

ORDINANCE NO. 960

AN ORDINANCE OF THE CITY OF CLYDE HILL, WASHINGTON, CONCERNING THE PLANNING COMMISSION; AMENDING CHAPTER 17.38 OF THE CLYDE HILL MUNICIPAL CODE (“CHMC”) BY SUBSTITUTING THE PLANNING COMMISSION FOR THE BOARD OF ADJUSTMENT TO ADJUDICATE VIEW AND SUNLIGHT OBSTRUCTION DISPUTES; PROVIDING FOR CLOSED RECORD REVIEW BY THE CITY’S HEARING EXAMINER; AND PROVIDING FOR SEVERABILITY, AN EFFECTIVE DATE, AND FOR SUMMARY PUBLICATION BY ORDINANCE TITLE ONLY.

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WHEREAS, the City Council believes it in the public interest for the Planning Commission to assume the responsibilities and duties for the adjudication of view and sunlight obstruction disputes formally assigned to the Board of Adjustment in Chapter 17.38 CHMC; and

WHEREAS, the City Council has determined it in the public interest to provide a person adversely affected by a decision of the Planning Commission made under section 17.38.060 CHMC a means of administrative review before the City’s Hearing Examiner;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CLYDE HILL, WASHINGTON, DO ORDAIN AS FOLLOWS:

**Section 1.** **Amended Chapter 17.38.** Chapter 17.380 CHMC is hereby amended to read as follows (amendments shown by underline for additions and by strikethrough for deletions):

***Chapter 17.38***  
***TREES – VIEW AND SUNLIGHT OBSTRUCTION***

Sections:

- [17.38.010](#) Purpose.
- [17.38.020](#) Definitions.
- [17.38.025](#) Rights established.

- [17.38.028](#) Limitations on filing complaints.
- [17.38.030](#) Process for resolution of obstruction disputes.
- [17.38.040](#) Notification of hearing.
- [17.38.050](#) Hearing and findings of the ~~board~~ commission.
- [17.38.060](#) Decision of the ~~board~~ commission and appeal to hearing examiner.
- [17.38.070](#) Work of correction and allocation of costs.
- [17.38.080](#) Reserved.
- [17.38.085](#) Compliance required.
- [17.38.090](#) Continued maintenance.
- [17.38.100](#) Limitation of liability.

#### 17.38.010 Purpose.

This chapter is enacted in recognition of the following facts and for the following reasons:

A. Among the features that contribute to the high property values, attractiveness and livability of the city of Clyde Hill are its trees as defined herein, both native and introduced, and its views obtained from a variety of elevations throughout the city.

B. Trees, whether growing singly, in clusters or in woodland situations produce a wide variety of significant psychological and tangible benefits for both residents and visitors to the city. Trees contribute to the natural environment of the city by modifying temperatures and winds, replenishing oxygen to the atmosphere, removing pollutants from the air, controlling soil erosion, and providing wildlife habitat. Trees contribute to the visual environment of the city by providing scale, color, silhouette and mass, and by creating visual screens and buffers to separate land uses and promote individual privacy. Trees contribute to the economic environment of the city by stabilizing property values and reducing the need for surface drainage systems. Trees contribute to the cultural environment of the city by becoming living landmarks of the city's history and providing a critical element of nature in the midst of urban congestion and settlement.

C. Views produce a variety of significant and tangible benefits for both residents and visitors to the city. Views contribute to the economic environment of the city by substantially enhancing property values, upon which the city of Clyde Hill is largely dependent due to the residential nature of the city and corresponding limited diversity of revenue sources. Views contribute to the visual environment of the city by providing inspiring panoramic vistas, and creating distinctive supplements to architectural design. Views contribute to the cultural environment of the city by providing a unifying effect, allowing individuals to relate different areas of the city to each other in space and time.

D. Similarly, access to sunlight across property lines contributes to the health and well-being of community members, enhances property values, and provides an opportunity to utilize solar energy.

E. It is recognized that trees, sunlight 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. Trees may block sunlight, impinge upon the utilization of solar energy, harbor plant disease, retard the growth of grass and encourage growth of moss, harbor rodents, interfere with snow and ice removal, as well as interfere with the enjoyment of views, including the undermining of property values. It is therefore in the interest of the public welfare, health and safety to establish a process and standards for the resolution of view obstruction claims so as to provide a reasonable balance between tree, view, and sunlight related values. This chapter is intended to accommodate, in a balanced, fair, and reasonable manner, views, sunlight, and competing obstructions by trees, privacy, and the use and enjoyment of real property.

F. This chapter is enacted to provide a fair and structured process for resolving disputes relating to view and sunlight obstruction by trees on private property. It is the principal intent of this chapter to encourage resolution of view and sunlight obstruction disputes among neighbors in a civil and considerate fashion and without city involvement. When a view or sunlight obstruction dispute arises, the parties should act reasonably and responsibly to resolve the dispute through friendly communication, quality dialogue, thoughtful negotiation, compromise, and mediation before resorting to filing a complaint with the board of adjustment.

G. As owners of trees, residents in the city of Clyde Hill should make every effort to recognize the zone in which they live according to the Citizen's Guide to Urban Forest Management in the City of Clyde Hill and plant and maintain appropriate species of trees that will preserve views as described in the Guide. Further, tree owners should recognize and respect the views of their neighbors and maintain those view corridors appropriately, understanding that an obstructed view or loss of sunlight may affect the property value and personal enjoyment of neighboring properties.

H. As view owners and those who benefit from access to sunlight, residents in the city of Clyde Hill should recognize that this chapter is not intended to provide a right to a totally unobstructed view or access to sunlight, the quality of which may often be enhanced rather than diminished by appropriate inclusion of landscaping. 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 the provisions of this chapter.

#### 17.38.020 Definitions.

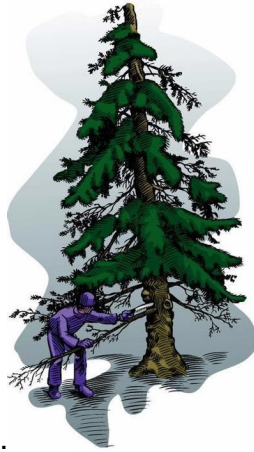
The definitions contained in Chapter [17.04](#) CHMC shall apply to this chapter, except that the definitions of this section shall apply in the case of a conflict with the definitions in Chapter [17.04](#) CHMC.

~~“Board of adjustment” or “board” means the board established in Chapter [2.21](#) CHMC.~~

“Buildable area” means, for purposes of this chapter, the space remaining on a lot after the minimum setback requirements have been met.

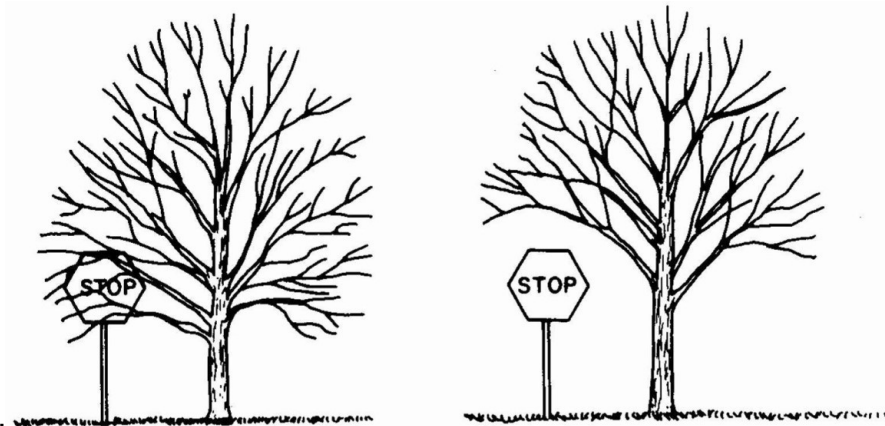
“Complainant” means an owner of real property in the city of Clyde Hill complaining of a view or sunlight obstruction and utilizing the process for resolution of obstruction disputes set forth in this chapter.

“Crown cleaning” means the selective removal of dead, dying, diseased and broken branches from the tree crown. The diagram that follows is illustrative of “crown cleaning”



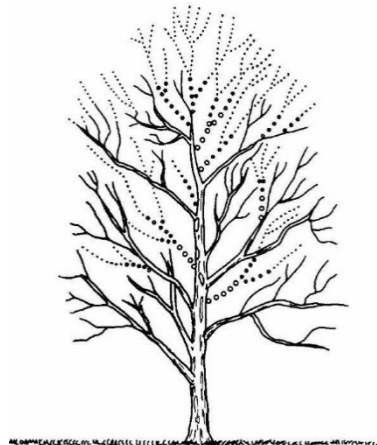
within the meaning of this chapter.

“Crown raising” means the selective removal of lower limbs from a tree crown to provide clearance. The diagram that follows is illustrative of “crown raising” within the



meaning of this chapter.

“Crown reduction” is a method of reducing the height and/or spread of a tree crown by making appropriate pruning cuts. Appropriate pruning cuts are to a lateral branch at least one-third the size of the parent branch or leader. The diagram that follows is illustrative of “crown reduction” within the meaning of this chapter.



“Heading back” means cutting a shoot or branch back to a bud, stub, or lateral branch not large enough to assume apical dominance.

“Living and entertainment areas” means areas from which a view is observed most often by the occupants relative to other portions of the residence, which may include both interior and exterior spaces. The determination of living and entertainment areas is to be made on a case-by-case basis by the board following receipt of evidence from the complainant, but in any case, shall not include bathrooms, hallways, garages, closets, and laundry rooms.

“Maintenance pruning” means pruning with the primary objective of maintaining or improving tree health and structure; includes “crown reduction” or “thinning” but not ordinarily “topping” or “heading back.”

“Person” means any individual, firm, partnership, corporation or other legal entity owning property in the city of Clyde Hill.

“Planning Commission” or “commission” means the commission established in Chapter 2.20 of the Clyde Hill Municipal Code.

“Pruning” means the removal of plant material from a tree/vegetation, using approved practices to achieve a specified objective.

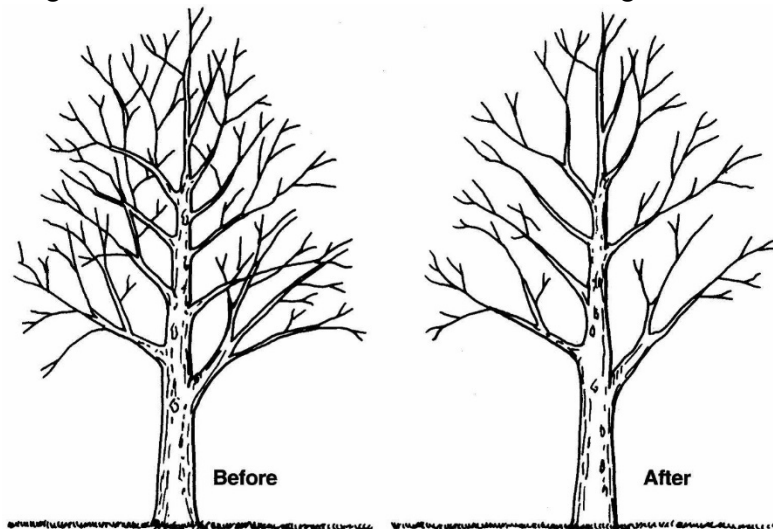
“Real property owner” means a person who has legal or equitable title to real property, or his or her agent or representative.

“Severe pruning” means the cutting of branches and/or trunk of a tree in a manner which substantially reduces the overall 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.

“Topping” and “heading back” as defined herein are considered to be severe pruning.

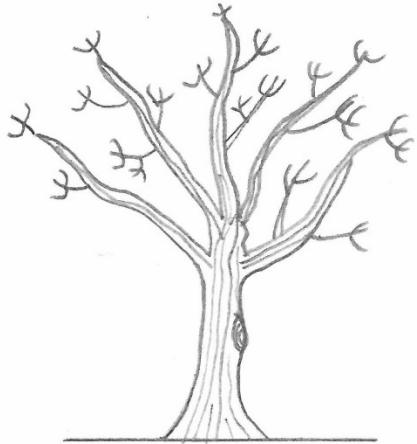
“Stand thinning,” means the selective removal of a portion of trees from a grove of trees.

“Thinning” means the selective removal of live branches to provide light or air penetration through the tree or to lighten the weight of the remaining branches. The diagram that follows is illustrative of “thinning” within the meaning of this chapter.

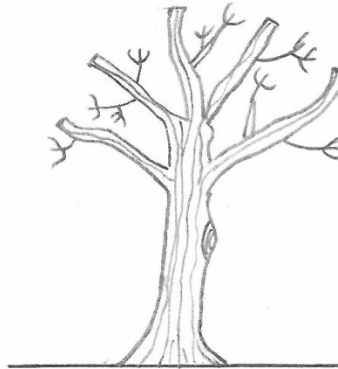


“Topping” is an inappropriate pruning technique to reduce tree size, involving eliminating the upper portion of the trunk or main leader of a tree. The diagram that

follows is illustrative of “topping” within the meaning of this chapter.



**Before**



**After**

“Tree” means a woody perennial plant which usually, but not necessarily, has a single trunk and a height of 16 feet or more, and for purposes of this chapter includes any shrubbery capable in its normal growth to exceed a height of 16 feet; references herein to “tree” shall include the plural; provided, however, any tree whose age antedates the incorporation of the city shall be deemed a “historic” tree and be exempted from this chapter; and provided further, that any tree which is 25 feet in height or less from original grade and is located within the buildable area of a tree owner’s lot shall be exempted from this chapter.

“Tree owner” means the record owner of the real property on which the subject tree in the city of Clyde Hill is located.

“View” means a vista of Lake Washington, bridges, skylines, landmarks, Cascade or Olympic Mountains and area communities or surrounding hills from the living and entertainment areas of the home.

“Vista pruning” is selective pruning to enable a view from a predetermined point.

#### 17.38.025 Rights established.

In order to resolve the conflict between trees, sunlight and views as defined herein, real property owners in the city shall have the right to seek restoration of views or sunlight which existed at any time since they purchased or occupied a property, subject to the limitations of CHMC [17.38.028](#), when such views or sunlight are observed from living and entertainment areas of the home and have subsequently been unreasonably obstructed by the growth of a tree located on private property. It is not the intent of this chapter to allow property owners in the city to create or enhance views or access to sunlight that were not at one time enjoyed by that property owner since purchasing or occupying the property.

#### 17.38.028 Limitations on filing complaints.

A complaint for restoring views or sunlight may only be made to the ~~board of adjustment~~ commission if a complaint has not been initiated by the complainant within the last two years against the real property upon which the tree is located.

The ~~board of adjustment~~ commission will not provide relief to any property owner seeking to create or enhance their view or access to sunlight that was not at one time enjoyed by that property owner since purchasing or occupying the property. However, a property owner seeking to create or enhance their view or access to sunlight may utilize the neighbor resolution and mediation guidelines as established in CHMC [17.38.030](#). The city will further make the city arborist available as a resource to all property owners seeking to resolve a dispute relating to view or sunlight obstruction in accordance with the limitations established in CHMC [17.38.030\(B\)\(1\)](#).

Multiple real property owners in the city may together initiate the process for resolution of an obstruction dispute as outlined in CHMC [17.38.030](#) with one tree owner or multiple tree owners. However, a complaint for preserving or restoring views or sunlight may only be made to the ~~board of adjustment~~ commission by one complainant to request the relief from one tree owner. The board of adjustment, in its sole discretion, may consolidate multiple complaints for hearing.

#### 17.38.030 Process for resolution of obstruction disputes.

The complainant shall use the process established in this section to resolve view and sunlight obstruction disputes. First, the complainant must complete the “neighbor resolution” process described in subsection (A) of this section. Second, if that process does not yield a result mutually satisfactory to the complainant and tree owner, then the complainant shall propose mediation, as described in subsection (B) of this section. If the tree owner does not participate in mediation or if mediation is unsuccessful in resolving the claim, then the complainant may file a complaint with the city clerk, as described in subsection (C) of this section, requesting a hearing before the board of adjustment, which will decide the dispute.

A. Neighbor Resolution. A complainant who believes that the view from or the sunlight reaching the real property of the complainant is unreasonably obstructed by a tree shall notify the tree owner in writing of such concerns. The written notice should request a personal discussion with the tree owner for the purpose of reaching a mutually agreeable solution. The complainant shall invite the tree owner to view the obstruction from his or her property and shall communicate clearly and specifically about the extent of the obstruction and the desired remedy. Tree owners are encouraged to similarly invite the complainant to view the tree(s) from their property and discuss clearly and specifically with the complainant any impacts the proposed remedy would have on their property, including aesthetic, financial, or privacy concerns. The complainant and tree owner are encouraged to consult the city arborist during the neighbor resolution process to obtain a brief tree assessment and recommendations regarding methods available to remedy the obstruction as provided in subsection (B)(1) of this section.

B. Mediation. If the parties do not agree as to the existence or nature of the complainant’s obstruction, a means for resolution of the complaint, or the tree owner fails to respond to the written notice in subsection (A) of this section within 30 days, the complainant shall propose mediation in writing as a timely means to settle the obstruction dispute.

1. Consultation with City Arborist Prior to Mediation Required. The complainant and the tree owner shall be required to consult with the city arborist regarding the particular tree obstructing the view from or sunlight reaching the complainant’s property

prior to mediation, unless they previously consulted with the city arborist during the neighbor resolution process. The city arborist shall provide a brief tree assessment to both the complainant and tree owner regarding the tree in question. The tree assessment may include impartial information relating to the health, condition, and characteristics of the tree and options for remedying the obstruction, such as maintenance or vista pruning and, if necessary, removal and replacement of the tree(s) with another species. The city arborist may provide general information and approximate cost estimates for the options outlined in the tree assessment and/or may refer the complainant and tree owner to other professionals that should be consulted prior to mediation. The city arborist shall consult the Citizen's Guide to Urban Forest Management in the City of Clyde Hill, current arboricultural industry standards and best management practices, and the hierarchy established in CHMC [17.38.050](#) in recommending the least invasive methods available to remedy the obstruction. This initial consultation and tree assessment shall be provided to the complainant and tree owner at no cost; provided, that the city arborist shall not spend more than three hours' time on the consultation and assessment. Should the city arborist spend more than three hours' time on the consultation and assessment, such charges shall be paid for by the complainant.

2. Acceptance and Conduct of Mediation. Acceptance of mediation by the tree owner is not required by this chapter, but encouraged. If the tree owner declines to participate in mediation, the tree owner's preference(s) relating to the remedy shall not be considered by the ~~board of adjustment~~ commission, as otherwise provided in CHMC [17.38.050](#)(C), and the tree owner shall be responsible for restoration costs as provided in CHMC [17.38.070](#). If the mediation is accepted, the parties shall mutually agree upon a mediator. It is recommended that the services of a professionally trained mediator be employed. Mediation may be arranged through the Seattle-King County Alternate Dispute Resolution Center or any other professional mediator. The mediator shall not have the power to issue binding orders for restorative action, but shall strive to enable the parties to resolve their dispute by written agreement. The complainant shall be responsible for the fees and expenses of the mediator, unless the complainant and tree owner agree otherwise.

C. Complaint to the ~~Board of Adjustment~~ Commission. In the event that the initial consultation process fails, and mediation either is declined by the tree owner or fails, a property owner who desires to take advantage of the provisions of this chapter to resolve the conflict between trees and views or access to sunlight shall file with the city clerk a complaint requesting a hearing before the ~~board of adjustment~~ commission, which will decide the dispute.

1. Consultation with City Arborist Required Prior to Filing Complaint. Prior to filing a complaint with the city clerk as described in subsection (C)(2) of this section, the complainant shall consult with the city arborist and obtain a written report containing the city arborist's observations and recommendations regarding the age of the tree; the condition and characteristics of the tree(s); the estimated growth rate of the tree; the zone in which the tree owner's property is located according to the Citizen's Guide to Urban Forest Management in the City of Clyde Hill; options for remedying the obstruction in accordance with CHMC [17.38.050](#); and suggestions for future maintenance that should be performed. Where the complainant alleges an obstruction



of sunlight, the city arborist may also make observations regarding the extent to which sunlight shades or shadows the complainant's property. In addressing the restorative actions available, the city arborist shall consult the Citizen's Guide to Urban Forest Management in the City of Clyde Hill, current arboricultural industry standards and best management practices, and the hierarchy established in CHMC [17.38.050](#) to emphasize the least invasive methods of providing reasonable relief from the obstruction, taking into account the impact upon the health of the tree and surrounding vegetation. The city arborist's report should also discuss the impact that the suggested remedy would have on the tree owner's property, including impacts on privacy, energy savings, and soil stability, if such information can be determined, and whether such impacts may be mitigated by replacement of the tree with a different species of tree. The complainant shall be responsible for the cost of obtaining the city arborist's report as established in the city's master fee resolution. Neither the complainant nor the tree owner shall be precluded from seeking the advice of another arborist.

2. Filing a Complaint. The complainant shall file a complaint in the form provided by the city clerk, stating with particularity the manner in which the view from her/his property or sunlight reaching her/his property is being unreasonably obstructed by the growth of one or more trees on the tree owner's property, the complainant's desired outcome, and the specific restorative actions proposed by the complainant to resolve the unreasonable obstruction. The complainant shall be required to, at minimum, attach to the complaint the city arborist's written report; an appraisal of the valuation of the complainant's property with the current view or sunlight obstruction and, if possible, a valuation with the view or sunlight access that was enjoyed at one time since the complainant purchased or occupied the property; a survey if alleging a view obstruction; evidence of the date of possession or acquisition of the complainant's real property; and any evidence of the view or sunlight access that was enjoyed at one time since purchasing or occupying the real property, which may include photographs, written or expected oral testimony by the complainant and/or neighbors, and expert reports regarding the growth rate of the tree. If the complainant is alleging an obstruction of sunlight, the complainant shall also describe the location(s) on his or her property which have become shaded and the hours during which the obstruction occurs during both winter and summer months. The complainant shall deposit with the city clerk a nonrefundable fee, in an amount to be established by resolution of the city council, to cover the administrative costs to process the complaint. In addition, the complainant shall deposit with the city clerk, in an amount to be established by resolution of the city council, an additional deposit, which shall be refunded in any amount not used, against the consulting expenses incurred by the city under provisions of this chapter, including the city attorney, the city arborist, or other consultant, and shall agree in writing to pay in full the reasonable amount of any such expenses, even if such expenses exceed the amount of the advance. The complainant shall also be required to deposit with the city clerk an amount established in the city's master fee resolution, which shall be refunded in any amount not used, to pay for various expenditures actually and reasonably incurred by the tree owner in evaluating the complaint, such as by obtaining an independent arborist's report, appraisal, geotech report, or other consultant's report.

D. Tree Owner Answer. Within 45 days of receiving the complaint, the tree owner shall file with the city clerk a written answer to the complaint in the form provided by the

city clerk, attaching any reports or exhibits the tree owner intends to present to the ~~board of adjustment~~ commission. Absent good cause shown, the chair of the board of adjustment shall exclude from evidence any reports that are not submitted within 45 days of receiving the complaint.

#### 17.38.040 Notification of hearing.

The ~~board of adjustment~~ commission sitting in a quasi-judicial capacity shall schedule a hearing on the complete application within 60 days after it is filed with the city by the complainant, unless a time extension is otherwise agreed to by the parties. The city clerk shall give at least 10 days' notice of the hearing by certified mail, return receipt requested, to the tree owner as shown on the last assessor's tax roll of King County, and to the complainant, and shall give at least 10 days' notice of the hearing by mailing notices to all such other property owners within 300 feet of the tree owner's property, using the ownerships, names and addresses from the last assessor's tax roll. The notice shall state the name of the complainant, the name of the tree owner, the tree's location, and the time and place of the hearing, and shall request written comments prior to the hearing. The hearing shall only proceed following proof that the tree owner has received notice as provided herein. The failure of any other property owner to receive the notice shall not invalidate the proceedings.

#### 17.38.050 Hearing and findings of the ~~board~~ commission.

A. At the hearing, each party or their counsel may present, subject to CHMC 17.38.030(D) and evidentiary determinations made by the ~~board~~ commission, such relevant evidence as the party deems necessary. It is the complainant's burden to prove by a preponderance of the evidence that the complaint is consistent with the criteria contained in this section. The hearing may be continued from time to time for good cause, within the discretion of the ~~board~~ commission.

B. Prior to rendering a decision in favor of the complainant, the board shall find all of the following facts to be true:

1. That the complainant has followed the process for resolution of obstruction disputes as established in CHMC 17.38.030;
2. That the view or sunlight access existed at any time since the complainant purchased or occupied the property;
3. That the view from or the sunlight reaching living and entertainment areas of the home is now unreasonably obstructed by a tree in comparison to the view or sunlight that reached such living and entertainment areas of the home at one time since the complainant purchased or occupied the property and the manner in which the view or sunlight is obstructed. In determining whether the view from or sunlight reaching the living and entertainment areas of the home of the complainant is unreasonably obstructed, the ~~board~~ commission may consider several factors, which include, but are not limited to, the following:

- a. Extent of the View Obstruction. The extent of the alleged view obstruction complained of from the living and entertainment areas of the complainant's home, expressed as a percentage of the total view, and surveyed or otherwise determined by a licensed land surveyor, in comparison with the view enjoyed at one time since the complainant owned or occupied the property;

b. Quality of the View. The extent to which landmarks or other unique view features, as defined in CHMC [17.38.020](#), are obstructed by the tree complained of. The board should consider whether other tree(s) or structures also obstruct the desired view and the extent to which the complainant already enjoys a view of such landmarks and view features from the living and entertainment areas of the home. Complainants are not entitled to a totally unobstructed view;

c. Future View. The extent to which other tree(s) in the foreground or background will grow and obstruct the view in the future;

d. Extent of the Sunlight Obstruction. The extent to which the tree(s) cause shadows or reduce access to sunlight in comparison to the sunlight access that was enjoyed at one time since the complainant owned or occupied the property. In determining the extent to which the tree complained of shadows or shades the property of the complainant, the ~~board~~ commission should consider whether living and entertainment areas of the complainant's property have become shaded and the amount of time and hours during the day in which the shade occurs, given the location of the tree in relation to the complainant's home and the sun in both winter and summer months;

e. Permanence of View or Sunlight Obstruction. The extent to which the alleged obstruction of view or access to sunlight exists perennially or merely seasonally;

f. Complainant's Property Value. The extent to which the tree(s)' obstruction of the view or sunlight adversely affects the real property value of the complainant's real property;

g. Benefits to the Tree Owner. The extent to which the tree(s) provide visual screening and privacy; a wildlife habitat; soil stability (as measured by soil structure, degree of slope and extent of root system); and energy conservation and/or climate control;

h. Neighboring Vegetation. The extent to which the tree(s) affect neighboring vegetation and its importance in the overall landscape design of the tree owner;

i. Tree Characteristics and Health. The visual quality of the tree(s), including, but not limited to, species characteristics, size, form, texture, color, vigor and location; and other tree-related factors, including, but not limited to, indigenous tree species, specimen tree quality, rare tree species, historical value, and appraised value as determined by the trunk formula method of appraisal;

4. That such obstruction materially decreases the enjoyment of the real property of the complainant, as determined by an objective evaluation of the above criteria; and

5. That restorative action to be ordered by the ~~board~~ commission will not unreasonably decrease the enjoyment or value of the real property and privacy of the tree owner as determined by an objective evaluation of the above criteria.

C. Any relief which may be granted by the ~~board~~ commission shall be determined with consideration given to the following standards:

1. Relief granted should substantially restore a view or access to sunlight.

2. The least invasive procedure to the continued health or preservation of the obstructing tree(s) which would grant the complainant appropriate relief should be ordered by the board absent cause; provided, that if in the opinion of the board, one or more procedures would provide the relief to which the complainant is entitled, the

preference of the tree owner shall govern, except as provided in CHMC [17.38.030\(B\)\(2\)](#). Restorative procedures may include, but are not limited to, the following, in order of preference:

a. Crown Cleaning. Removing dead, dying, diseased and broken branches from the crown of the tree.

b. Crown Raising. Selectively removing the lower limbs from a tree crown.

c. Thinning. Thinning techniques can be used to improve general views through the tree, and can improve the overall structure of the tree, if done in a manner consistent with industry standards.

d. Vista Pruning. Vista pruning of branches may be utilized where possible, if it does not adversely affect the tree's growth pattern or health. Topping should not be done to accomplish vista pruning.

e. Crown Reduction. Crown reduction is preferable to topping or tree removal, on species that are appropriate for this practice, which does not usually include evergreen conifers. Reduction is a viable option 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.

f. Stand Thinning. The removal of a portion of the total number of trees from a grove of trees, without any replacement plantings.

g. Heading Back. Heading back should only be permitted under the following circumstances:

i. The tree(s) is specifically planted and maintained as a hedge, espalier, bonsai, or in pollard form, or heading back is performed to meet a specific structural objective;

ii. Restorative procedures in subsections (C)(2)(a) through (f) of this section will not provide reasonable relief from the obstruction; and

iii. Subsequent growth characteristics will not create a future obstruction of greater proportions.

h. Topping. Eliminating the upper portion of a tree's trunk or main leader. Topping should only be permitted under the following circumstances:

i. The tree(s) is specifically planted and maintained as a hedge, espalier, bonsai, or in pollard form;

ii. Restorative procedures in subsections (C)(2)(a) through (g) of this section will not provide reasonable relief from the obstruction;

iii. Subsequent growth characteristics will not create a future obstruction of greater proportions; and

iv. That the tree risk factors will not increase, causing a hazard as a result of topping.

i. Tree Removal and Replacement. Tree removal, which may be considered when the above mentioned restorative procedures are judged to be ineffective, may be accompanied by replacement plantings or appropriate plant materials to restore the maximum level of benefits lost due to tree removal. The replacement tree shall be chosen by the tree owner from a list of trees established by the city which will be less likely to cause a reoccurrence of the unreasonable obstruction.

3. In making the ~~board's~~ commission's decision, the personal attachment of a party to particular trees or landscaping shall not be compelling nor shall a minor obstruction of a view or sunlight be decisive.

D. It shall be a defense if the tree owner can demonstrate that the complainant created or exacerbated the obstruction as a result of a substantial remodel or rebuild of his or her home. This defense should be proven by reference to photographs, building plans, and/or expert testimony. It shall further be a defense if the tree owner can demonstrate that the obstruction was not visible from a living and entertainment area of the home prior to the substantial remodel or rebuild.

#### 17.38.060 Decision of the ~~board~~ commission.

Following the hearing, the ~~board~~ commission shall render its decision and shall so advise the parties, in writing. It shall, in its decision, if it finds for the complainant, determine the specific manner in which the view or sunlight is to be restored with consideration given to the standards established in CHMC [17.38.050](#). The written decision of the ~~board~~ commission shall become final 14 calendar days after entry thereof and upon payment of all of the city's expenses in excess of the deposit submitted by the complainant as required by CHMC [17.38.030\(C\)](#). The ~~board's~~ commission's decision shall be the final decision of the city unless a party files a written notice of appeal with the city clerk no later than ten (10) calendar days following issuance of the commission's decision. The appeal shall be a closed record review by the City's Hearing Examiner of the factual issues and the conclusions drawn from the factual issues confined to the record created by the commission. The Hearing Examiner may grant relief only if the party seeking relief has carried the burden of establishing that: (1) The decision by the commission is an erroneous interpretation of the CHMC; (2) the decision by the commission is not supported by evidence that is substantial when viewed in the light of the whole record before the examiner; or (3) the decision by the commission is a clearly erroneous application of the law to the facts. The appellant shall submit to the clerk with the written notice of appeal payment of the appeal fee set forth in the city's fee resolution and be responsible for costs incurred by the City in the processing of the appeal including, but not limited to, costs of transcription, copying, and hearing examiner fees.

### 17.38.070 Work of correction and allocation of costs.

A. Allocation of Costs. The cost of all restorative actions and replacement plantings required by the ~~board~~ commission in their written decision shall be apportioned by the board between the complainant and the tree owner as follows:

1. The complainant and tree owner shall each pay 50 percent of such costs in those cases involving any tree planted or allowed to sprout as a result of natural regeneration by the tree owner subsequent to the effective date of Ordinance No. 648 (November 1991).

2. The tree owner shall pay 100 percent of such costs in those cases where:

a. The tree owner has refused to participate in good faith in the initial neighbor resolution or voluntary mediation processes (CHMC 17.38.030) and where the complainant has prevailed on their complaint in the decision of the board;

b. In any subsequent dispute between the same parties to restore any view obstructed by the same tree or trees or any of the plantings substituted for the original offending tree or trees described in this subsection (A);

c. The tree owner plants a tree(s) against the expressed, written objection of the complainant and the same tree(s) later become the subject of a complaint under this chapter; or

d. The tree constitutes a hazard to the safety of the complainant or his property and is being maintained by the tree owner in disregard for the safety of others.

3. In all other cases, the complainant shall pay 100 percent of such costs.

B. Deposits and Work of Correction. If a portion of the costs for restorative actions and replacement plantings has been allocated to the complainant, within 15 days after the decision of the ~~board~~ commission becomes final, the tree owner will obtain at least two bids from licensed tree service companies to have the prescribed work done, and shall present all bids to the complainant. Within 15 days after presentation of the bids, the complainant will deposit with the city or tree owner an amount equal to the lowest bid or percentage thereof allocated by the ~~board of adjustment~~ planning commission. Failure by a complainant to deposit with the city or tree owner the full amount required by the board within the 15 days required shall constitute a withdrawal and abandonment of the claim. The tree owner will, at her/his sole discretion, choose the company by which she/he wishes the work done and shall order the work done within 30 days after receiving the complainant's deposit or such other period of time as the ~~board~~ commission may determine to be reasonable and appropriate. The tree owner shall pay the difference between the deposit amount and the bid amount of the company she/he has chosen. The ordered work shall be done by a licensed tree service under the sole discretion and control of the tree owner. However, nothing in this section shall prohibit the tree owner from doing the work herself/himself. The complainant shall pay only the entire lowest bid amount of the ordered work.

C. Cost of Continued Maintenance. After the initial compliance with the ~~board's~~ commission's decision, the tree owner, at his or her expense, shall be responsible for maintaining the tree(s) in compliance with the ~~board's~~ commission's decision.

D. Application. The provisions in this section for cost allocation are intended solely for the use by the ~~board~~ commission in making their decision on a complaint and not intended to be used as guidelines for usage by a complainant or tree owner in their

informal discussions or resolution of a claimed view or sunlight obstruction under CHMC [17.38.030](#)(A) or (B).

17.38.080 Reserved.

17.38.085 Compliance required.

The tree owner shall comply with any work prescribed by the board no later than 90 days after the decision of the ~~board~~ commission becomes final. Thereafter, the continued maintenance of the tree without compliance with the final order prescribed by the ~~board~~ commission shall constitute a public nuisance which may be enjoined or abated as provided by law by the complainant.

17.38.090 Continued maintenance.

The board may direct that the work prescribed pursuant to CHMC [17.38.070](#) be continuously maintained and that the decision of the board may be binding upon future owners and shall run with the land, in which case the city shall record the board's decision with the King County recording office and shall be reimbursed by the complainant. The tree owner shall have the sole responsibility of maintaining the trees at such height as may be decided upon by the board and shall be responsible for the cost of and maintaining the tree(s) in accordance with the ~~board's~~ commission's decision. Failure to comply with the direction or decision of the board made pursuant to the provisions of this chapter shall constitute a public nuisance which may be enjoined or abated as provided by law by the complainant.

17.38.100 Limitation of liability.

The issuance of a decision by the ~~board of adjustment~~ planning commission shall not create any liability of the city for injury or property damage resulting from the restorative actions ordered by the ~~board~~ commission to be performed. 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 or sunlight obstruction complaint, including, but not limited to, agreements arrived at during the initial consultation or mediation process. Failure of the city to enforce provisions of this chapter shall not give rise to any civil or criminal liabilities on the part of the city. 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.**     **Severability.** If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

**Section 3.**     **Effective Date.** This ordinance shall be in full force and effect five days after publication of the summary of this ordinance, consisting of its title.

**PASSED by the City Council and APPROVED by the Mayor of the City of Clyde Hill, at a regular meeting held this \_\_\_\_\_ day of \_\_\_\_\_, 2018.**

CITY OF CLYDE HILL, WASHINGTON:

\_\_\_\_\_  
MAYOR, GEORGE MARTIN

Published: \_\_\_\_\_  
Effective: \_\_\_\_\_

ATTEST/AUTHENTICATED:

\_\_\_\_\_  
CITY CLERK, MITCHELL WASSERMAN

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY:

BY \_\_\_\_\_  
GREG A. RUBSTELLO, CITY ATTORNEY



**SUMMARY OF ORDINANCE NO. \_\_\_\_\_**

of the City of Clyde Hill, Washington

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On \_\_\_\_\_, 2018, the City Council of the City of Clyde Hill, Washington, approved Ordinance No. \_\_\_\_\_, the main points of which are summarized by its title as follows:

AN ORDINANCE OF THE CITY OF CLYDE HILL, WASHINGTON, CONCERNING THE PLANNING COMMISSION; AMENDING CHAPTER 17.38 OF THE CLYDE HILL MUNICIPAL CODE (“CHMC”) BY SUBSTITUTING THE PLANNING COMMISSION FOR THE BOARD OF ADJUSTMENT TO ADJUDICATE VIEW AND SUNLIGHT OBSTRUCTION DISPUTES; PROVIDING FOR CLOSED RECORD REVIEW BY THE CITY’S HEARING EXAMINER; AND PROVIDING FOR SEVERABILITY, AN EFFECTIVE DATE, AND FOR SUMMARY PUBLICATION BY ORDINANCE TITLE ONLY.

The full text of this ordinance will be mailed upon request.

APPROVED by the City Council at their meeting of \_\_\_\_\_, 2018.

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CITY CLERK, MITCHELL WASSERMAN