

ORDINANCE NO. 3813

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TORRANCE, CALIFORNIA, ADDING ARTICLE 41 TO DIVISION 9 OF THE TORRANCE MUNICIPAL CODE, TO ESTABLISH A PROCESS TO RESTORE VIEWS OBSTRUCTED BY VEGETATION IN THE HILLSIDE OVERLAY DISTRICT OF THE CITY OF TORRANCE.

WHEREAS, within the Hillside (and Local Coastal Overlay Zone) (herein "Hillside Overlay"), views, whether of the Pacific Ocean, the surrounding hillsides and city lights or other natural and manmade landmarks produce a variety of significant and tangible benefits for both residents and visitors. Views contribute to the aesthetic visual environment of the community by providing scenic vistas and inspiring distinctive architectural design. Views contribute to property values; and

WHEREAS, residents and property owners cherish their views of the South Bay Region. Such views contribute greatly to the quality of life in the city and promote the general welfare of the entire community; and

WHEREAS, trees and vegetation produce a wide variety of significant psychological and tangible benefits for both residents and visitors to within the Hillside and Local Coastal Overlay Zone. Trees and vegetation provide privacy, modify temperatures, screen winds, replenish oxygen to the atmosphere, maintain soil moisture, mitigate soil erosion and provide wildlife habitat. Trees and vegetation contribute to the visual environment and aesthetics by blending, buffering and reducing the scale and mass of architecture. Trees and vegetation within the city provide botanical variety and a sense of history. Trees and vegetation also create shade and visual screens and provide a buffer between different land uses. Trees contribute to property values. Absent an unreasonable obstruction of the view of properties within the Hillside and Local Coastal Overlay Zone, the city encourages and supports the growth and maintenance of trees and vegetation; and

WHEREAS, owners and residents within the Hillside and Local Coastal Overlay Zone should maintain trees on their property in a healthy condition for both safety reasons and for preservation of outward views. Before planting trees, owners and residents should consider view blockage potential, both currently and at tree maturity, and should not plant, maintain or permit to grow any tree or vegetation which unreasonably obstructs the view from a neighboring property; and

WHEREAS, the benefits derived from views and trees/vegetation may come into conflict. The planting of trees and other vegetation and their subsequent growth, particularly when such trees are not properly maintained, can produce unintended harmful effects both on the property on which they are planted and/or on neighboring properties within the Hillside and Local Coastal Overlay Zone; and

WHEREAS, within the Hillside and Local Coastal Overlay Zone it is in the interest of the public health, safety and welfare to:

- (a) Establish the right of real property owners in the Hillside and Local Coastal Overlay Zone to preserve and/or restore views which exist from unreasonable obstruction by the growth of trees and other vegetation. Such a right shall

accrue, and shall protect views that existed, on the date the property was acquired or fifteen years prior to the effective date of the ordinance codified in the this chapter, whichever is later;

- (b) Recognize that every real property owner in the Hillside and Local Coastal Overlay Zone is entitled to a process to resolve conflicts that negatively impact view equity, in order to preserve a reasonable amount of the view benefitting such real property;
- (c) Establish a process and evaluation criteria by which property owners within the Hillside and Local Coastal Overlay Zone may seek restoration of views when unreasonably obstructed by the growth of trees or other vegetation; and

WHEREAS, the alteration or removal of vegetation shall be in compliance with the Federal Migratory Bird Treaty Act; and

WHEREAS, the City Council finds that this ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to the following sections of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3: i) Section 15031 (b)(3) (CEQA only applies to activities which have the potential for having a significant effect on the environment), ii) 15060(c)(3) (the activity is not a project as defined in Section 15378), and iii) 15175 (the Master Environmental Impact Report for the city's General Plan certified on April 6, 2010, State Clearing House #2008/11046, has addressed mitigating environmental measures for all proposed amendments to be made to the Municipal Code); and

WHEREAS, the City Council finds that this ordinance is not subject to the Permit Streamlining Act as the City is providing only an advisory opinion and is not enforcing such an opinion; and

WHEREAS, the City Council, upon giving the required Notice did on the 28th day of June, and the 4th day of October 2016, conduct Public Meetings and on the 28th day of February, conduct a Public Hearing, at which time all interested parties were given full opportunity to be heard and present evidence.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF TORRANCE DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1

Article 41, entitled View Equity, is hereby added to Chapter 2 of Division 9 of the City of Torrance Municipal Code.

92.41.010 INTENT AND PURPOSE

The intent and purpose of this chapter is to:

- a) Recognize and establish a process by which real property owners may restore or preserve view equity within the immediate vicinity of their property;
- b) Establish procedures and evaluation criteria by which real property owners may seek resolution of view equity disputes;
- c) Discourage duplicative, repetitive or serial claims for view equity; and
- d) Discourage ill-considered damage to trees/vegetation and promote proper landscaping establishment and maintenance.

It is not the intent of the City to encourage clear-cutting or substantial denuding of any property of its trees by overzealous application of provisions of this chapter. It is not the intent of this

ordinance to create a permit that would be governed by the Permit Streamlining Act. Nor is it the intent or purpose of this article for the City to create either a covenant running with the land (for example, CC&Rs or deed restriction) or an equitable servitude (for example, easement or license). However, the City will keep a record of agreements and decisions reached pursuant to Sections 92.41.090, 92.41.010, and 92.41.110) of which it is notified, and provide those agreements and/or decisions to those who request such a report.

92.41.020 DEFINITIONS

Alter means to take action that changes the tree or vegetation, including but not limited to, extensive pruning of the canopy area, cutting, girdling, interfering with the water supply, applying chemicals or re-grading around the feeder root zone of the vegetation.

Arbitrator means a mutually agreed upon neutral third party professional intermediary who conducts a hearing process, and who hears testimony, considers evidence and makes binding decisions for the disputing parties. The arbitrator of a view equity dispute shall be chosen from a resource available from the City of qualified and professionally trained arbitrators/mediators, including but not limited to, members of the American Arbitration Association.

Authorized agent means a person, as defined herein, who has been designated and approved in writing by the property owner of record to act on his/her behalf in matters pertaining to the processing of a view equity claim as outlined in this chapter.

Binding arbitration means a voluntary legal procedure for settling disputes and leading to a final and binding determination of rights of parties, usually consisting of a hearing before an arbitrator where all relevant evidence may be freely admitted as set forth in California Code of Civil Procedure Section 1280 et seq.

Canopy means the umbrella-like structure created by the over-head leaves and branches of a tree which create a sheltered area below.

City means the City of Torrance.

City trees means trees on City property or in the public right-of-way.

City property means any real property of which the City is the fee simple owner of record.

Claim, view equity means documentation, as set forth in Section 92.41.100, that outlines the basis of view equity diminishment and the specific preservation action that is being sought.

Crown means the rounded top of the tree.

Crown reduction/shaping means a method of comprehensive pruning that reduces the height and/or spread of vegetation. Crown reduction entails the reduction of the top, sides or individual limbs by means of removal of leaders or the longest portion of limbs to a lateral large enough to assume the terminal.

Destroy means to kill or take action that endangers the health or vigor of vegetation, including, but not limited to, cutting, girdling, interfering with the water supply, applying chemicals or re-grading around the base of the trunk or main stem.

Heading back means the overall reduction of the mass of a tree by modification to major limbs.

Lacing means a comprehensive method of pruning that systematically and sensitively removes excess foliage and improves the structure of the tree.

Maintenance pruning means pruning with the primary objective of maintaining or improving tree health and structure; includes "crown reduction/shaping" or "lacing" but not ordinarily "heading back."

Mediator means a neutral, objective third party professional negotiator/facilitator to help disputing parties reach a mutually satisfactory solution regarding a view equity claim. The mediator shall be chosen from a resource of qualified and professionally trained arbitrators/mediators, including but not limited to, members of the American Arbitration Association.

Obstruction means the blocking or diminishment of a view attributable to growth, improper maintenance, or location of vegetation.

Person means any individual, individuals, corporation, partnership, firm or other legal entity.

Pruning means the removal of plant material from vegetation.

Restorative action means any specific steps taken affecting vegetation that would result in the preservation or restoration of view equity across property lines.

Severe pruning means the cutting of branches and/or trunk of a tree in a manner which substantially reduces the oval size of the tree or destroys the existing symmetrical appearance or natural shape of the tree and which results in the removal of main lateral branches leaving the trunk and branches of the tree in a stub appearance. "Heading back" as defined herein is considered to be severe pruning.

Stand thinning means the selective removal of a portion of trees from a grove of trees.

Street means the portion of a right-of-way easement used for public purposes, such as roadway improvements, curbs, gutters and sidewalks, dedicated to the city, and formally accepted by the city into the city public street system for maintenance purposes.

Sunlight means the availability or access to light from the sun across property lines.

Vegetation owner means any person who owns real property in the city on which vegetation is located.

Vegetation means plants or grasses with the potential to obstruct views. "Vegetation" includes, without limitation, trees, shrubs, grasses, hedges and bushes, whether planted in ground or within pots, planters or containers. "Vegetation" shall not include any type of plants or trees owned and maintained by the City.

View means a vista of features, of, bodies of water, beaches, coastline, islands, skylines, mountains, city lights, ridges, hillside terrain, canyons, geologic features and landmarks. The term "view" does not mean an unobstructed panorama of these features. A "view" shall be limited to one common interior or developed exterior space used by the view seeker, including but not limited to the living, family, and dining rooms, bedrooms, rooms that have features such as picture windows, sliding glass doors, and French doors, and common exterior areas such as patios, balconies, decks, pool areas, and gazebos designed to take advantage of views.

View equity means achievement of a fair, reasonable, and balanced accommodation of views and competing obstructions (such as structures and/or vegetation), privacy and the use and enjoyment of property. No person shall plant, maintain, or permit to grow any trees or vegetation which unreasonably obstructs the view from a neighboring property.

Viewing area means a common interior or developed exterior space used by the view seeker, including but not limited to the living area, family, and dining rooms, bedrooms, rooms that have features such as picture windows, sliding glass doors, and French doors, and common exterior areas such as patios, balconies, decks, pool areas, and gazebos designed to take advantage of views. In structures, the finished floor elevation of any viewing area must be at or above the

existing grade adjacent to the exterior wall of the part of the building nearest to said viewing area. Hallways, closets, mechanical rooms, bathrooms, garages, driveways and interior side yards shall not be considered or used as selected viewing locations or areas.

View seeker means any real property owner in the city or authorized agent of such property owner who alleges that vegetation located within the immediate vicinity of the property as set forth in Section 92.41.030 is causing obstruction of the view benefitting such real property.

Vista pruning means the selective thinning of framework limbs or specific areas of the crown of a tree to allow a view from a specific point.

92.41.030 VIEW EQUITY CLAIM LIMITATIONS

Subject to other provisions of this chapter, a real property owner within the Hillside Overlay of the city may initiate the claim resolution process as outlined in Section 92.41.70. However, a claim for preserving or restoring view equity may only be made:

- a) Regarding any vegetation located on real property, either zoned or developed with solely residential uses, which is within five hundred (500) feet from the view seeker's real property boundary located within the Hillside Overlay District in the City of Torrance, and;
- b) Only if there has not been an active View Equity claim against that real property by the view seeker or any other real property owner in the city within the last two years, unless the subsequent claim is made within 45 days of notice of the original claim as provided in Section 92.41.090 of this chapter. In addition, a view seeker may only seek to preserve or restore a view from one common interior or exterior space used by the view seeker, including but not limited to the living, family, and dining rooms, bedroom. rooms that have features such as picture windows, sliding glass doors, and French doors, and common exterior areas such as patios, balconies, decks, pool areas, and gazebos designed to best enjoy views.

92.41.040 CRITERIA FOR DETERMINING UNREASONABLE OBSTRUCTION

The following criteria are to be considered (but are not exclusive) in determining whether unreasonable obstruction of a view has occurred:

- a) The vantage point(s) from which the view is observed
- b) The extent of obstruction of views, both currently and at vegetation maturity
- c) The quality of views being obstructed, including the existence of landmarks, vistas, or other unique view features
- d) The extent to which vegetation has grown to obscure the enjoyment of the view from the view seeker's property since the view seeker's acquisition of his or her property or 15 years prior to the ordinance's adoption, whichever is more recent.

92.41.050 CRITERIA FOR DETERMINING APPROPRIATE VIEW EQUITY CLAIM ACTION

When it has been determined that unreasonable obstruction has occurred, then the following un-weighted factors shall be considered in determining appropriate preservation action:

- a) The amount of vegetation in the area and the current effects of the vegetation and its removal on the neighboring vegetation,
- b) The extent to which the vegetation provides:
 - 1) Wind screening or privacy (visual or auditory),
 - 2) Energy conservation and/or climate control,
 - 3) Soil stability, as measured by soil structure, degree of slope and extent of the vegetation's root system when the vegetation proposed to be removed,
 - 4) Aesthetics, including but not limited to species characteristics, size, growth, and form

- 5) Community/neighborhood quality, value or significance
- 6) Shade
- 7) Rare and interesting botanical species
- 8) Habitat value for wildlife
- 9) Blending, buffering or reduction in the scale and mass of architecture
- c) Any hazards posed by the vegetation to persons or structures on the property of the complaining party including, but not limited to, fire danger or the danger of falling limbs or trees,
- d) The variety, age, projected rate of growth, and maintenance requirements of the vegetation,
- e) The state of documented view obstruction by the subject vegetation since the view seeker's purchase of his/her property, or within the last 15 years, whichever is most recent,
- f) The profile state of the subject vegetation since the vegetation owner purchased his/her property, or within the last 15 years, whichever is most recent.

92.41.060 HIERARCHY OF RESTORATIVE ACTION

View equity actions must be consistent with all other provisions of this title. Severe pruning should be avoided due to the damage such practice causes to the vegetation's form and health. Restoration actions may include, but are not limited to the following, in order of preference, assuming no countervailing health or safety interest(s) exist:

- a) **Lacing.** Lacing is the most preferable pruning technique that removes excess foliage and can improve the structure of the tree.
- b) **Vista Pruning.** Vista pruning of branches may be utilized where possible, if it does not adversely affect the tree's growth pattern or health.
- c) **Crown Reduction.** Crown reduction is preferable to tree removal, if it is determined that the impact of crown reduction does not destroy the visual proportions of the tree, adversely affect the tree's growth pattern or health, or otherwise constitute a detriment to the tree(s) in question.
- d) **Stand Thinning.** The removal of a portion of the total number of trees from a grove of trees, without any replacement plantings.
- e) **Heading Back.** Eliminating the outer extent of the major branches throughout the tree. Heading back is only to be permitted for trees specifically planted and maintained as a hedge, espalier, bonsai, or in pollard form and if restoration actions "a" through "d" of this section will not accomplish the determined preservation action and the subsequent growth characteristics will not create a future obstruction of greater proportions.
- f) **Vegetation Removal.** Vegetation removal may be considered when the above-mentioned restoration actions are judged to be ineffective and may be accompanied by replacement plantings or appropriate plant materials to restore the maximum level of benefits lost due to vegetation removal.

92.41.070 PROCESS FOR RESOLUTION OF OBSTRUCTION DISPUTES

The view seeker shall follow the process established by this chapter in seeking view equity.

1. Neighbor to neighbor contact. The view seeker and vegetation owner contact each other to resolve the view dispute.
2. Initial Reconciliation. The view seeker must complete the Initial Reconciliation process described in Section 92.41.090.
3. Advisory Opinion. If the Initial Reconciliation does not yield a result mutually satisfactory to the view seeker and vegetation owner, the view seeker may file a view equity claim requesting the Advisory Opinion of staff. Staff will make recommendations to correct adverse view impacts identified and follow the guidelines as set forth in Section 92.41.100.

4. Mediation. If either the view seeker or vegetation owner does not agree with the Advisory Opinion, the disagreeing party or the view seeker may request Mediation as described in Section 92.41.110.
5. Arbitration. If the vegetation owner does not participate in mediation or if mediation is unsuccessful in resolving the claim, either party may next pursue resolution by arbitration, as set forth in Section 92.41.120.
6. Litigation. If steps "1" through "5" are taken and processes are exhausted by the requesting party but no resolution is reached, the disagreeing party may then initiate litigation as described in Section 92.41.130.

92.41.080 NEIGHBOR TO NEIGHBOR CONTACT

The view seeker and vegetation owner shall contact each other to find a resolution and establish an agreement regarding the restoration of view. If an agreement is reached, there is no need to contact the City. If no agreement is reached, the view seeker may proceed with Initial Reconciliation.

92.41.090 INITIAL RECONCILIATION

A view seeker who believes that vegetation which has grown on another person's property within the Hillside Overlay in the city has caused unreasonable obstruction of view equity from the view seeker's property, shall first request that the City notify the vegetation owner of such concerns. The notification shall request personal discussions to enable the view seeker and vegetation owner to attempt to reach a mutually agreeable solution. The notification must invite the vegetation owner to view the alleged obstruction from the view seeker's property, and the vegetation owner is requested to invite the view seeker to view the situation from his/her property. The notification must include a copy of the View Equity Ordinance, available from the City, and the following verbiage: "Failure of the vegetation owner to respond to the written request for initial reconciliation within forty-five (45) days from the date on the notification shall be deemed formal refusal by the vegetation owner to participate in the initial reconciliation." The notification shall also reference the consequences of non-participation by the vegetation owner as described in Section 92.41.130.

During the Initial Reconciliation, the view seeker and vegetation owner may request assistance from a Certified Arborist. The City may provide a link to the International Society of Arboriculture to allow residents to search for a certified arborist. If the view seeker and vegetation owner reach an agreement, there is no need to file anything with the City. If initial reconciliation is refused, or if the parties do not agree as to the existence and nature of the view seeker's obstruction and the appropriate view equity action, the view seeker may proceed with subsequent View Equity claim resolution process outlined in Section 92.41.100.

92.41.100 ADVISORY OPINION

If Neighbor to Neighbor contact and Initial Reconciliation (Sections 92.41.080 and 92.41.090, respectively) do not produce a mutually agreeable solution, the view seeker may file a View Equity Claim application to request an Advisory Opinion. A View Equity Claim shall consist of all of the following:

- a) A description of the nature and extent of the alleged obstruction, including pertinent and corroborating physical evidence. Evidence may include but is not limited to dated photographic prints, negatives or slides. Such evidence must show absence of the obstruction at any documentable time during the tenure of the complaining party, or 15 years prior to the adoption of the View Equity Ordinance, whichever is most recent. Evidence to show the date of property acquisition or occupancy by the complaining party must be included.
- b) The location of all vegetation alleged to cause obstruction, the address of the property upon which the obstructing vegetation is located, and the present owner's name and address.

- c) Evidence of the failure of Initial Reconciliation, as described in Section 92.41.090, to resolve the dispute. The complaining party must provide physical evidence that written attempts at reconciliation have been made and have failed. Evidence may include, but is not limited to, copies of sent letters and corresponding receipts for certified or registered mail.
- d) The View Equity Claim fee in the amount established by resolution of the City Council as well as a deposit to retain the services of a certified arborist. Additional funds may be required as the process continues. Any money remaining at the end of the process will be refunded to the applicant.

Staff will review the application and deem it complete or incomplete. If the application is deemed incomplete, staff will mail a letter to the applicant stating what is needed to complete the application with a deadline of 30 days from the date of the letter. If the application is deemed complete, staff will process the application and prepare a notice, notification map and mailing labels of Hillside Overlay residential properties located within a 500 foot radius of the vegetation owner's property lines. The notification map shall indicate the view seeker and vegetation owner's properties. City staff shall mail the notice to the vegetation owner and surrounding property owners. The notice shall serve to inform neighbors that the view seeker has filed a View Equity Claim against the vegetation owner and will provide the neighbors 45 days from the date of the notice to file a joint claim with the Community Development Department against the same vegetation owner. The notice will also include a link to the View Equity Ordinance and inform the vegetation owner of the consequences of non-participation in the Initial Reconciliation, Advisory Opinion, Mediation and/or Arbitration processes as described in Section 92.41.130. Any joint claims will require completion of items A through C above and a multiple application fee. To the extent possible, neighboring claims will be combined with the existing claim for purposes of the Advisory Opinion, Mediation, and Arbitration. Failure to file a joint claim within 45 days of the notice date shall result in a 2 year waiting period to file a new claim against the same Vegetation Owner as described in Section 92.41.030.

Staff will set a date to conduct site visits to all properties participating in the view equity claim and document obstructions at each residence from only one ordinance-designated viewing area. Staff may acquire the assistance of a Certified Arborist during field visits. If a vegetation owner does not cooperate in the establishment of a site visit, the Advisory Opinion will be written without benefit of the perspective from the vegetation owner's property. The Advisory Opinion Letter will be signed by the Community Development Director and a copy will be mailed to all involved parties. The Advisory Opinion Letter will state which properties were visited, if a view blockage appears to exist and any recommended corrective measures that can resolve the view impacts identified. The following criteria will guide in the development of the Advisory Opinion:

- a) The vantage point(s) from which the view is observed is adversely impacting the value and enjoyment of the view-seeking residence(s);
- b) The extent to which the view obstruction, has detracted from the viewing area's utilization;
- c) The quality of the view being obstructed, including the existence of landmarks, vistas, or other unique view features has been adversely impacted by the overgrown vegetation;
- d) The extent to which the vegetation has grown to obscure the enjoyment of the view from the view seeker's property since the view seeker's acquisition of his or her property or 15 years prior to the ordinance's adoption;
- e) The extent to which the view has been or is diminished by factors other than vegetation;

- f) The recommended view impact corrective measures will not unreasonably result in an adverse privacy, energy consumption, soil stability or aesthetics impact and may include the following un-weighted factors:
 - 1. Wind screening or privacy (visual or auditory)
 - 2. Energy conservation and/or climate control
 - 3. Soil stability, as assessed by commonly known soil conditions, degree of slope and extent of the tree's root system when a tree is proposed to be removed
 - 4. Aesthetics, including but not limited to species characteristics, size, growth, and form
 - 5. Community/neighborhood quality, value or significance
 - 6. Shade
 - 7. Rare and interesting botanical species
 - 8. Habitat value for wildlife
 - 9. Blending, buffering or reduction in the scale and mass of profile
- g) The recommended view impact corrective measures will not unreasonably affect the health of remaining vegetation

If the view seeker(s) and vegetation owner agree with the Community Development Director's Advisory Opinion, they must file that agreement with the City within 45 days. As described in Section 92.41.140, the cost of any restorative action and/or maintenance shall be determined by mutual agreement. City staff shall not be responsible for enforcement of any agreement(s) made through the Advisory Opinion. Within 45 days of the date of the Advisory Opinion Letter, if either or both parties disagree with the Advisory Opinion, the disagreeing party must notify the City in writing that they wish to proceed with Mediation.

92.41.110 MEDIATION

If Neighbor to Neighbor Contact, Initial Reconciliation and Advisory Opinion do not result in an agreement between the vegetation owner and the view seeker(s), the disagreeing party may request Mediation within 45 days from the date of the Advisory Opinion Letter. If a request for mediation is made, staff will mail a notice requesting to proceed with mediation to all interested parties, or to all neighbors within a 500 foot radius of the vegetation owner, if the claim was begun during mediation. Any joint claims received shall follow the provisions set forth in section 92.41.100. The notice will include a link to the View Equity Ordinance and inform the vegetation owner of the consequences of non-participation in the Initial Reconciliation, Advisory Opinion, Mediation and/or Arbitration processes as described in Section 92.41.130. All interested parties shall have forty-five (45) days from the date of the request for mediation to respond in writing of their intent to continue with mediation. Failure to respond within 45 days will be deemed a formal refusal of mediation and the view seeker(s) must proceed to Arbitration. The notice shall also provide information regarding selecting a mediator. If, at any point, the view seeker does not participate in the process, their claim will be considered closed.

The view seeker and vegetation owner shall have 45 days from the date of the filing of acceptance of mediation to select a mediator. If one is not selected or neither party can agree on a mediator by the end of the timeframe, they may jointly request that City staff randomly select a mediator.

The mediator shall contact the City to request a copy of the Advisory Opinion, mailing list for the View Equity case, and a link to a copy of the View Equity Ordinance. The mediator shall establish a date for mediation and will send a written notice of the mediation hearing date to each party by certified mail. The role of the mediator shall be advisory in nature and shall not be binding in establishing the preservation or restoration of view equity. Any agreement reached between the two parties as a result of the mediation process described herein shall be reduced to writing and shall include steps for maintenance measures and allocations of any associated

costs. The agreement shall be signed by the mediator and all of the parties, and a copy shall be submitted to the Community Development Department. The cost of mediation, including review by a certified arborist, shall be paid initially by the requesting party, provided, however, that the ultimate responsibility for such cost may subsequently be modified either by mutual agreement of the parties or by a determination of the mediator as to a just and reasonable allocation of responsibility.

92.41.120 BINDING ARBITRATION

If Neighbor to Neighbor Contact, Initial Reconciliation, Advisory Opinion and/or Mediation fail to achieve agreement between the vegetation owner and the view seeker(s), the disagreeing party(ies) may request Binding Arbitration. If a request for binding arbitration is made, the City shall mail a notice requesting to proceed in a Binding Arbitration process to all interested parties. The notice will include a link to the View Equity Ordinance and inform the vegetation owner of the consequences of non-participation in the Initial Reconciliation, Advisory Opinion, Mediation and/or Arbitration processes as described in Section 92.41.130. All interested parties shall have forty-five (45) days from the date of the request for arbitration to respond in writing of their intent to continue with arbitration. Failure to respond in writing within forty-five (45) days shall be deemed formal refusal of arbitration. The notice shall also provide information regarding selecting an arbitrator.

The view seeker(s) and vegetation owner shall have forty-five (45) days from the date of filing acceptance of arbitration, to select an individual arbitrator. If one is not selected or neither party can agree on an arbitrator by the end of the timeframe, they may jointly request that City staff randomly select an arbitrator or either party may petition a court of competent jurisdiction to appoint an arbitrator. If the vegetation owner requests arbitration but view seeker refuses to participate in the arbitration process, the case will be considered closed.

The arbitrator will contact the City to request a copy of the Advisory Opinion, mailing list for the View Equity case, Mediator's Report, and a link to a copy of the View Equity Ordinance. The arbitrator shall establish a date for arbitration and will send a written notice of the arbitration hearing to each party by certified mail. The arbitrator shall be guided by the provisions of this chapter, including the evaluation criteria set forth in Sections 92.41.040, and 92.41.050 and the hierarchy of restorative actions set forth in Section 92.41.060, respectively, in attempting to resolve the view equity claim, and shall submit a complete written decision to the view seeker(s) and the vegetation owner. Any decision of the arbitrator shall be enforceable pursuant to the provisions of California Code of Civil Procedure Section 1285 et seq., and a copy of the decision shall be submitted to the Community Development Department. City staff shall not be responsible for enforcement of any agreement(s) made through binding arbitration.

The costs of arbitration shall be paid initially by the requesting party, provided, however, that the ultimate responsibility for such costs may subsequently be modified either by mutual agreement of the parties or by a determination of the arbitrator as to a just and reasonable allocation of responsibility.

92.41.130 LITIGATION

If the view seeker(s) and vegetation owner have attempted to obtain but have been unsuccessful in attaining agreement or resolution through Neighbor to Neighbor Contact (Section 92.41.080), Initial Reconciliation (Section 92.41.090), Advisory Opinion (Section 92.41.100), Mediation (Section 92.41.110), and/or Arbitration (Section 92.41.120), either party may initiate civil action in a court of competent jurisdiction for resolution of his/her view equity claim under the provisions of this chapter. It is the intent of this chapter that the evaluation criteria set forth in Sections 92.41.040, and 92.41.050 and the hierarchy of restorative actions set forth in Section 92.41.060, are utilized in adjudicating view equity claims in civil litigation.

In the event of civil litigation, the view seeker shall provide a copy of the filed complaint to the Community Development Department.

The prevailing party in any civil action brought pursuant to this chapter shall be entitled to recover its reasonable costs and attorneys' fees incurred in the litigation, subject to the following exception: a vegetation owner who prevails in litigation shall not be entitled to recover attorneys' fees and costs if the vegetation owner has declined to participate in the Initial Reconciliation,

Advisory Opinion, Mediation, and/or Arbitration processes set forth in Sections 92.41.090, 92.41.100, 92.41.110 and 92.41.120, respectively. All notices sent out during Initial Reconciliation, Advisory Opinion, Mediation and/or Arbitration shall inform the vegetation owner of this provision and the consequences of non-participation in the Initial Reconciliation, Advisory Opinion, Mediation and/or Arbitration processes. City staff shall not be responsible for enforcement of any adjudication made through litigation.

92.41.140 APPORTIONMENT OF COSTS

The cost of any determined restorative action and/or maintenance shall be determined by mutual agreement or pursuant to any final decision through mediation, arbitration, court order, or settlement. It is the intent of this chapter that a vegetation owner who sells his or her property shall notify the purchaser of any established agreement, binding arbitration decision, or court order requiring subsequent maintenance of vegetation.

92.41.150 LIABILITY

- a) The City shall not be liable for any damages, injuries, costs or expenses which are the result of any advisory opinion issued by a City employee or official or any agreements or determinations resulting from mediation, arbitration or litigation concerning view equity claims or a view seeker's assertions pertaining to views granted or conferred herein.
- b) Under no circumstances shall the City have any responsibility or liability to enforce or seek any legal redress, civil or criminal, for any decision that any other person or entity makes concerning a view equity claim.
- c) A failure to comply with the provisions of this chapter is not a misdemeanor, and the enforcement of this chapter shall be only by the affected and interested private parties.

SECTION 2

Any provisions of the Torrance Municipal Code or its appendices, or any other ordinances of the City inconsistent with this ordinance to the extent of the inconsistencies and no further, are repealed.

SECTION 3

If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 4

This ordinance will take effect thirty days after the date of its adoption. Within fifteen days following adoption, this ordinance or a summary of this ordinance, if authorized by the City Council, will be published at least once in the Daily Breeze, a newspaper of general circulation, published and circulated in the City of Torrance.

INTRODUCED and **APPROVED** this 28th day of February, 2017.

ADOPTED and **PASSED** this 7th day of March, 2017.

APPROVED AS TO FORM:

JOHN L. FELLOWS III, City Attorney

by Patrick Q. Sullivan
Patrick Q. Sullivan, Assistant City Attorney

Patrick J. Furey
Mayor Patrick J. Furey
ATTEST:

Rebecca Poirier
Rebecca Poirier, MMC, City Clerk

TORRANCE CITY COUNCIL ORDINANCE NO. 3813

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss
CITY OF TORRANCE)

I, Rebecca Poirier, City Clerk of the City of Torrance, California, do hereby certify that the foregoing Ordinance was duly introduced and approved at an adjourned regular meeting of the City Council held on the 28th day of February, 2017 and was duly adopted at a regular meeting of said Council held on the 7th day of March, 2017 by the following roll call vote:

AYES: COUNCILMEMBERS Ashcraft, Goodrich, Griffiths, Rizzo, Weideman, and Mayor Furey.
NOES: COUNCILMEMBERS: None.
ABSTAIN: COUNCILMEMBERS: Herring.
ABSENT: COUNCILMEMBERS: None.

This ordinance was duly published in accordance with State law (GC 40806).

Date: 3/13/17

Rebecca Poirier
Rebecca Poirier, MMC
City Clerk of the City of Torrance