

# Tree Obstruction of Views Combining District (-TOV)

Ordinance No. 2024-21  
County File #CDZT24-00002

BOARD OF  
SUPERVISORS

NOVEMBER 12, 2024

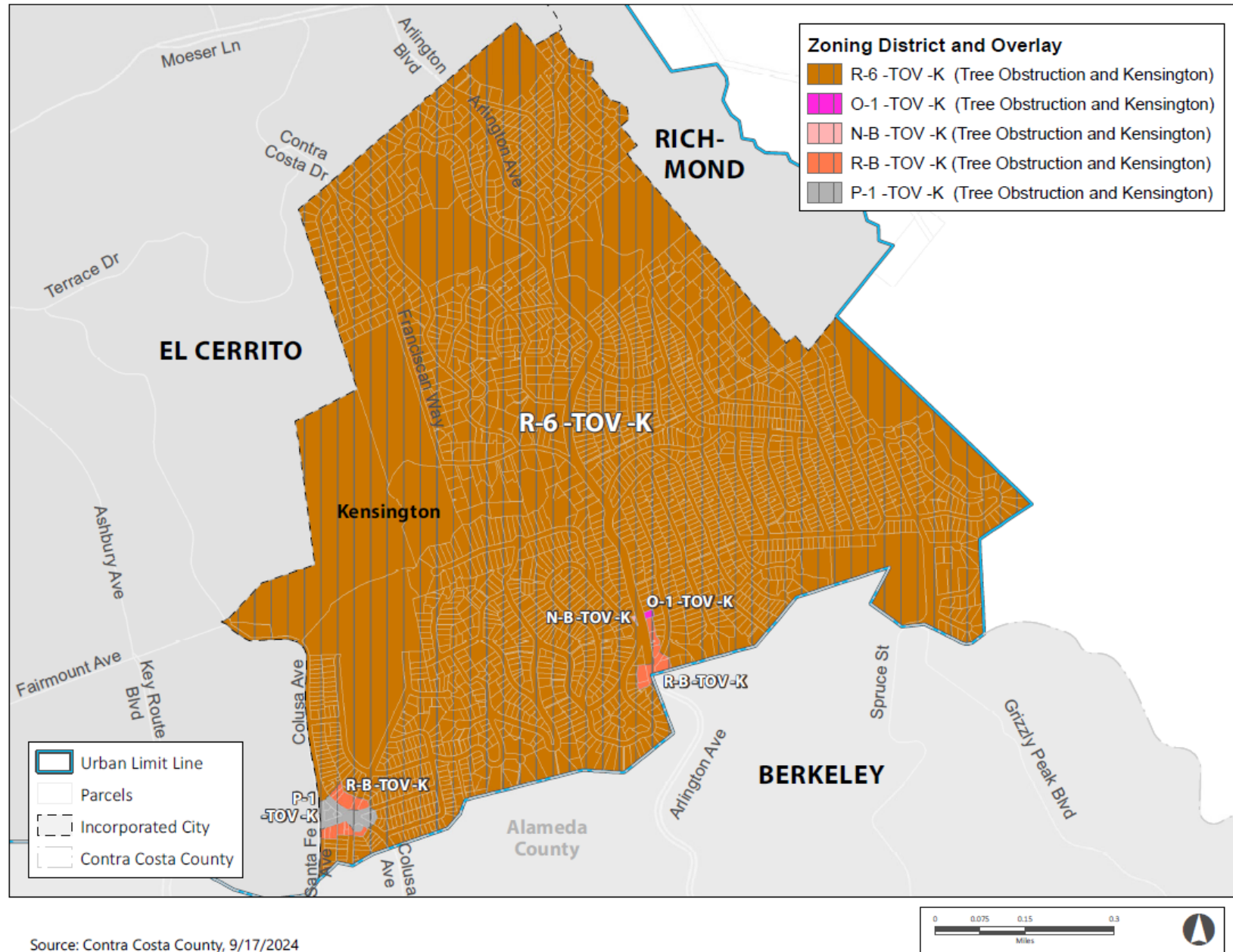


# Background

## Chapter 816-2, Tree Obstruction of Views (-TOV) Combining District of the County Ordinance Code

- Enacted in 1984
- Applies only to Kensington area of County
- Provides a method for private property owners to gain restoration of views and sunlight lost due to tree growth on another private property.
- Not intended to create any greater right to a view or access to sunlight than what existed when an owner purchased their property.
- Over past 20 years, Kensington residents expressed concerns that the current ordinance is confusing, vague, unhelpful, lacks enforceability, and may lead to expensive lawsuits.
- Working group of Kensington residents established by Supervisor Gioia to discuss, resulting in a draft ordinance including a more extensive County and community process to resolve tree-view disputes





Source: Contra Costa County, 9/17/2024



# Changes to the County's Zoning Code

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## Clarifies:

- Purpose and Intent of the –TOV Ordinance
- The right to seek restoration of views or sunlight that existed when claimant acquired property
- Processes by which a property owner (claimant) may seek a restoration of views when they are unreasonably obstructed by tree growth on another property
- The ordinance does not preclude any person from separately enforcing the provisions of the California Solar Shade Control Act (if applicable)

## Adds or Revises:

- Definitions for “arborist”, “arborist’s report”, and “view”
- Tree flammability and health
- Tree maintenance
- County’s Tree Protection and Preservation Ordinance – Protected Trees
- Tree Arbitration Board, designated by the County Board of Supervisors



# Changes to the County's Zoning Code: Procedures for Resolving View Claims

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## Initial Reconciliation:

- Voluntary process - encourages parties to reach a mutual agreement on restorative action and costs
- Claimants seeking to establish a view that did not exist when they acquired the property should expect to pay all costs unless agreed upon otherwise
- Claims related to views that did not exist when the claimant acquired the property are not governed by the ordinance or reviewable by a tree arbitration board

## Voluntary Mediation

- Established as new process if initial reconciliation is unsuccessful
- Fees/costs to be as agreed upon by parties and the mediator

## Litigation

- Claimant may pursue civil legal action if initial reconciliation and mediation is unsuccessful, and the parties do not agree to binding arbitration

## Arbitration *OR* Fact-Finding Advisory Decision

- Claim & filing fee submitted to DCD
- Noticed public meeting before the Tree Arbitration Board
- Binding Arbitration Decision of Tree Arbitration Board:
  - Required Findings
  - Required restorative actions
  - Required allocation of costs
- Fact-Finding Advisory Decision:
  - Factual findings
  - Recommended restorative actions
  - Recommended allocation of cost
  - May involve litigation to enforce decision



# Consistency with the County General Plan

## The zoning text amendment is consistent with the following General Plan Policies:

- Policies 3-211 and 3-212 of General Plan 2005-2020 and Policies 2 and 3 in the draft Envision 2040 General Plan for the Kensington area related to the reasonable protection for existing residences regarding access to sunlight and preservation of views of scenic natural features and the developed environment such as bridges and the San Francisco skyline.
- Action item #4 of the draft Envision 2040 General Plan that would require a review of the view protection ordinance to ensure that it addresses issues such as view blockage by trees and vegetation.
- Restorative actions that may affect a protected tree must comply with the County's Tree Protection and Preservation Ordinance and thus would be consistent with Policy 8-6 in the Conservation Element (General Plan 2005-2020) and Policy COS-P6.1 in the Conservation, Open Space, and Working Lands Element (draft Envision 2040 General Plan) aimed at protecting environmental resources such as significant trees, particularly mature native species, and natural vegetation or woodlands.
- Restorative actions that result in removal of trees may be consistent with Policy COS-P6.4 (draft Envision 2040 General Plan) encouraging the removal of invasive, non-native trees.



# Staff Recommendations

1. OPEN the public hearing on Ordinance No. 2024-21, RECEIVE testimony, and CLOSE the public hearing.
2. DETERMINE that adoption of Ordinance No. 2024-21, is exempt from the California Environmental Quality Act (CEQA) under CEQA Guidelines section 15061(b)(3).
3. ADOPT Ordinance No. 2024-21, Tree Obstruction of Views (-TOV) Combining District Ordinance, related to and establishing a property owner's right to seek the restoration of views and sunlight that existed when the property owner purchased their property and establishing a process by which the property owner may seek restoration of these views when they are unreasonably obstructed by the growth of trees on another property.
4. DIRECT the Department of Conservation and Development to file a CEQA Notice of Exemption with the County Clerk.



# Questions?

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