



CITY OF BEVERLY HILLS STAFF REPORT

Meeting Date: July 7, 2011

To: Honorable Mayor & City Council

From: Susan Healy Keene, AICP, Director of Community Development

Subject: Trousdale Estates View Restoration: Ordinance limiting height of fences and hedges

Attachments:

1. Draft Ordinance
2. Enforcement Costs

INTRODUCTION

Following the City Council's study session review of a draft view preservation ordinance (January 25) and subsequent to a City Council Ad Hoc meeting (April 20: Mayor Brucker & Vice Mayor Brien), the Planning Commission has held three public hearings on revisions to the view restoration ordinance. On June 23, 2011, the Planning Commission adopted a resolution forwarding to the City Council a revised ordinance that focuses solely on enhancing administrative remedies to address view-related disputes in Trousdale. Evaluation of a much broader view restoration permit and public hearing process was deferred and the Planning Commission will resume that discussion on July 28.

The subject ordinance modifies fence and hedge standards on certain slopes between properties in Trousdale. It is anticipated that these standards will address some of the more impactful conditions in the area that obstruct view, with the goal of providing an administrative process that can be objectively enforced. However, as explained in this report, there are fiscal impacts to the city associated with this administrative remedy.

DISCUSSION

For nearly two years the city has been working on regulations to restore views in the Trousdale area. As fiscal costs and alternative policy objectives are being evaluated for a more comprehensive view restoration ordinance, the Planning Commission has recommended that the City Council adopt the

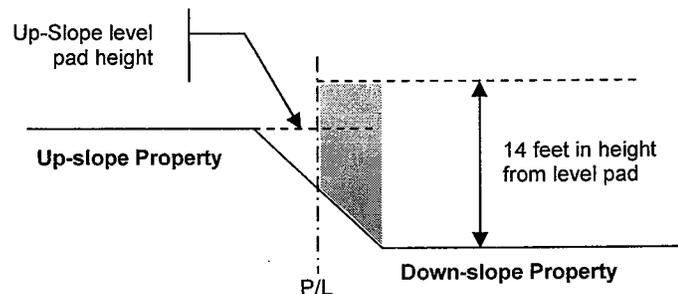
attach draft ordinance in order to provide more immediate relief and a less costly remedy to up-slope property owners whose views are obstructed by hedges cultivated by down-slope neighbors. The recommended, 'code enforcement solution' is not intended to address all obstructed views, but is intended to resolve some of the more egregious conditions. Comments from the City Council Ad Hoc meeting suggested support for this approach.

Draft Ordinance

The draft ordinance is included with this report as Attachment 1. In summary, the ordinance substantively amends the existing Trousdale estates Walls, Fences and Hedges code section (BHMC Section 10-3-2616) as follows:

- Limits the height of fences located on the slope of a down-slope property to no more than 36-inches above the immediately adjacent, up-slope property's level pad;
- Limits, in areas outside of the front yard setback, the height of hedges on the slope of a down-slope property to the higher of:
 - Finished grade of the level pad on the immediately adjacent up-slope property, or
 - 14 feet as measured from the down-slope property's level pad;
- Modifies the hedge definition such that three (3) or more individual plants (including trees) that are cultivated or maintained in a manner to produce a barrier to inhibit passage or obscure view, shall constitute a hedge. The previous definition did not include the 'three or more plants' language and did not include trees with canopies above eight feet from grade. The hedge definition includes other objective criteria, which is provided in the attachment.

The following diagram illustrates bullet point two above and represents a cross section between adjacent up- and down-slope properties. The regulation only affects the shaded area delineated below.



Code Enforcement

The City's code enforcement staff is able to evaluate these objective criteria in the field without requiring a substantial amount of information to be provided by any view or foliage owners. Compliance can be determined with modest measuring equipment and visual inspection. The same general code enforcement procedures would apply for these regulations as for other zoning regulations, including: conducting site investigations; contacting affected parties; gaining access to property; sending compliance letters; verifying compliance; and following through on other administrative remedies in cases of non-compliance, including city prosecution. It is estimated that it would take upwards of 11

staff hours for each case. Complex cases or cases that do not result in a more timely resolution, including cases that involve city prosecution, would require substantially more time.

Additionally, other complaints or violations are frequently reported when a code enforcement officer responds to any given complaint. These additional complaints may come from either the aggrieved party or alleged violator. As a result, it is anticipated that even more code enforcement activity will be generated when enforcing the subject ordinance.

View Restoration

The Planning Commission will continue its discussion regarding a public hearing process to address other view restoration issues not remedied with this ordinance. Staff continues to evaluate the approximate costs associated with such a process, including; costs to applicants; staff costs; and, legal costs and risks. Additionally, work on the view restoration process has exceeded conservative staff workload estimates and impedes the Planning division's ability to work on other Council-defined priorities. Accordingly, the City Council may want to consider adopting the subject code enforcement solution and have staff evaluate the effect of the ordinance in 12 - 24 months to see if a more comprehensive view restoration program is warranted.

FISCAL IMPACT

There would be a fiscal impact to the City to implement the subject ordinance. Primarily, the City's Code Enforcement Division would expect an increase in workload. It is anticipated that Code Enforcement would process 4-6 complaints per month and that each complaint would require 5-11 hours of Code Enforcement staff time. The estimated costs are provided below:

- Low estimate (4 complaints per month; 48 complaints a year, at 5 staff hours per complaint):
\$60,912.
- High Estimate (6 complaints per month; 72 complaints a year, at 11 staff hours per complaint):
\$201,024.

The average of the above figures would be approximately \$130,968 annually. The above costs do not reflect additional cost from code enforcement activity that will be generated when other violations are revealed through enforcement of the subject ordinance.

In order to enforce the regulations imposed by the subject ordinance and to maintain existing levels of service in the Code Enforcement Division, it will be necessary to augment that program by one full time Code Enforcement Officer. That employee would also be able to address other violations that would arise from the new ordinance.

In addition to code enforcement staff cost, there would be costs related to Planning staff assistance for code enforcement cases. These costs are difficult to monetize but planning staff assistance with cases resulting from the new ordinance could impact planning staff time directed to other priorities such as processing applications and advancing other City Council priorities.

The City does not charge fees for enforcement of City zoning standards. When using the City's Administrative Penalty process to enforce the Zoning Code, the City may receive back a small

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percentage of costs incurred through penalties that may be levied on a violator if the violator does not comply with the Code in a timely manner.

RECOMMENDATION

Staff recommends that the City Council provide direction as to whether staff should proceed with a City Council public hearing on the fence and hedge height ordinance and whether that ordinance should proceed separately from or concurrent with an ordinance creating a Trousdale View Restoration Permit process to address foliage, including individual trees (not subject to the proposed hedge height standard).



Susan Healy Keene, AICP

Approved By

Attachment 1

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. The fence shall be open to public view, as defined in article 1 of this chapter. Notwithstanding Sections 10-3-2759 and 10-3-2603, 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 between adjacent downslope and upslope properties shall not extend above the higher of:

- i. The finished grade of the level pad on the upslope property; or,
- ii. Fourteen feet (14') from the level pad of the downslope property.

For purposes of this paragraph F, downslope and upslope properties separated by a public street shall be deemed to be adjacent.

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. A report regarding the implementation of this Ordinance shall be provided to the Planning Commission and City Council after twelve months from the effective date of the Ordinance.

Section 7. 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 8. 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:

BYRON POPE (SEAL)
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

LAURENCE S. WIENER
City Attorney

JEFFREY KOLIN
City Manager

SUSAN HEALY KEENE AICP
Director of Community Development

Attachment 2

Proposed Ordinance Amending Maximum Height of Fences and Hedges in Trousdale Estates		
Potential City Cost Per Complaint to Code Enforcement		
Enforcement Steps	City Code Enforcement Costs	City Prosecutor Costs
<p>1. Referral to City Code Enforcement (CE): (City Administrative Penalty process) (BHMC 1-3-300)</p> <ul style="list-style-type: none"> • CE verifies violation (inspection) • Confer w/Planning staff in some cases • CE Compliance Orders (up to 3) • Violator may request City Administrative Hearing at each step • City Prosecutor (CP) Demand Letter w/date for compliance • Compliance by violator • CE compliance inspection 	<div style="border: 1px solid black; padding: 5px; margin: 10px auto; width: 80%;"> It would be expected that most cases would be resolved at this level </div> <p>(Does not include Planning staff cost)</p> <p>TOTAL \$1,269 – \$2,792</p>	<p>TOTAL \$290 - \$725</p>
<p>2. Noncompliance or Partial Compliance = City Prosecutor Process</p> <p>(Failure to Comply = City Abatement Action; each step in abatement action may be appealed to City Council)</p>	<p>TOTAL \$3,500 - \$8,000</p>	<p>TOTAL \$11,600 - \$17,400</p>
<p>3. Restitution of City Cost</p> <p>City legal action to obtain reimbursement re some of the above costs including abatement cost (may require a lien on violator's property). Most prosecutorial costs not recoverable.</p>	<p>Minimal CE staff time but may include Admin Services staff time</p>	<p>TOTAL \$5,000</p>

NOTE: All dollar figures on this table are estimates. Each case will be different and costs can vary depending on the specifics of a case.