



CITY OF BEVERLY HILLS STAFF REPORT

Meeting Date: December 19, 2011

To: Honorable Mayor & City Council

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

Subject: Trousdale Estates View Restoration: Three month review of ordinance limiting height of fences and hedges

Attachments:

1. Trousdale Fence and Hedge Height Ordinance
2. Cost Recovery Information
3. Photos of Trees and Hedges

INTRODUCTION

When the City Council, on August 16, 2011, adopted an ordinance regarding the height of fences and hedges in Trousdale, it requested a report in three months to review implementation of the ordinance, specifically addressing impact on City resources and efficacy of the definition of "hedge" included in the ordinance. The ordinance became effective September 15, 2011 and this report provides information about implementation of the ordinance from that date until December 6, 2011. The report focuses on: 1) the number and types of complaints received by the City pursuant to the ordinance and the level of staff resources required to address these complaints; and, 2) issues brought up through experience with the ordinance including interpretation of the hedge definition. Staff is requesting City Council direction as to whether the definition of hedge in the ordinance is achieving the City's Council's objective to limit tree hedges that clearly and substantially block views.

DISCUSSION

The subject ordinance modified fence and hedge standards on certain slopes between properties in Trousdale. It was anticipated that these standards would address some of the more impactful view obstruction conditions in the area and would be objectively enforced by staff, thereby providing more immediate relief and a potentially less costly remedy for property owners. Foliage that may obstruct views and that is not addressed by this ordinance is addressed by the Trousdale View Restoration Ordinance adopted by the City Council on December 6, 2011.

Ordinance Summary

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

- Limited 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;
- Limited, in areas outside of the front yard setback, the height of hedges on slopes of adjacent properties to the higher of:
 - Finished grade of the level pad on the immediately adjacent up-slope property, or
 - 14 feet as measured from the adjacent down-slope property's level pad;
- Modified 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 definition of hedge used in the balance of the Code does not include tree hedges.

Ordinance Enforcement

Code Enforcement staff members are currently conducting 13 active investigations (an average of 4.5 per month), have spoken with eight residents who are waiting to file complaints, and have fielded seven other inquiries regarding enforcement under the ordinance. The number of complaints received is consistent with staff's estimate provided to the City Council on July 7, 2011 that the City would receive an average of 5 complaints per month.

Staff also previously reported to the Council that other complaints or violations are frequently reported when a code enforcement officer responds to any given complaint. As anticipated, during recent field visits, residents have directed staff's attention to other code violations such as alleged hedge height violations not related to the new ordinance. Historically, for every ten violations enforced by code enforcement staff, approximately six property owners refer additional violations to Code Enforcement.

Hedge Definition

The definition of hedge in the Trousdale fence and hedge ordinance includes tree hedges. The City Council discussed whether this hedge definition should include two or three trees and settled on three in the final version but asked staff to provide information as to the efficacy of this definition in achieving the goal of the ordinance: assisting residents in addressing views clearly blocked by tree hedges. Staff found during investigation of fence and hedge complaints that making a determination as to whether trees in close proximity form a hedge pursuant to the ordinance definition hinges not only on the number of trees but on the interpretation of the term, "obscure" in the definition:

"Hedge", as used in this subsection F, shall be defined as growth of vegetation, consisting of three (3) or more individual plants, including, without limitation, trees, **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 (4) horizontal feet, such growth shall not be considered a hedge for purposes of this subsection F.

The highlighted phrase has been part of the City's hedge definition for decades. The word "obscure" is defined by the Merriam-Webster Dictionary as: "1. to make dark, dim or indistinct," "2. To conceal or hide by or as if by covering." This has been consistently interpreted by staff to refer to a solid barrier. Attachment 2 includes photographs of trees showing staff's interpretation of the hedge definition. Staff requests confirmation from the City Council that staff's interpretations are consistent with the City Council's understanding. If the City Council determines that it has a different understanding of the hedge definition, staff recommends that the City Council direct staff to work with the Planning Commission to revise the definition. Trees that are determined not to be part of a tree hedge as defined by the subject ordinance may be addressed under the Trousdale View Restoration Ordinance adopted by the City Council on December 6, 2011.

Other Issues

After adoption of the Trousdale fence and hedge ordinance, it became apparent that the regulations do not apply to flag lots¹ in the same way as other lots. There are 12 flag lots in Trousdale. Because of the small number of lots affected, staff does not believe that a code change to address fences and hedges on flag lots must be made immediately and would recommend that such a change be considered by the City Council at such time in the future that other zoning code changes are considered by the City Council. This would use City resources more efficiently and allow additional time for staff, in implementing the ordinance, to determine if other revisions should be considered.

FISCAL

The number of complaints in the first 3 months of implementation has averaged 4.5 per month with an estimate of 11 hours to resolve each complaint. This would result in 54 cases for the first year and a total cost of approximately \$118,800 to the City. Complex cases, including cases that involve city prosecution, would require substantially more time and expense and could add to this figure. It would be expected that the number of new cases would diminish over time but old cases would return as foliage grows and violations recur, resulting in an approximately 120,000 cost to the City annually.

Looking at it in terms of staff hours, resolving 13 complaints will require approximately 143 Code Enforcement staff hours or more than three and a half weeks of one staff person's time. This does not include the hours spent by Planning staff working with Code Enforcement staff to implement the ordinance. As reported by staff when the ordinance was adopted, the City does not have the ability to charge fees related to correcting violations of zoning code regulations. Attachment 2 addresses issues of cost recovery.

¹ FLAG LOT: A site area that is characterized by a strip of land, less than thirty six feet (36') in width, which provides access to the main portion of the site area from a street. Such strip of land shall be referred to as the "pole" of the flag lot.

RECOMMENDATION

Staff recommends that the City Council provide direction as to whether the hedge definition in the Trousdale fence and hedge height ordinance is achieving the City Council's objective. Staff further recommends that the City Council direct staff to review changes to the ordinance with regard to flag lots, as discussed in the report, to be returned to the City Council at such time that other zoning code changes are considered. As stated in the report, there may be ongoing cost to the City that may warrant additional staffing in the future. Community Development Department staff continues to evaluate the resource impact of this ordinance as well as other recent and pending ordinances considered by the City Council. Staff will present that report to the City Council during budget reviews.

Susan Healy Keene, AICP

Approved By



Attachment 1

Attachment 1

Beverly Hills Municipal 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 subsection, in no event shall a hedge exceed the maximum height permitted pursuant to subsection F of this section.

- 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 subsection, in no event shall a hedge exceed the maximum height permitted pursuant to subsection F of this section.

New Code Section Below

F. Height Limit For Fences And Hedges Meeting Certain Criteria:

1. Fences: New fences on a slope of a downslope property shall not in any event extend above a point thirty six inches (36") above the finished grade of the level pad on the adjacent upslope property in any area where the fence is located in a line of sight from the upslope property to the Los Angeles

Attachment 1

Beverly Hills Municipal Code

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 of this chapter, any existing fence subject to this subsection 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 fence 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 area of the fence is replaced or reconstructed, then the replacement structure shall be treated as new for the purposes of this subsection and shall be constructed so that the entire structure conforms with the development standards of this subsection.

2. Hedges: Except as permitted by an agreement between adjacent downslope and upslope neighbors, hedges planted outside of the front yard setback on a slope between adjacent downslope and upslope properties where the upslope property faces the Los Angeles area basin shall not extend above the higher of:
 - a. The finished grade of the level pad on the upslope property; or
 - b. Fourteen feet (14') from the level pad of the downslope property.

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

"Hedge", as used in this subsection F, shall be defined as growth of vegetation, consisting of three (3) or more individual plants, including, without limitation, trees, 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 (4) horizontal feet, such growth shall not be considered a hedge for purposes of this subsection F.

"Located in a line of sight from the upslope property to the Los Angeles area basin" means that the plane established by the fence or hedge, either at the height of the fence or hedge or if extended upward, would intersect a sight line from the upslope property to the Los Angeles area basin. (Ord. 11-O-2611, eff. 9-16-2011)

Attachment 2

Attachment 2

Cost Recovery Information

Cost Recovery

During review of the Trousdale fence and hedge ordinance, the City Council directed staff to review options for recovery of costs associated with implementation of the proposed ordinance. Staff looked at options such as charging a fee to a hedge complainant to cover or partially cover the City's enforcement cost or charging a fee to all property owners to create a Trousdale hedge height program:

- **Charging a Fee.** The proposed ordinance is similar to many other provisions of the municipal code where development standards are adopted; the City cannot charge those who make complaints about City development standards, whether in Trousdale or any other part of the City.
- **Hedge Height Program.** In general, fees may be charged for recovering the cost of providing a service. The typical example is a fee charged for processing a conditional use permit application. There are constitutional limitations on the levying of fees such as Proposition 218, which deals with property-related fees, and Proposition 26, which prohibits a local government from enacting new fees without voter approval unless that fee falls under one of the exceptions under Proposition 26. A hedge height program would be infeasible under these constraints.

Attachment 3



Attachment 3

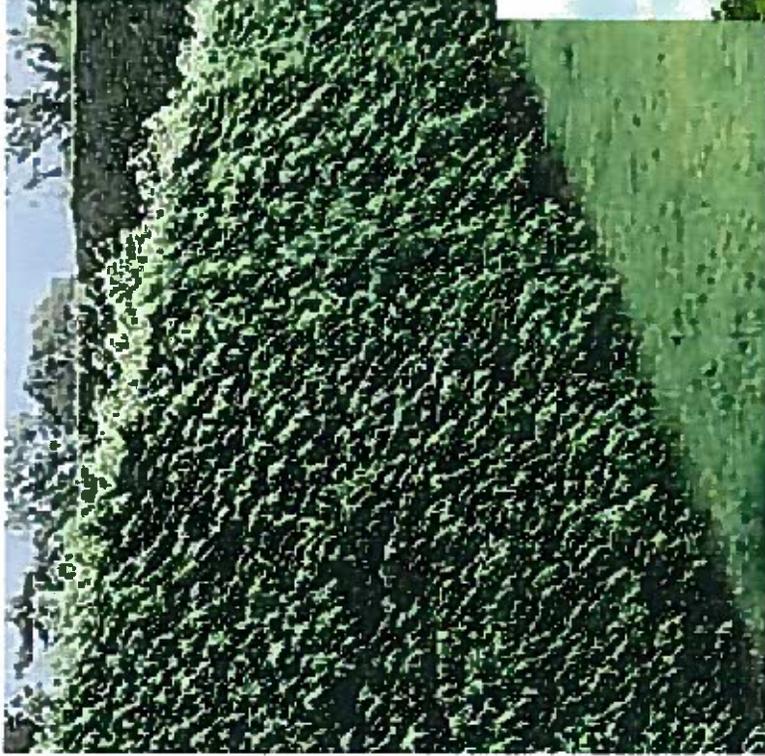
View Restoration Trousdale Fence and Hedge Ordinance

Examples of Trees and Tree Hedges

Department of Community Development



Definition of Hedge



A hedge under old code
A hedge under new code



Not a hedge under old code
A hedge under new code



Individual trees not
a hedge under old
code or new code



To enforce the new code, Code Enforcement determines if trees in question are located on a slope, are located behind the front setback, and if there are three or more trees in that location that inhibit passage or obscure a view. If so, the trees may be subject to the new hedge code. This appears to be a hedge subject to the new code. The next question is whether the tree hedge is above the height limit in the code.



Shallow Slope



This is a hedge on a shallow slope between properties. The hedge is allowed to be a maximum of 14' from the level pad of the downslope property under the new code. This hedge appears to be slightly above that height.



Shallow Slope

This is a hedge on a shallow slope between properties. The hedge is allowed to be a maximum of 14' from the level pad of the downslope property under the new code. This hedge appears to be slightly above that height.



Close-up of previous photo



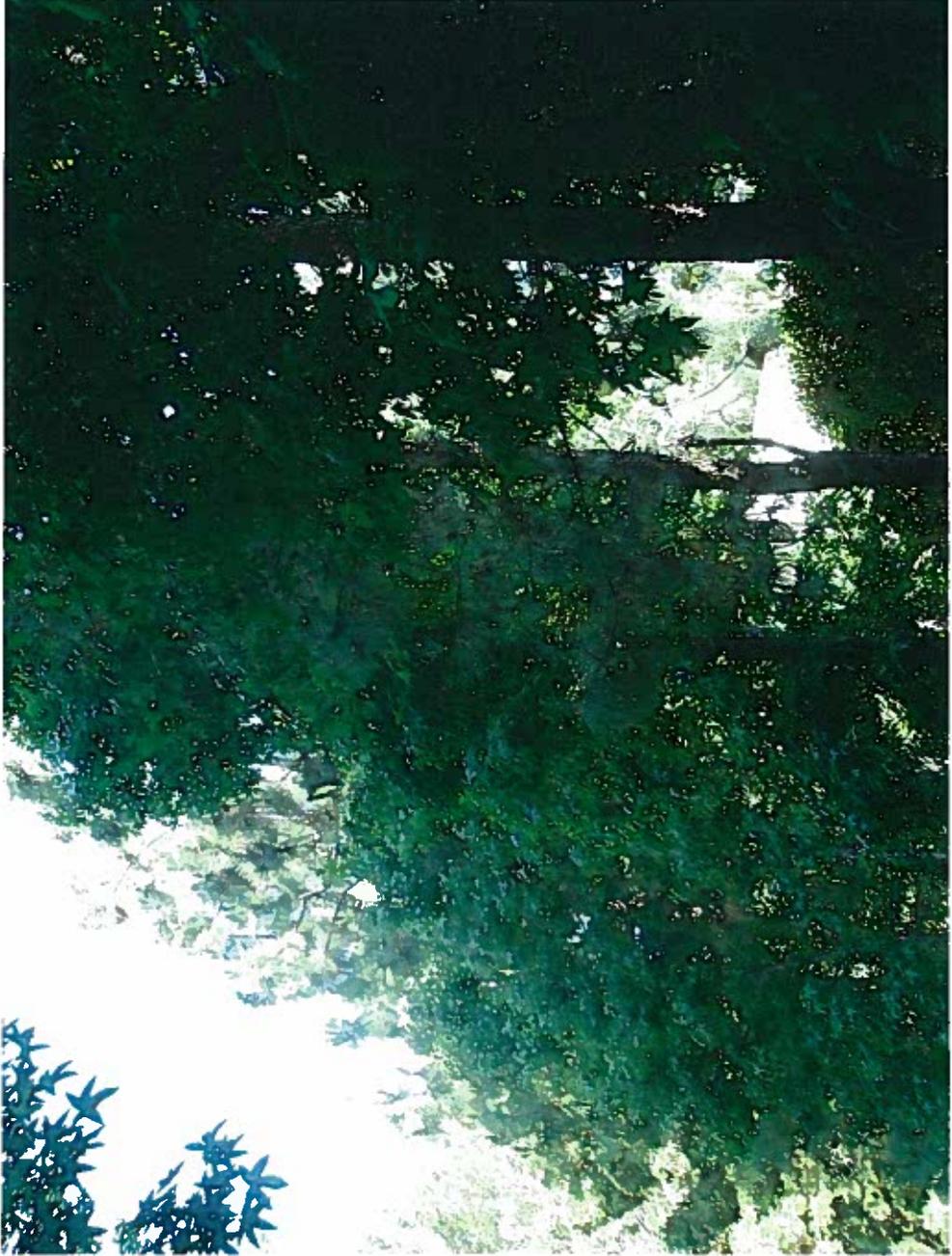
This appears to be a hedge subject to the new code.





This appears to be a hedge subject to the new code; however, if trimmed (laced) to open up the canopy so the trees do not prohibit passage or obscure a view, then it may no longer be a hedge.





Another view of previous area.



Before



Potential
hedge (palm
trees) prior to
trimming.



Before

A second view of previous area.





Before



A third view
of previous
area.



After

Same area as previous photos, after trimming. Staff found that this is no longer a hedge meeting the definition in the code.





After

A second
view of
previous
area





After

A third view of previous area.





After

A fourth view of previous area.

