pruning, Revision of ANSI-A300-1995. Our use of industry-standard terminology should allow certified arborists to apply the ordinance more consistently when called upon to do so during mediation, arbitration or litigation.

A key policy issue requires the TAC's feedback, namely, whether to include City owned and maintained trees in the ordinance. Santa Barbara does not make City trees subject to its ordinance. We recommend following the Santa Barbara model on this point because of the sheer volume and cost of dealing with discussion, mediation, arbitration and litigation requests. The City could face literally hundreds of tree and vegetation disputes which would overwhelm our capacity to respond. The City's limited financial and

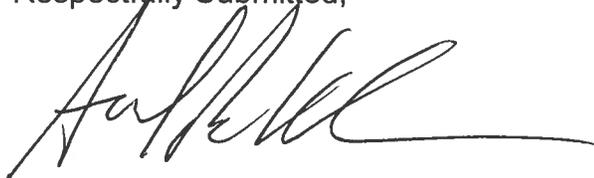
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staff resources are already overextended. For these reasons, we recommend that the ordinance not apply to City owned and maintained trees.

We welcome the Tree Advisory Committee's and the public's commentary and feedback.

Respectfully Submitted,



Ariel Pierre Calonne
City Attorney

APC:

cc: Mark D. Watkins, City Manager
Elena Brokaw, Parks, Recreation and Community Partnerships Director
Nathan Slack, Urban Forestry Coordinator