



## Planning Commission Report

**Meeting Date:** June 23, 2011

**Subject:** An ordinance of the City of Beverly Hills amending Beverly Hills Municipal Code Section 10-3-2616 regarding development standards for walls, fences and hedges in the Trousdale Estates area of the City.

**Recommendation:** Conduct continued public hearing, consider revised draft ordinance and consider adopting a resolution recommending revised draft ordinance to the City Council.

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### REPORT SUMMARY

On June 9, 2011, the Planning Commission considered a revised draft Trousdale view restoration ordinance. The draft ordinance included two ways of addressing view restoration: a) additional regulation of hedge heights in Trousdale Estates (also known as the code enforcement solution); and, b) a view restoration process for addressing foliage, including trees, that does not fall within the proposed hedge height standard and is alleged to disrupt a view. At the June 9, 2011 meeting, the Planning Commission proposed revisions to the ordinance and directed staff to return quickly with a draft ordinance regulating fence and hedge heights in certain areas of Trousdale Estates. The Planning Commission further directed that staff return at a later meeting with a draft ordinance including the Planning Commission's proposed revisions to the view restoration process.

Attached is a clean copy of the draft ordinance regulating fence and hedge heights in Trousdale Estates including changes as proposed by the Planning Commission at its June 9, 2011 meeting, a redlined copy of the existing Trousdale "Walls, Fences and Hedges" Zoning Code section showing the proposed changes, a Planning Commission resolution recommending the draft ordinance to the City Council, and a copy of the June 9, 2011 Planning Commission meeting staff report.

If the Planning Commission adopts a resolution at the June 23<sup>rd</sup> meeting, it is anticipated that review of the proposed code enforcement solution would be placed on the City Council's July 7, 2011 Study Session agenda for discussion.

**Attachment(s):**

1. Clean Copy of draft Trousdale Fences and Hedges Ordinance
2. Redline showing proposed changes to existing Zoning Code
3. Planning Commission Resolution Recommending Ordinance

**Report Author and Contact Information:**

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## **DISCUSSION**

### **Code Enforcement Solution: Revisions to Fence and Hedge Height Standards**

A code enforcement solution is intended to provide a clear standard in the City's Zoning Code that the City's Code Enforcement Division can effectively enforce, providing resolution of many view obstruction cases with a minimum of time and resources committed. In the original ordinance recommended by the Planning Commission to the City Council in December 2010, the Planning Commission proposed the following additional restriction on hedge height in Trousdale Estates:

"F. Height Limit for Hedges meeting certain criteria. Hedges planted on a slope of a down-slope property, that are within five horizontal feet from the edge of the level pad of an up-slope property, shall not extend above the elevation of the level pad on the upslope property in any area where the upslope property may have a view of the Los Angeles Basin."

Since a code enforcement solution is a "one size fits all" solution and includes no discretionary review, the Planning Commission crafted a narrow standard to avoid unintended consequences. The proposed standard was intended to provide relief for those residents with a property line near their upslope pad, wherein the adjacent downslope property has tall hedges growing near the property line so as to completely obscure the upslope residents' view.

The City Council/Planning Commission Ad Hoc Committee, at its April 20, 2011 meeting, discussed potential ways to expand this code enforcement solution to capture as many view obstruction situations as possible. The Ad Hoc Committee suggested reviewing expansion of the area in which the new hedge height standard would apply and including standards for tree hedges (hedgerows).

The Planning Commission proposed the following changes to the code enforcement solution at the June 9, 2011 Planning Commission meeting:

- Include a fence standard so that fences may be built at upslope property lines but cannot exceed 36 inches and must be open to view so as not to disrupt a potential view;
- expand hedge height limitations to the entire slope of a downslope property, outside of the front yard setback;
- change the definition of hedge so it includes tree hedges (previously, foliage above eight feet was exempt from hedge height limitations);
- define a maximum height for hedges on slopes that allows hedges higher than currently allowed by Code (current maximum height of 6-8 feet in side and rear yards) but not higher than an upslope pad or the height of a downslope primary structure. This allows opportunities for taller privacy hedges on slopes with height limitations to protect views.

Following is the proposed new code language incorporating these changes:

"F. Height Limit for Fences and Hedges meeting certain criteria.

Fences: New fences on a slope of a down-slope property shall not in any event extend above a point thirty-six inches (36") above the finished grade of the level pad on the upslope property in any area where the upslope property faces the Los Angeles Area Basin. Any part of a fence that extends above the finished grade of the level pad on the upslope property shall be open to public view, as defined in article 1 of this chapter. Notwithstanding Section 10-3-2759, any existing fence subject to this paragraph F that was constructed in accordance with applicable ordinances and regulations at the time of construction shall be deemed a nonconforming structure, and may be maintained in its existing configuration unless more than fifty percent (50%) of the area of the fence measured from the outer perimeter of the structure without deductions for open spaces in the fencing, is replaced or reconstructed in any five (5) year period. If more than fifty percent (50%) of the combined area of the fence is replaced or reconstructed, then the replacement structure shall be treated as new for the purposes of this paragraph and shall be constructed so that the entire structure conforms with the development standards of this paragraph.

Hedges: Hedges planted outside of the front yard setback on a slope of a downslope property in any area where the upslope property faces the Los Angeles Area Basin shall not extend above the higher of:

- i. The finished grade of the level pad on the upslope property; or,
- ii. The height of the primary structure on the downslope property if legally permitted to exceed the finished grade of the level pad on the upslope property.

Hedge, as used in this paragraph F, shall be defined as growth of vegetation, consisting of three (3) or more individual plants, that is cultivated or maintained in such a manner as to produce a barrier to inhibit passage or to obscure view, which is more than twelve inches (12") in height. Where there are interruptions of growth by vertical space to the top of the vegetation material having a horizontal distance of more than twenty four inches (24") in every four horizontal feet (4'), such growth shall not be considered a hedge for purposes of this paragraph F."

It is noted that walls are not included in the revised code standard because walls are considered structures and structures may not be constructed on slopes in Trousdale. Fences are currently allowed to be built on slopes if they meet certain standards.

### **Maximum Hedge Height**

Staff, in reviewing the changes proposed by the Planning Commission, requests that the Planning Commission consider basing the height limit under ii above on the 14-foot height limit for structures in Trousdale rather than on the existing height of the primary structure. Using a height of 14 feet as measured from the downslope property's pad would be a more consistent measure across diverse properties that may provide a more appropriate balance of the desire for views and the desire to

maintain the benefits provided by trees. Using the existing structure height as a measure might penalize a homeowner who elected to build or buy a home with a lower profile (e.g. 11 or 12 feet high) but who wished or wishes to have a group of three or more trees up to 14 feet high to provide shade for the home or for outdoor areas. Alternatively, a property owner with a legally non-conforming home that is up to 22 feet high would have the opportunity to maintain or plant hedges up to that height on the slope below their upslope neighbor, pursuant to section F. Hedges. ii.

### **Fiscal Impact**

There would be a fiscal impact to the City of expanding regulation of fences and hedges in Trousdale. The City's Code Enforcement Division would expect an increase in workload and has expressed concern that determining whether a particular hedge is located on a slope could be difficult in cases where hedges are located near the toe of the slope. In cases where Code Enforcement requires access to a foliage owner's property to make this determination, there may be costs associated with gaining access to the property including prosecutorial costs.

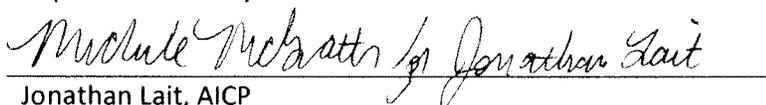
### **PUBLIC OUTREACH AND NOTIFICATION**

A public notice for this meeting was published in the *Beverly Hills Courier* on May 13, 2011, in the *Beverly Hills Weekly* on May 19, 2011 and mailed to each property owner in Trousdale Estates on May 16, 2011. Several letters were received prior to the May 26, 2011 Planning Commission meeting and entered into the record. The public hearing was continued to June 9, 2011 and additional correspondence was received prior and during the June 9, 2011 Planning Commission meeting and entered into the record. The public hearing was continued to June 23, 2011 and, as of the time of this report, no additional letters have been received by the Planning Division.

### **ENVIRONMENTAL ASSESSMENT**

This project has been assessed in accordance with the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the City, and no significant unmitigated environmental impacts are anticipated; therefore, a negative declaration was prepared and a resolution adopted by the Planning Commission on December 16, 2011 recommending the City Council adopt a negative declaration for the ordinance. A Notice of Intent to Adopt a Negative Declaration was issued on June 11, 2010, and a period for public comment on the environmental documentation ran from June 18, 2010 through July 8, 2010.

Report Received By:



Jonathan Lait, AICP  
Assistant Director of Community Development / City Planner

## **Attachment 1**

Clean Copy of draft Trousdale Fences and Hedges Ordinance

ORDINANCE OF THE CITY OF BEVERLY HILLS  
AMENDING BEVERLY HILLS MUNICIPAL CODE SECTION  
10-3-2616 REGARDING DEVELOPMENT STANDARDS FOR  
WALLS, FENCES AND HEDGES IN THE TROUSDALE  
ESTATES AREA OF THE CITY

THE CITY COUNCIL OF THE CITY OF BEVERLY HILLS HEREBY

ORDAINS AS FOLLOWS:

Section 1. The City Council considered this Ordinance at a duly noticed public hearing on \_\_\_\_\_ and, at the conclusion of the hearing, introduced this Ordinance. Evidence, both written and oral, was presented during the hearing.

Section 2. An initial study of the potential environmental impact of a broader view restoration ordinance, of which this ordinance was a part, was prepared. The initial study concluded that the broader ordinance would not result in significant adverse environmental impacts; thus a negative declaration is the appropriate document to adopt in order to comply with the California Environmental Quality Act (CEQA). This ordinance, being narrower in scope, will have less potential for impacts than the broader ordinance, and will not result in potentially significant environmental impacts. A notice of intent to adopt a negative declaration was published on June 11, 2010, and the proposed negative declaration and initial study were made available for a 20-day public review period from June 18, 2010 through July 8, 2010. No public comments on the proposed negative declaration or initial study were submitted during the comment period. Based on the information in the records regarding this ordinance, the City Council finds that there is no evidence suggesting that this ordinance may result in significant adverse impacts on the environment. The records related to this determination are on file with

the City's Community Development Department, 455 N. Rexford Drive, Beverly Hills, California, 90210. The custodian of records is the Director of Community Development.

Section 3. The City Council hereby amends Section 2616 of Article 26 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code to read as follows:

**"10-3-2616: WALLS, FENCES AND HEDGES:**

In addition to any requirements imposed pursuant to title 9 of this code, a building permit shall be required for any wall or fence greater than six feet (6') in height and shall also be required for any wall or fence, regardless of its height, that is located in a front yard.

A. Thickness: No wall or fence shall exceed two feet (2') in thickness. Cavities or spaces within a wall or fence shall not be used for the support, storage, shelter, or enclosure of persons, animals, or personal property.

B. Supporting Elements: No column, pillar, post, or other supporting element of a wall or fence shall be more than twenty four inches (24") in width.

C. Front Yards: The maximum allowable height of a wall, fence, or hedge located within the first twenty percent (20%) of the front yard, measured from the front lot line shall be three feet (3').

The maximum allowable height of a wall, fence, or hedge located within the front yard at a distance from the front lot line of more than twenty percent (20%) of the front setback shall be six feet (6'); provided, however, any portion of such wall, fence, or hedge that exceeds three feet (3') in height shall be open to public view.

D. Side Yards: The maximum allowable height for that portion of a wall, fence, or hedge located in both a side yard and a front yard shall be six feet (6'); provided, however, that any portion of such wall, fence, or hedge that exceeds three feet (3') in height shall be open to public view.

The maximum allowable height for that portion of a wall, fence, or hedge located in a side yard, but not in a front yard, shall be seven feet (7'), except that the maximum allowable height shall be eight feet (8') for such a wall, fence, or hedge located within five feet (5') of a rear lot line and parallel to such rear lot line.

Notwithstanding the provisions of this paragraph D, in no event shall a hedge exceed the maximum height permitted pursuant to paragraph F below.

E. Rear Yards: The maximum allowable height for a fence, wall or hedge located in a rear yard shall be eight feet (8').

Notwithstanding the provisions of this paragraph E, in no event shall a hedge exceed the maximum height permitted pursuant to paragraph F below.

F. Height Limit for Fences and Hedges meeting certain criteria.

Fences: New fences on a slope of a down-slope property shall not in any event extend above a point thirty-six inches (36") above the finished grade of the level pad on the upslope property in any area where the upslope property faces the Los Angeles Area Basin. Any part of a fence that extends above the finished grade of the level pad on the upslope property shall be open to public view, as defined in article 1 of this chapter. Notwithstanding Section 10-3-2759, any existing fence subject to this paragraph F that was constructed in accordance with applicable ordinances and regulations at the time of construction shall be deemed a nonconforming structure, and may be maintained in its existing configuration unless more than fifty percent (50%) of the area of the fence measured from the outer perimeter of the structure without deductions for open spaces in the fencing, is replaced or reconstructed in any five (5) year period. If more than fifty percent (50%) of the combined area of the fence is replaced or reconstructed, then the replacement structure shall be treated as new for the purposes of this paragraph and shall be constructed so that the entire structure conforms with the development standards of this paragraph.

Hedges: Hedges planted outside of the front yard setback on a slope of a downslope property in any area where the upslope property faces the Los Angeles Area Basin shall not extend above the higher of:

- i. The finished grade of the level pad on the upslope property; or,
- ii. The height of the primary structure on the downslope property if legally permitted to exceed the finished grade of the level pad on the upslope property.

Hedge, as used in this paragraph F, shall be defined as growth of vegetation, consisting of three (3) or more individual plants, that is cultivated or maintained in such a manner as to produce a barrier to inhibit passage or to obscure view, which is more than twelve inches (12") in height. Where there are interruptions of growth by vertical space to the top of the vegetation material having a horizontal distance of more than twenty four inches (24") in every four horizontal feet (4'), such growth shall not be considered a hedge for purposes of this paragraph F."

Section 4. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance or the application thereof to any person or place, is for any reason held

to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, the remainder of this Ordinance shall remain in full force and effect.

Section 5. The City Council hereby adopts a Negative Declaration, approves this Ordinance, and authorizes the Mayor to execute the Ordinance on behalf of the City.

Section 6. Publication. The City Clerk shall cause this Ordinance to be published at least once in a newspaper of general circulation published and circulated in the City within fifteen (15) days after its passage in accordance with Section 36933 of the Government Code, shall certify to the adoption of this Ordinance, and shall cause this Ordinance and his certification, together with proof of publication, to be entered in the Book of Ordinances of the Council of this City.

Section 7. This Ordinance shall go into effect and be in full force and effect at 12:01 a.m. on the thirty-first (31st) day after its passage.

Adopted:  
Effective:

\_\_\_\_\_  
BARRY BRUCKER  
Mayor of the City of Beverly Hills,  
California

ATTEST:

\_\_\_\_\_  
(SEAL)  
BYRON POPE  
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

\_\_\_\_\_  
LAURENCE S. WIENER  
City Attorney

\_\_\_\_\_  
JEFFREY KOLIN  
City Manager

\_\_\_\_\_  
SUSAN HEALY KEENE AICP

## **Attachment 2**

Redline showing proposed changes to existing Zoning Code

### 10-3-2616: WALLS, FENCES AND HEDGES:

In addition to any requirements imposed pursuant to title 9 of this code, a building permit shall be required for any wall or fence greater than six feet (6') in height and shall also be required for any wall or fence, regardless of its height, that is located in a front yard.

A. Thickness: No wall or fence shall exceed two feet (2') in thickness. Cavities or spaces within a wall or fence shall not be used for the support, storage, shelter, or enclosure of persons, animals, or personal property.

B. Supporting Elements: No column, pillar, post, or other supporting element of a wall or fence shall be more than twenty four inches (24") in width.

C. Front Yards: The maximum allowable height of a wall, fence, or hedge located within the first twenty percent (20%) of the front yard, measured from the front lot line shall be three feet (3').

The maximum allowable height of a wall, fence, or hedge located within the front yard at a distance from the front lot line of more than twenty percent (20%) of the front setback shall be six feet (6'); provided, however, any portion of such wall, fence, or hedge that exceeds three feet (3') in height shall be open to public view.

D. Side Yards: The maximum allowable height for that portion of a wall, fence, or hedge located in both a side yard and a front yard shall be six feet (6'); provided, however, that any portion of such wall, fence, or hedge that exceeds three feet (3') in height shall be open to public view.

The maximum allowable height for that portion of a wall, fence, or hedge located in a side yard, but not in a front yard, shall be seven feet (7'), except that the maximum allowable height shall be eight feet (8') for such a wall, fence, or hedge located within five feet (5') of a rear lot line and parallel to such rear lot line.

Notwithstanding the provisions of this paragraph D, in no event shall a hedge exceed the maximum height permitted pursuant to paragraph F below.

E. Rear Yards: The maximum allowable height for a fence, wall or hedge located in a rear yard shall be eight feet (8').

Notwithstanding the provisions of this paragraph E, in no event shall a hedge exceed the maximum height permitted pursuant to paragraph F below.

F. Height Limit for Fences and Hedges meeting certain criteria.

Fences: New fences on a slope of a down-slope property shall not in any event extend above a point thirty-six inches (36") above the finished grade of the level pad on the upslope property in any area where the upslope property faces the Los Angeles Area Basin. Any part of a fence that extends above the finished grade of the level pad on the upslope property shall be open to public view, as defined in article 1 of this chapter.

Notwithstanding Section 10-3-2759, any existing fence subject to this paragraph F that was constructed in accordance with applicable ordinances and regulations at the time of construction shall be deemed a nonconforming structure, and may be maintained in its existing configuration unless more than fifty percent (50%) of the area of the fence measured from the outer perimeter of the structure without deductions for open spaces in the fencing, is replaced or reconstructed in any five (5) year period. If more than fifty percent (50%) of the combined area of the fence is replaced or reconstructed, then the replacement structure shall be treated as new for the purposes of this paragraph and shall be constructed so that the entire structure conforms with the development standards of this paragraph.

Hedges: Hedges planted outside of the front yard setback on a slope of a downslope property in any area where the upslope property faces the Los Angeles Area Basin shall not extend above the higher of:

- i. The finished grade of the level pad on the upslope property; or,
- ii. The height of the primary structure on the downslope property if legally permitted to exceed the finished grade of the level pad on the upslope property.

Hedge, as used in this paragraph F, shall be defined as growth of vegetation, consisting of three (3) or more individual plants, that is cultivated or maintained in such a manner as to produce a barrier to inhibit passage or to obscure view, which is more than twelve inches (12") in height. Where there are interruptions of growth by vertical space to the top of the vegetation material having a horizontal distance of more than twenty four inches (24") in every four horizontal feet (4'), such growth shall not be considered a hedge for purposes of this paragraph F."

## **Attachment 3**

Planning Commission Resolution Recommending Ordinance

RESOLUTION NO.

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BEVERLY HILLS RECOMMENDING ADOPTION OF AN ORDINANCE OF THE CITY OF BEVERLY HILLS AMENDING BEVERLY HILLS MUNICIPAL CODE SECTION 10-3-2616 REGARDING DEVELOPMENT STANDARDS FOR WALLS, FENCES AND HEDGES IN THE TROUSDALE ESTATES AREA OF THE CITY

WHEREAS, the Planning Commission has considered the proposed amendment to the City of Beverly Hills Municipal Code, as set forth and attached hereto as Exhibit A and more fully described below (the “Walls, Fences and Hedges Ordinance”); and,

WHEREAS, the Planning Commission considered the zone text amendment set forth in the proposed Walls, Fences and Hedges Ordinance at duly noticed public hearings on November 23, 2010, December 16, 2010, May 26, 2011 and June 9, 2011, at which times it received oral and documentary evidence relative to the proposed Amendment; and,

WHEREAS, the Planning Commission finds that the proposed Walls, Fences and Hedges Ordinance is required for the public health, safety, and general welfare, and that the Walls, Fences and Hedges Ordinance is consistent with the general objectives, principles, and standards of the General Plan;

NOW, THEREFORE, the Planning Commission of the City of Beverly Hills does resolve as follows:

Section 1. An initial study of the potential environmental impact of a comprehensive ordinance related to the restoration of views in the Trousdale Estates Area of the City, which draft ordinance included provisions related to hedge location and height (the View Restoration Ordinance), was prepared. The initial study concluded that the proposed View

Restoration Ordinance would not result in significant adverse environmental impacts; thus a negative declaration is the appropriate document to adopt in order to comply with the California Environmental Quality Act (CEQA). A notice of intent to adopt a negative declaration was published on June 11, 2010, and the proposed negative declaration and initial study were made available for a 20-day public review period from June 18, 2010 through July 8, 2010. No public comments on the proposed negative declaration or initial study were submitted during the comment period. Thereafter, the decision was made to bifurcate the View Restoration Ordinance, so that the walls, fences and hedges provisions (the Walls, Fences and Hedges Ordinance) would proceed in advance of the remaining portions of the View Restoration Ordinance. Based on the information in the records regarding the proposed View Restoration Ordinance, the Planning Commission finds that there is no evidence suggesting that the draft Walls, Fences and Hedges Ordinance would result in significant adverse impacts on the environment, and hereby recommends that the City Council adopt a negative declaration for the Walls, Fences and Hedges Ordinance, based on the information in the previously prepared initial study. The records related to this determination are on file with the City's Community Development Department, 455 N. Rexford Drive, Beverly Hills, California, 90210.

Section 2. The Planning Commission does hereby find that the proposed Zone Text Amendment as set forth in the proposed Walls, Fences and Hedges Ordinance is intended to restore and preserve certain views from substantial disruption by certain new walls and fences, the growth of hedges as defined in the Code, or a combination thereof, while providing for residential privacy, security and maintaining the garden quality of the City. It is

not the intent of the Walls, Fences and Hedges Ordinance to create an expectation that any particular view or views would be restored or preserved.

The City's General Plan includes the following policy that relates to this proposed Ordinance: "LU 2.1 City Places: Neighborhood, Districts, and Corridors. Maintain and enhance the character, distribution, built form, scale, and aesthetic qualities of the city's distinctive residential neighborhoods, business districts, corridors, and open spaces." Trousdale Estates was developed to take advantage of views of the Los Angeles Area Basin and such views are one of the most distinctive qualities of this neighborhood. The proposed amendment would assist some residents in restoring and maintaining this special quality of the area by addressing certain clearly identifiable situations of view obstruction; therefore, the Walls, Fences and Hedges Ordinance would be consistent with the goals and policies of the General Plan.

Section 3. The Planning Commission does hereby recommend that the City Council adopt the proposed Walls, Fences and Hedges Ordinance approving and enacting the proposed Amendment substantially as set forth in Exhibit A, which is attached hereto and incorporated herein by reference.

Section 4. The Secretary of the Planning Commission shall certify to the passage, approval, and adoption of this resolution, and shall cause this resolution and his/her Certification to be entered in the Book of Resolutions of the Planning Commission of the City.

Adopted:

\_\_\_\_\_  
Daniel Yukelson  
Chair of the Planning Commission of the  
City of Beverly Hills, California

Attest:

\_\_\_\_\_  
Secretary

Approved as to form:

Approved as to content:

\_\_\_\_\_  
David M. Snow  
Assistant City Attorney

\_\_\_\_\_  
Jonathan Lait, AICP  
Assistant Director of Community Development /  
City Planner

