



AGENDA REPORT

Meeting Date: August 7, 2012

Item Number: D-3

To: Honorable Mayor & City Council

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

Subject: A. AN ORDINANCE OF THE CITY OF BEVERLY HILLS AMENDING BEVERLY HILLS MUNICIPAL CODE SECTION 10-8-106 REGARDING TROUSDALE VIEW RESTORATION PERMIT PROCEDURES

B. CONSIDERATION OF AMENDMENTS TO BEVERLY HILLS MUNICIPAL CODE SECTION 10-3-2616 REGARDING DEVELOPMENT STANDARDS FOR WALLS, FENCES AND HEDGES IN THE TROUSDALE ESTATES AREA OF THE CITY.

Attachments:

1. Proposed Ordinance
2. Planning Commission Resolution No. 1644
3. Planning Commission Staff Report for 6/14/12
4. Trousdale Fence and Hedge Height Ordinance, adopted 8/16/11
5. Trousdale View Restoration Ordinance, adopted 12/6/11
6. Planning Commission Resolution No. 1654 and Exhibit A, "View Restoration Guidelines"

RECOMMENDATION

Staff recommends that the City Council move to waive the full reading of the ordinance and that the ordinance entitled, "An Ordinance of the City of Beverly Hills Amending Beverly Hills Municipal Code Section 10-8-106 Regarding Trousdale View Restoration Permit Procedures" be introduced and read by title only. Staff further recommends that the City Council consider amendments to Beverly Hills Municipal Code Section 10-3-2616 regarding development standards for walls, fences and hedges in Trousdale, particularly the definition of "hedge" included in that Code section. Staff also recommends that the City Council discuss City policies with regard to administration and enforcement of the Trousdale View Restoration Permit process.

INTRODUCTION

At the City Council's direction, changes were considered to each of the ordinances that comprise the City's Trousdale View Restoration Program:

- Trousdale View Restoration Ordinance, adopted December 6, 2011: provides a set of regulations and a discretionary review process to assist property owners in restoring and maintaining views in Trousdale; and,
- Trousdale Fence and Hedge Height Ordinance, adopted August 16, 2011: regulates the maximum hedge and fence heights on certain slopes in Trousdale and includes a new definition of hedge for the purpose of the ordinance.

The change in the Trousdale View Restoration Ordinance would eliminate the 500-foot notice radius for a View Restoration Permit and require only that the View Restoration Permit applicant and foliage owners identified in the Permit application receive notice, as well as occupants of the foliage owners' properties. This amendment was unanimously recommended by the Planning Commission and the attached ordinance would revise the Code accordingly.

The change proposed to the Trousdale Fence and Hedge Height Ordinance would revise the definition of "hedge" so that a minimum of two trees growing together to form a barrier or to obscure view could be considered a hedge; this would be a change from the current definition in which a minimum of three trees could be considered a hedge. The Planning Commission discussed this revision to the hedge definition and decided not to recommend this change, indicating it would defer to the City Council's ultimate decision on the issue.

The Planning Commission also recommended that the City Council discuss ways to reduce costs for view owners through clarification of the City's indemnification and enforcement policies with regard to the Trousdale View Restoration Program but felt that these matters were not in the Planning Commission's purview.

BACKGROUND

The Trousdale Fence and Hedge Ordinance was adopted in August, 2011 and the City Council conducted a three-month review of the ordinance at a Study Session on December 19, 2011. At that Study Session, the City Council discussed a number of issues related to the Trousdale View Restoration Program and, in particular, expressed concern that the revised definition of "hedge" in the Trousdale Fence and Hedge Height Ordinance was not adequate to address the Council's goal of providing more immediate relief for residents with view disruption issues. The Mayor directed that the City Council Trousdale Ad Hoc Committee discuss the definition of "hedge" as well as ways to reduce the cost of the Trousdale View Restoration Ordinance for view owners.

The Ad Hoc Committee of then-Mayor Brucker and then-Vice Mayor Brien met on January 23, 2012 and recommended that the definition of hedge in the Trousdale Fence and Hedge Height Ordinance should be revised from a minimum of three trees to two trees. A change to the definition of hedge in the Zoning Code requires a zoning text amendment and must therefore be reviewed first by the Planning Commission. The Ad Hoc Committee also made recommendations as to how the City could reduce the cost of the Trousdale View Restoration Ordinance for view owners, including clarifying City policy with regard to City enforcement of View Restoration Permits and interpretation of the indemnification language in the ordinance. Those recommendations are presented later in this report.

During the Planning Commission's review of Guidelines to the Trousdale View Restoration Ordinance in December through March, 2012, staff suggested that the 500-foot notice radius for the View Restoration Permit was not necessary because of revisions that had been made to the ordinance prior to adoption by the City Council; the Planning Commission concurred. As a result, this proposed change to the View Restoration Permit procedures was included as part of the Planning Commission's review of changes to the Trousdale View Restoration Program in June, 2012.

The Planning Commission held a public hearing on June 14, 2012 to consider:

- Revision of the public notice requirements for Trousdale View Restoration Permits;
- A change in the definition of hedge on certain slopes in Trousdale; and,
- Recommendations of the City Council Trousdale Ad Hoc Committee regarding reducing costs of the Trousdale View Restoration Program for view owners.

The Planning Commission recommended the attached ordinance revising Trousdale View Restoration Permit public notice requirements. The Planning Commission decided not to recommend revisions to the adopted Trousdale Fence and Hedge Height Ordinance but expressed a willingness to defer to the City Council if it wished to revise the definition of "hedge." The Planning Commission also recommended that the City Council discuss the Trousdale View Restoration Permit indemnification and enforcement policies as recommended by the City Council Trousdale Ad Hoc Committee.

DISCUSSION

Amendment to Trousdale View Restoration Ordinance Public Notice Requirements

The Trousdale View Restoration Ordinance was adopted as a part of a new Chapter of the Zoning Code addressing view restoration (BHMC Section 10-8-100 et seq.). Section 10-8-106 established a View Restoration Permit process including public hearing procedures. The reviewing authority for the Permit is the Planning Commission. As currently adopted, notice of any hearing shall be mailed at least thirty days prior to the hearing to the applicant and all owners and residential occupants of property within five hundred feet (500') of the view owner's and foliage owner's properties.

This notice requirement was contemplated by the Planning Commission when there was no limit on the number of view owners and foliage owners on a View Restoration Permit application. The expansive notice requirement was intended to allow one view owner to identify additional view owners who had issues with the same foliage owner(s) and thereby to allow consolidation of view restoration cases. It was determined through the Planning Commission's public review process for the proposed view restoration ordinance that an application with multiple view owners would be unwieldy and difficult to process and adjudicate. As a result, the Planning Commission recommended limiting each View Restoration Permit Application to one view owner, although more than one foliage owner may be identified in the application. Since the adopted ordinance limits each application to one view owner, staff proposes that the notice requirement should be revised so that notice of a View Restoration Permit hearing is sent only to the view owner applicant and to the foliage owners identified in the application, along with occupants on the foliage owner's property, in case the foliage owner is not the occupant. This is

the only change proposed to this section of the Code and the proposed change would read as follows:

E. Public Hearing Notice: The reviewing authority shall hold a public hearing concerning each application for a view restoration permit.

Notice of any hearing held pursuant to this section shall be mailed at least thirty (30) days prior to such hearing by United States mail, postage paid, to the applicant and to all owners who are identified as foliage owners in the View Restoration Permit application, as shown on the latest equalized assessment roll, as well as residential occupants of the foliage owners' properties. "

View Restoration Permit cases involve issues among individual neighbors and so it would not appear necessary to inform a wide radius of neighbors. It can also be expensive for an applicant to obtain the necessary radius map and address labels for a large mailing. This would be inconsistent with the City Council's direction to minimize the view owner's costs.

Amendment to Trousdale Fence and Hedge Height Ordinance

The Trousdale Fence and Hedge Height Ordinance amended the Trousdale Estates Walls, Fences and Hedges Code section (BHMC Section 10-3-2616) as follows:

- 1) 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;
- 2) Limited, in areas outside of the front yard setback, the height of hedges on the slope between adjacent properties to the higher of:
 - a) Finished grade of the level pad on the immediately adjacent up-slope property, or
 - b) 14 feet as measured from the down-slope property's level pad;
- 3) 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 Code definition of hedge at the time did not include the 'three or more plants' language and did not include trees with canopies eight feet above grade.

It is noted that walls may not be built on slopes in Trousdale and so were unaffected by the ordinance.

At the December 19, 2011 City Council meeting, Councilmembers expressed concern that the new definition of hedge, and particularly the language, "three or more individual plants" may not adequately address the Council's goal of assisting Trousdale residents in restoring and maintaining views. The City Council discussed revising the definition so that a hedge would be "two or more individual plants" although the only specific direction from the City Council was that the City Council Trousdale Ad Hoc Committee should discuss revisions to the hedge definition. The Ad Hoc Committee supported reducing the minimum number of plants (which includes trees) in a hedge from three to two. As stated previously, revising the definition of hedge in an adopted Zoning ordinance requires Planning Commission review pursuant to State law.

Language reducing the number of plants/trees included in the definition of hedge from three to two plants was proposed in a draft ordinance to the Planning Commission as follows:

"Hedge, as used in this paragraph F, shall be defined as growth of vegetation, consisting of two (2) 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."

The Planning Commission considered this Code change at a public hearing on June 14, 2012 and concluded that the definition of hedge had been thoroughly discussed when the Planning Commission recommended the Trousdale Fence and Hedge Height Ordinance to the City Council in June, 2011. As a result, the Commission stated that it was not inclined to recommend any revisions to the hedge definition at this time. The Planning Commission did, however, direct staff to inform the City Council that the Council had the support of the Planning Commission if the City Council wished to revise the definition of hedge from a minimum of three trees to two trees.

Development of the Current Definition of Hedge Height for Trousdale

During development of the Trousdale View Restoration Program, the Planning Commission spent a great deal of time discussing the addition of objective standards to the Code that are clear and measurable and would allow certain view disruption situations to be addressed by the City's Code Enforcement staff rather than the City's proposed (now adopted) View Restoration Permit process. These standards ultimately included the current definition of hedge (including trees) for certain slopes in Trousdale and maximum height standards for these hedges. These standards reflect the Planning Commission's stated goal of addressing the most egregious cases of view obstruction with the "code enforcement solution." The Planning Commission felt that three trees growing together was an appropriate number to constitute a hedge, particularly when such trees may be required to be trimmed or removed without a determination that they substantially block a view. Cases involving one or two trees could be addressed through the View Restoration process through which a determination would be made as to whether the trees are substantially blocking a view.

City Councilmembers may have a slightly different goal, as expressed at some public meetings, of capturing as many view obstruction situations as possible through the "code enforcement solution." If this is the goal, Councilmembers may wish to consider revising the definition of "hedge" so that a minimum of two, rather than three plants constitute a hedge. By reducing the number of trees in the hedge definition, it is likely that additional trees would be captured by the definition. This would potentially allow more Trousdale residents with foliage growing on the slope between their property and a neighbor's property to take advantage of this Code section.

The public notice for this City Council meeting includes consideration of changes to Trousdale hedge regulations so the Council may revise the attached ordinance to include a revised definition of hedge.

Staff believes a change in the number of trees included in the definition of hedge will result in additional code enforcement cases that might have otherwise been referred to the View

Restoration Permit process. The City has had 22 active code enforcement cases related to the Trousdale Fence and Hedge Height Ordinance since it was adopted. One case has been resolved, two are almost resolved and the rest are pending resolution. Code Enforcement staff confirms that cases take an average of approximately eight hours to resolve, as reported previously by staff, and staff has reported a high confidence level that most current cases can be resolved successfully. The addition of a contract code enforcement officer to the budget this year will be instrumental in resolving the existing cases.

Other Hedge Issues

Other hedge issues were discussed at the June 14, 2012 Planning Commission public hearing but were not ultimately recommended for City Council consideration by the Planning Commission including:

Additional Hedge Definition Changes

Some Trousdale residents supported replacing the word "obscure" in the hedge definition with a different term that would allow City Code Enforcement action on foliage that does not form a solid barrier.

The Planning Commission concluded that such a change would make the ordinance language too subjective for what is intended to be an objective determination of facts that can be carried out by Code Enforcement officers without commission oversight.

Three Strikes

Once a foliage owner has three separate violations with regard to the same hedge (i.e. the hedge violates the Code, City Code Enforcement responds, the hedge is trimmed; the hedge grows and violates the Code, Code Enforcement responds, the hedge is trimmed and this occurs a third time), then the hedge (trees) must be completely removed at the expense of the foliage owner.

The Planning Commission determined that this may be too extreme a solution in a situation where foliage will always grow and property owners are attempting to comply.

Once a Hedge; Always a Hedge

If foliage has been determined by staff to be a hedge, it is always considered a hedge, even if trimmed so that it no longer meets the definition of hedge.

It was determined that this proposes a consistency problem with the code language and does not provide the opportunity for foliage owners to address hedge height issues through trimming or lacing of foliage as opposed to cutting down or removing foliage.

Policy Issues for City Council Consideration

The City Council, at its December 19, 2011 Study Session, directed the City Council Trousdale Ad Hoc Committee to review ways to reduce costs of the Trousdale View Restoration Permit process for view owners. The Trousdale Ad Hoc Committee met on January 23, 2012 and discussed reducing the cost for view owners through: 1) City policies with regard to the indemnification language in the ordinance; and, 2) City policies with regard to enforcement of View Restoration Permits. At its June 14, 2012 meeting, the Planning Commission recommended that the City Council discuss these policies with the goal of providing direction for staff and Trousdale property owners.

Ordinance Indemnification Language

The indemnification language in the ordinance (Section 10-8-106 (L)), requires a view owner to be responsible for any and all costs incurred by the City in enforcing any View Restoration Permit, except for those costs of enforcement as the City may recover from a foliage owner;

"Indemnification: View Owner shall defend, indemnify and hold harmless the City, its agents, officers, attorneys and employees from any claim, action or proceeding (collectively "action") against the City or its agents, officers, attorneys or employees to attack, set aside, void or annul the entitlements that may be granted by the City through issuance of a View Restoration Permit, and for any and all costs incurred in enforcing the View Restoration Permit, except for those costs of enforcement as the city may recover from a Foliage Owner. Indemnitor shall reimburse the City for any court costs and attorney fees that the City may be required by a court to pay as a result of such action. City may, at its sole and absolute discretion: 1) participate in the defense of such action undertaken by View Owner, or 2) retain separate counsel whose attorney fees and costs shall be paid by View Owner. Such participation in the defense of such action or the retention of separate counsel by the City shall not relieve View Owner's obligations under this provision. The City shall promptly notify the View Owner of any such action."

This potentially makes a view owner responsible not only for any City enforcement or prosecution of a view restoration decision (Trousdale View Restoration Permit) but also for any litigation that may arise as a result of a City view restoration decision.

The Planning Commission's resolution recommending approval of the Trousdale View Restoration Ordinance in fall 2011 recommended consideration of a cap on the maximum dollar amount a view owner would have to pay to satisfy the indemnification requirements. When adopting the ordinance, the City Council expressed similar concern about the potential cost to view owners of indemnifying the City and directed the City Council Trousdale Ad Hoc Committee to consider this issue. The Ad Hoc Committee recommended that the City should cover the cost of litigation of the ordinance itself (a facial challenge) but that a view owner should be responsible for the cost of defending a City decision regarding a specific view restoration case. The cost of enforcement of a City View Restoration decision is addressed below.

City Enforcement of View Restoration Permit Decisions

The Trousdale View Restoration ordinance requires the City to ensure initial compliance with a View Restoration Permit with subsequent enforcement the responsibility of the view owner:

"[T]he City shall take such action, as appropriate, to ensure initial compliance with a View Restoration Permit. After an initial determination by the City that a Foliage Owner has complied with a View Restoration Permit, any further dispute regarding the Foliage Owner's compliance with the View Restoration Permit shall be resolved by a civil action initiated by the View Owner."

This language addresses the concern, experienced by other cities with view preservation ordinances, that these cases require continuous enforcement due to the growth of foliage that is not maintained in accordance with City decisions. To address the concern about the potential

cost to view owners, the City Council Trousdale Ad Hoc Committee recommended that the City cover the cost of the City's Administrative Penalty Process (typical code enforcement process to ensure compliance with City regulations), but if a case required prosecution, the view owner would be responsible for the costs.

Staff is seeking City Council direction as to whether staff should follow the Ad Hoc Committee recommendation with regard to enforcement of View Restoration Permits. The City Council could direct staff to follow the Ad Hoc Committee's policy and staff would include this information in the Trousdale View Restoration Guidelines. The Planning Commission adopted Resolution No. 1634 (attached), approving the Trousdale View Restoration Guidelines, on March 22, 2012. The Resolution includes Section 3, authorizing staff to make changes to the Guidelines necessitated by City Council amendments to the Trousdale View Restoration Ordinance. This allows staff to revise the Guidelines pursuant to City Council direction without additional Planning Commission review. Adding information to the Guidelines regarding the City Council's policies as to indemnification and enforcement may reduce some view owners' concerns about the potential cost of proceeding with the City's View Restoration Permit process.

GENERAL PLAN CONSISTENCY

The Planning Commission found that the proposed zone text amendment is intended to "maintain and enhance the character,...and aesthetic qualities of the City's distinctive residential neighborhoods..." as stated in the Land Use Element of the City's adopted General Plan Land under goal LU 2.1 "City Places: Neighborhood, Districts, and Corridors." 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 amendments would assist some residents in restoring and maintaining this special quality of the area by addressing view obstruction through regulation of foliage height and streamlining the permit process; therefore, the proposed ordinance would be consistent with the goals and policies of the General Plan.

ENVIRONMENTAL DETERMINATION

The amendments propose limited changes to the previously adopted Trousdale View Restoration Ordinance and the related Trousdale Wall, Fence and Hedge Ordinance for which a Negative Declaration was adopted after the project was assessed in accordance with the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the City and no significant environmental impacts were identified.

FISCAL IMPACT

There could be an additional cost to the City for expanded code enforcement activities if changes to the existing Trousdale Fence and Hedge Height Ordinance result in more code enforcement cases.

PUBLIC NOTICE

A public hearing notice was mailed on July 27, 2012 to all property owners in Trousdale Estates. Notice was published in the *Beverly Hills Courier* and the *Beverly Hills Weekly*, two newspapers of local circulation. In addition to the required notice, staff has emailed meeting notices and staff reports to a list of interested parties. As of the time of this report no additional letters have been received by the Planning Division.

Susan Healy Keene, AICP
Director of Community Development


Approved By

Attachment 1
Proposed Ordinance

ORDINANCE NO. 12-O- _____

ORDINANCE OF THE CITY OF BEVERLY HILLS
AMENDING BEVERLY HILLS MUNICIPAL CODE SECTION
10-8-106 REGARDING TROUSDALE VIEW RESTORATION
PERMIT PROCEDURES

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 August 7, 2012 and, at the conclusion of the hearing, introduced this Ordinance. Evidence, both written and oral, was presented during the hearing.

Section 2. The Project has previously been environmentally reviewed pursuant to the provisions of the California Environmental Quality Act (Public Resources Code Sections 21000, et seq. ("CEQA"), the State CEQA Guidelines (California Code of Regulations, Title 14, Sections 15000, et seq.), and the City's Local CEQA Guidelines. Based on the initial study, the previously adopted negative declaration, the comments received thereon, and the record before the City Council, the City Council hereby finds that there have been no substantial changes to the Project or the environment that would require the preparation of a subsequent negative declaration or a supplement to the previously adopted negative declaration because the requested approval will make a minor modifications to existing Code sections and will not introduce significant environmental effects or substantially increase the severity of effects previously identified and analyzed in the adopted negative declaration. Furthermore, there are no changed circumstances or new information, which was not known at the time the negative declaration was adopted that would require the preparation of a subsequent negative declaration or major revisions to the previously adopted negative declaration pursuant to CEQA Guidelines Section 15162. Therefore, the original negative declaration represents the independent judgment

of the City and there is no substantial evidence that the approval of the Project, as modified, may have any significant environmental impact. The documents and other material which constitute the record on which this decision is based 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 106E of Chapter 8 of Title 10 of the Beverly Hills Municipal Code to read as follows:

"E. Public Hearing Notice: The reviewing authority shall hold a public hearing concerning each application for a view restoration permit.

Notice of any hearing held pursuant to this section shall be mailed at least thirty (30) days prior to such hearing by United States mail, postage paid, to the applicant and to all owners who are identified as foliage owners in the View Restoration Permit application, as shown on the latest equalized assessment roll, as well as residential occupants of the foliage owners' properties."

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 relies on the previously adopted Negative Declaration for the View Restoration Ordinance and finds that no further environmental review is required because the previously adopted Negative Declaration remains accurate and applicable to the minor change contemplated by this Ordinance.

Section 6. The City Council hereby approves this Ordinance, and authorizes the Mayor to execute the Ordinance on behalf of the City.

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.

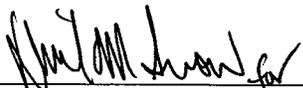
Adopted:
Effective:

WILLIAM W. BRIEN, MD
Mayor of the City of Beverly Hills,
California

ATTEST:

(SEAL)
BYRON POPE
City Clerk

APPROVED AS TO FORM:



LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

JEFFREY KOLIN
City Manager



SUSAN HEALY KEENE AICP
Director of Community Development

Attachment 2

Planning Commission Resolution no. 1644
Recommending Adoption of the Ordinance

RESOLUTION NO. 1644

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
10-8-106 REGARDING TROUSDALE VIEW RESTORATION
PERMIT PROCEDURES

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 "Ordinance"); and,

WHEREAS, the Planning Commission considered the zone text amendment set forth in the Ordinance at a duly noticed public hearing June 14, 2012, at which time it received oral and documentary evidence relative to the proposed Amendment; and,

WHEREAS, the Planning Commission finds that the proposed Ordinance is required for the public health, safety, and general welfare, and that the 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. The Project has previously been environmentally reviewed pursuant to the provisions of the California Environmental Quality Act (Public Resources Code Sections 21000, et seq. ("CEQA"), the State CEQA Guidelines (California Code of Regulations, Title 14, Sections 15000, et seq.), and the City's Local CEQA Guidelines. Based on the initial study, the previously adopted negative declaration, the comments received thereon, and the record before the Planning Commission, the Planning Commission hereby finds that there have been no substantial changes to the Project or the environment that would require the preparation of a subsequent negative declaration or a supplement to the previously adopted negative

declaration because the requested approval will make a minor modification to an existing Code section and will not introduce significant environmental effects or substantially increase the severity of effects previously identified and analyzed in the adopted negative declaration. Furthermore, there are no changed circumstances or new information, which was not known at the time the negative declaration was adopted that would require the preparation of a subsequent negative declaration or major revisions to the previously adopted negative declaration pursuant to CEQA Guidelines Section 15162. Therefore, the original negative declaration represents the independent judgment of the City and there is no substantial evidence that the approval of the Project, as modified, may have any significant environmental impact. The documents and other material which constitute the record on which this decision is based 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 2. The Planning Commission does hereby find that the proposed Zone Text Amendment as set forth in the proposed Ordinance is a minor change to an existing code section.

Section 3. The Planning Commission does hereby find that 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 Trousdale View Restoration Ordinance was adopted to restore and preserve views in Trousdale. The proposed amendment would revise the public notice

requirements for the Trousdale View Restoration Permit public hearing process to be in keeping with the intent of the ordinance to assist residents in restoring views; therefore, the Ordinance would be consistent with the goals and policies of the General Plan.

Section 4. The Planning Commission does hereby recommend that the City Council adopt the proposed Ordinance approving and enacting the proposed Amendment substantially as set forth in Exhibit A, which is attached hereto and incorporated herein by reference.

Section 5. 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: June 14, 2012



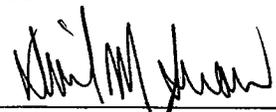
Craig Corman
Chair of the Planning Commission of the
City of Beverly Hills, California

Attest:



Secretary

Approved as to form:



David M. Snow
Assistant City Attorney

Approved as to content:



Michele McGrath
Acting City Planner

EXHIBIT A

ORDINANCE OF THE CITY OF BEVERLY HILLS
AMENDING BEVERLY HILLS MUNICIPAL CODE SECTION
10-8-106 REGARDING TROUSDALE VIEW RESTORATION
PERMIT PROCEDURES

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. The Project has previously been environmentally reviewed pursuant to the provisions of the California Environmental Quality Act (Public Resources Code Sections 21000, et seq. ("CEQA"), the State CEQA Guidelines (California Code of Regulations, Title 14, Sections 15000, et seq.), and the City's Local CEQA Guidelines. Based on the initial study, the previously adopted negative declaration, the comments received thereon, and the record before the Planning Commission, the Planning Commission hereby finds that there have been no substantial changes to the Project or the environment that would require the preparation of a subsequent negative declaration or a supplement to the previously adopted negative declaration because the requested approval will make a minor modifications to existing Code sections and will not introduce significant environmental effects or substantially increase the severity of effects previously identified and analyzed in the adopted negative declaration. Furthermore, there are no changed circumstances or new information, which was not known at the time the negative declaration was adopted that would require the preparation of a subsequent negative declaration or major revisions to the previously adopted negative declaration pursuant to CEQA Guidelines Section 15162. Therefore, the original negative declaration represents the

independent judgment of the City and there is no substantial evidence that the approval of the Project, as modified, may have any significant environmental impact. The documents and other material which constitute the record on which this decision is based 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 106E of Chapter 8 of Title 10 of the Beverly Hills Municipal Code to read as follows:

"E. Public Hearing Notice: The reviewing authority shall hold a public hearing concerning each application for a view restoration permit.

Notice of any hearing held pursuant to this section shall be mailed at least thirty (30) days prior to such hearing by United States mail, postage paid, to the applicant and to all owners who are identified as foliage owners in the View Restoration Permit application, as well as residential occupants of the foliage owners' properties, as shown on the latest equalized assessment roll."

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:

WILLIAM W. BRIEN
Mayor of the City of Beverly Hills,
California

ATTEST:

BYRON POPE (SEAL)
City Clerk

APPROVED AS TO FORM:

LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

JEFFREY KOLIN
City Manager

SUSAN HEALY KEENE AICP
Director of Community Development

Attachment 3
Planning Commission Staff Report
June, 14, 2012



City of Beverly Hills

Planning Division

455 N. Rexford Drive Beverly Hills, CA 90210
TEL. (310) 485-1141 FAX. (310) 858-5966

Planning Commission Report

Meeting Date: June 14, 2012

Subject: Resolution 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 and amending Beverly Hills Municipal Code Section 10-8-106 regarding Trousdale View Restoration Permit Procedures

Recommendation: Conduct a public hearing, consider Code amendments and consider adopting a resolution recommending draft ordinance to the City Council

REPORT SUMMARY

This report provides information about a change proposed in each of the ordinances that comprise the City's Trousdale View Restoration program: a) an ordinance regulating maximum hedge and fence heights on certain slopes in Trousdale that was adopted by the City Council on August 16, 2011 (Trousdale fence and hedge height ordinance); and, b) a Trousdale View Restoration Ordinance, adopted December 6, 2011, that provides a set of regulations and a discretionary review process to assist property owners in restoring and maintaining views in Trousdale. The change in the Trousdale fence and hedge height ordinance would revise the definition of "hedge" so that two trees growing together to form a barrier or to obscure view could be considered a hedge; this is a change from the current definition in which a minimum of three trees must be growing together to be considered a hedge. The change in the Trousdale View Restoration Ordinance would eliminate the 500-foot notice radius for a View Restoration Permit and require only that the View Restoration Permit applicant and foliage owners identified in the Permit application receive notice, as well as occupants of the foliage owners' properties. Review of the proposed change to the hedge definition was directed by the City Council; the change to the notice requirements was recommended by the Planning Commission during review of the Trousdale View Restoration Guidelines.

BACKGROUND

The Trousdale fence and hedge height ordinance was adopted prior to the Trousdale View Restoration Ordinance with the goal of enhancing administrative remedies to address view-related disputes in Trousdale by further regulating the height of fences and hedges. This was intended to address some of the more obvious cases of view disruption using the City's code enforcement process rather than the proposed (now adopted) View Restoration program which could result in a lengthier process and a public hearing. The Trousdale Fence and Hedge Ordinance was adopted in August, 2011 and the City

Attachment(s):

1. Planning Commission Resolution
2. Draft Ordinance

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Council conducted a three-month review of the ordinance at a Study Session on June 19, 2011. At that meeting, the Council expressed concern that the revised definition of "hedge" in the Trousdale fence and hedge height ordinance was not adequate to address the Council's goal of providing more immediate relief for residents with view disruption issues. The Mayor directed that the Trousdale Ad Hoc Committee should discuss this issue along with the issue of reducing the cost of the Trousdale View Restoration Ordinance for view owners. The issue of reducing costs had been raised by the Planning Commission and by the City Council at the public hearings on the ordinance but was referred to the Ad Hoc committee in the interest of adopting the ordinance more quickly to provide relief to Trousdale property owners.

The Ad Hoc Committee of then-Mayor Brucker and then-Vice Mayor Brien met on January 23, 2012 and recommended that the definition of hedge in the Trousdale fence and hedge height ordinance should be reviewed and potentially revised. A change to the definition of hedge requires a zoning text amendment and must therefore be reviewed first by the Planning Commission. The Ad Hoc Committee also made recommendations as to how the City could reduce the cost of the Trousdale View Restoration Ordinance for view owners, including clarifying City policy with regard to City enforcement of View Restoration Permits and interpretation of the indemnification language in the ordinance. Those recommendations are presented later in this report.

During the Planning Commission's review of Guidelines to the Trousdale View Restoration Ordinance in December 2011 and in the winter of 2012, staff suggested that the 500-foot notice radius for the View Restoration Permit was not necessary because of revisions that had been made to the ordinance prior to adoption by the City Council and the Planning Commission concurred. As a result, this proposed change to the View Restoration Permit procedures in the Zoning Code is included as part of the Planning Commission's review so it may be recommended to the City Council.

DISCUSSION

Amendment to Trousdale Fence and Hedge Height Ordinance

The Trousdale Fence and Hedge Height Ordinance amended the Trousdale Estates Walls, Fences and Hedges Code section (BHMC Section 10-3-2616) as follows:

- 1) 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;
- 2) Limited, in areas outside of the front yard setback, the height of hedges on the slope between adjacent properties to the higher of:
 - a) Finished grade of the level pad on the immediately adjacent up-slope property, or
 - b) 14 feet as measured from the down-slope property's level pad;
- 3) 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 Code definition of hedge at the time did not include the 'three or more plants' language and did not include trees with canopies eight feet above grade.

Walls may not be built on slopes in Trousdale and so were unaffected by the ordinance.

The City Council expressed the concern that the new definition of hedge, and particularly the language, "three or more individual plants" does not adequately address the Council's goal of assisting Trousdale residents in restoring and maintaining views. At its December 19, 2011 Study Session, the City Council specifically discussed revising the definition so that a hedge would be "two or more individual plants" and this language is proposed in the attached ordinance. This is the only change proposed to this section of the Code; the balance of the definition of hedge would remain unchanged and would read as follows:

"Hedge, as used in this paragraph F, shall be defined as growth of vegetation, consisting of ~~three (3)~~two (2) 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."

(Deleted language in strike-out and new language in italics)

By reducing the number of trees in the hedge definition, it is likely that additional trees would be captured by the definition. This would potentially allow more Trousdale residents with foliage growing on the slope between their property and a neighbor's property to take advantage of this Code section. It is noted that this code section requires hedges to be trimmed if in violation of the height standards in the Code section; there is no determination whether a view is disrupted. Staff believes the change will result in additional code enforcement cases that might have otherwise been referred to the View Restoration process. This would be consistent with the City Council's direction at the December 19, 2011 Study Session.

Amendment to Trousdale View Restoration Ordinance

The Trousdale View Restoration Ordinance was adopted as a part of a new Chapter of the Zoning Code addressing view restoration (BHMC Section 10-8-100). Section 10-8-106 established a View Restoration Permit including public hearing procedures. The reviewing authority for the Permit is the Planning Commission. Notice of any hearing shall be mailed at least thirty days prior to the hearing to the applicant and all owners and residential occupants of property within five hundred feet (500') of the view owner's and foliage owner's properties.

This notice requirement was contemplated by the Planning Commission when there was no limit on the number of view owners and foliage owners on a View Restoration Permit application. The expansive notice requirement was intended to allow one view owner to identify additional view owners who had issues with the same foliage owner(s) and thereby to allow consolidation of view restoration cases. It was determined through the Planning Commission's public review process that an application with multiple view owners would be unwieldy and difficult to process and adjudicate. As a result, the Planning Commission limited each View Restoration Permit Application to one view owner, although more than one foliage owner may be identified in the application. This is clarified in the Trousdale View

Restoration Guidelines adopted by the Planning Commission. Since the adopted ordinance limits each application to one view owner, staff proposes that the notice requirement should be revised so that notice of a View Restoration Permit hearing is sent only to the view owner applicant and to the foliage owners identified in the application, along with occupants on the foliage owner's property, in case the foliage owner is not the occupant. This is the only change proposed to this section of the Code and the proposed change would read as follows:

E. Public Hearing Notice: The reviewing authority shall hold a public hearing concerning each application for a view restoration permit.

Notice of any hearing held pursuant to this section shall be mailed at least thirty (30) days prior to such hearing by United States mail, postage paid, to the applicant and to all owners who are identified as foliage owners in the View Restoration Permit application, as well as and residential occupants of property within five hundred feet (500') of the view owner's and the foliage owner's' properties, as shown on the latest equalized assessment roll."

View Restoration Permit cases involve issues among individual neighbors and so it would not appear necessary to inform a wide radius of neighbors. It can also be expensive for an applicant to obtain the necessary radius map and address labels for a large mailing. This would also be inconsistent with the City Council's direction to minimize the application costs as much as possible.

Policy Issues for City Council Consideration

The following is a summary of the City Council's discussions regarding limiting costs for View Restoration Permit applicants. The City Council, at its December 19, 2011 Study Session, directed the City Council Ad Hoc Committee to review this issue which it did at a January 23, 2012 Ad Hoc meeting. The discussion included reducing the cost for view owners of enforcing View Restoration Permit decisions and reducing the potential costs inherent in the indemnification language in the Trousdale View Restoration Ordinance. The Ad Hoc Committee made recommendations that staff will present to the City Council for review and confirmation as part of its report to the City Council on the attached draft ordinance.

City Enforcement of View Restoration Permit Decisions

The Trousdale View Restoration ordinance states:

"[T]he City shall take such action, as appropriate, to ensure initial compliance with a view restoration permit. After an initial determination by the city that a Foliage Owner has complied with a View restoration Permit, any further dispute regarding the Foliage owner's compliance with the view restoration Permit shall be resolved by a civil action initiated by the View Owner."

This language addresses the concern, experienced by other cities with view preservation ordinances, that these cases require continuous enforcement due to the growth of foliage that is not maintained in accordance with City decisions. The Ad Hoc Committee recommended that should subsequent enforcement be required, the City would cover the cost of the City's initial enforcement action (Administrative Penalty Process) but if a case required prosecution, the View Owner would be responsible for the costs.

Indemnification Language

the indemnification language in the ordinance (Section 10-8-106 (L)), requires a view owner to be responsible for any and all costs incurred by the City in enforcing any View Restoration Permit, except for those costs of enforcement as the City may recover from a foliage owner.

The Planning Commission's resolution recommending approval of the Trousdale View Restoration Ordinance recommended consideration of a cap on the maximum dollar amount a view owner would have to pay to satisfy the indemnification requirements. When adopting the ordinance, the City Council expressed similar concern about the potential cost to view owners of indemnifying the City and directed the Ad Hoc Committee to consider this issue. The Ad Hoc Committee recommended that the City should cover the cost of litigation of the ordinance itself (a facial challenge) but that a view owner should be responsible for the cost of defending a City decision regarding a specific view restoration case.

PUBLIC OUTREACH AND NOTIFICATION

A public notice for this meeting was published in the *Beverly Hills Courier* on June 1, 2012, in the *Beverly Hills Weekly* on June 4, 2012 and mailed to each property owner in Trousdale Estates on June 4, 2012. In addition to the required notice, staff has emailed meeting notices and staff reports to a list of interested parties. As of the time of this report no additional letters have been received by the Planning Division.

GENERAL PLAN CONFORMANCE

The proposed ordinance would make minor changes to an existing Zoning Code section regarding the definition of hedges and a minor change to the Trousdale View Restoration Ordinance that regulate the restoration and maintenance of views that have been impaired by foliage in Trousdale Estates. The City's General Plan includes the following policies that relate to this proposed ordinance: LU 2.3 Hillside Development; OS 1 Natural and Open Space Protection: OS 1.1 Resource Preservation; OS 6 Visual Resource Preservation: OS 6.1 Protection of Scenic Views and OS 6.4 Minimize Removal of Existing Resources. The proposed ordinance stresses the importance of balancing the desire for views with the maintenance of trees and includes the following statement, "[r]emoval of a healthy tree not on a list of nuisance trees maintained by the City is to be avoided unless the reviewing authority determines such removal is necessary to restore a protected view in accordance with the findings." Based on the goal of the Trousdale View Restoration Ordinance to balance the desire for views with the maintenance of trees and language in the ordinance that specifically limits the removal of healthy trees, it is anticipated that a relatively small number of trees would require removal as a result of the ordinance; therefore, the ordinance would be consistent with the goals and policies of the General Plan.

ENVIRONMENTAL ASSESSMENT

The amendments propose limited changes to the previously adopted Trousdale View Restoration Ordinance and the related Trousdale Wall, Fence and Hedge Ordinance for which a Negative Declaration was adopted after the project was assessed in accordance with the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the City and no significant environmental impacts were identified.

NEXT STEPS

It is recommended that the Planning Commission close the public hearing and adopt the resolution recommending the draft ordinance to the City Council.

Report Prepared By:



Michele McGrath
Principal Planner

Attachment 4

Trousdale Fence and Hedge Height Ordinance

ORDINANCE NO. 11-O- 2611

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 August 2, 2011 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 adjacent upslope property in any area where the fence is located in a line of sight from the upslope property to 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 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 paragraph and shall be constructed so that the entire structure conforms with the development standards of this paragraph.

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:

- 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, 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 horizontal feet (4'), such growth shall not be considered a hedge for purposes of this paragraph 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."

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.

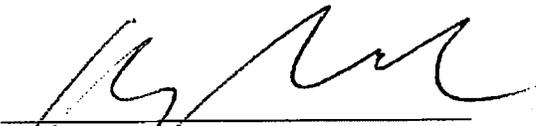
Section 5. The City Council hereby adopts a Negative Declaration, approves this Ordinance, and authorizes the Mayor to execute the Ordinance on behalf of the City.

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.

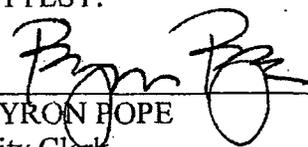
Section 8. This Ordinance shall go into effect and be in full force and effect at 12:01 a.m. on the thirty-first (31st) day after its passage.

Adopted: August 16, 2011
Effective: September 16, 2011



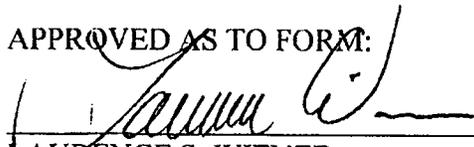
BARRY BRUCKER
Mayor of the City of
Beverly Hills, California

ATTEST:



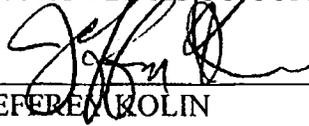
BYRON HOPE
City Clerk (SEAL)

APPROVED AS TO FORM:

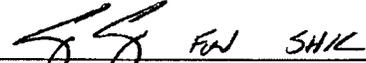


LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:



JEFFREY KOLIN
City Manager



SUSAN HEALY KEENE AICP
Director of Community Development

Attachment 5

Trousdale View Restoration Ordinance

ORDINANCE NO. 11-O- 2616

ORDINANCE OF THE CITY OF BEVERLY HILLS
AMENDING THE BEVERLY HILLS MUNICIPAL CODE TO
ADOPT A VIEW RESTORATION PROGRAM FOR 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 November 3, 2011, and, at the conclusion of the hearing, continued the matter to the meeting of November 15, 2011, for introduction. Evidence, both written and oral, was presented during the hearing.

Section 2. An initial study of the potential environmental impact of this ordinance was prepared. The initial study concluded that the 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 January 3, 2011, and the proposed negative declaration and initial study were made available for a 20-day public review period from January 6, 2011, through January 27, 2011. 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 the ordinance may result in significant adverse impacts on the environment, and hereby adopts the negative declaration for this ordinance. 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. City Council hereby adds a new Chapter 8 to Title 10 to the

Beverly Hills Municipal Code (BHMC) regarding View Restoration as follows:

“Chapter 8. VIEW RESTORATION.

Article 1. Trousdale Estates View Restoration

10-8-101 PURPOSE AND INTENT. The intent of this ordinance is to restore and preserve certain views from substantial disruption by the growth of privately owned trees, vegetation, or a combination thereof while providing for residential privacy and security; maintaining the garden quality of the City; insuring the safety and stability of the hillsides; and, acknowledging the importance of trees and vegetation in the City as an integral part of a sustainable environment. It is the further intent to establish a process by which residential property owners in Trousdale Estates may seek to restore and preserve certain views, with an emphasis on early neighbor resolution of view restoration issues. It is also the intent of this ordinance to educate residents to consider the potential to block neighbors’ views before planting foliage and in maintaining foliage. It is not the intent of this ordinance to create an expectation that any particular view or views would be restored or preserved.

10-8-102 DEFINITIONS.

Unless the context otherwise requires, the definitions set forth in this article shall govern the construction of this chapter:

(A) **ARBORIST:** An individual certified as an arborist by the International Society of Arboriculture (ISA), or an individual who is currently listed as a Consulting Arborist by the American Society of Consulting Arborists (ASCA).

(B) **CITY ADVISORY OPINION:** A non-binding opinion rendered by the Director of Community Development or his/her designee, to a view owner who requests such an opinion and pays a fee as set by the City Council.

(C) **DAMAGE:** Any action which may cause death or significant injury to a tree, or which places the tree in a hazardous condition or an irreversible state of decline. Such action may be taken by, but is not limited to, cutting, topping, girdling, poisoning, trenching, grading, or excavating within the drip line of the tree.

(D) **FOLIAGE:** The aggregate of leaves, branches and trunks of one or more plants. Trees and hedges, including hedges that otherwise meet the standards of the Zoning Code, are included in the definition of foliage.

(E) **FOLIAGE OWNER:** An owner of real property in Trousdale Estates upon which is located foliage that is subject to an action filed pursuant to this Article and which property is within five hundred feet (500’) of a view owner’s property. “Foliage owner” shall reference one or more owners of the same property.

(F) **FORESTER:** An individual licensed in California as a Registered Professional Forester (RPF).

(G) **HEDGE:** The term “Hedge” shall have the same meaning as set forth in BHMC 10-3-100.

(H) **LANDSCAPE ARCHITECT:** A landscape architect registered by the State of California.

(I) **PRIMARY RESIDENTIAL STRUCTURE:** The main structure or building on a site zoned for residential use and used or occupied as a private one-family residence.

(J) **PROTECTABLE VIEW:** A protectable view may include any view of the Los Angeles area basin from a viewing area as defined in this section. The view of the Los Angeles area basin may include but is not limited to city lights (Beverly Hills and other cities), ocean, and horizon. The term “protectable view” does not mean an unobstructed panorama of all or any of the above. For purposes of this section, a protectable view shall be determined from a point thirty-six inches (36”) above the finished grade of the viewing area.

(K) **PROTECTED VIEW:** A protectable view that has been determined by the reviewing authority to merit restoration.

(L) **RESTORATIVE ACTION:** Any specific steps taken affecting foliage that would result in the restoration or preservation of a protected view.

(M) **SAFE HARBOR AREA:** The area below a safe harbor plane.

(N) **SAFE HARBOR PLANE:** A plane defined by points at the edge of view owner's level pad to points measured from grade at the edge of an adjacent downslope foliage owner's principal building area that is farthest from the edge of view owner's level pad located in a line of sight of a protectable view. The points of the plane on foliage owner's property shall be at a height of one (1) foot above the height of the roof of the primary residential structure on foliage owner's property, not to exceed a maximum height of fifteen (15) feet as measured from grade. (See illustration in Section 10-8-103.) If the downslope property is undeveloped, or if the upslope property's view is over the driveway or “pole” portion of a flag lot, then the maximum height of fifteen (15) feet from grade shall apply.

For the purposes of this definition, the height of the roof of the primary residential structure excludes chimneys, stair or elevator shafts, vent pipes, mechanical equipment, parapets, architectural features that extend above the primary roof elevation, antennae, and other rooftop equipment. If the roof height varies, the height of the roof of the primary residential structure shall be the highest point of the roof of the primary structure.

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

If a view owner's level pad is less than one (1) foot above the height of the roof of the primary residential structure on foliage owner's property, then the safe harbor plane shall be defined as a plane above the foliage owner's level pad at a height of one (1) foot above the height of the roof of the primary residential structure on foliage owner's property.

(O) TREE: A woody perennial plant, consisting usually of a single elongated main stem or trunk and many branches.

(P) TREE SURVEY: A tree survey includes the following information for trees alleged to impair a view and all trees within the vicinity of the alleged view-impairing trees as determined by a Landscape Architect, Arborist, or Forester:

- (1) Species of each tree, based on scientific name, and the common name;
- (2) Tree identifying number and location recorded on a map;
- (3) Physical measurements of the tree such as height and circumference: (tree circumference shall be measured on the primary trunk at a height of four feet, six inches (4' - 6") above natural grade;
- (4) Age of the tree;
- (5) Report of overall health and structural condition of the tree;
- (6) Life expectancy and suitability for preservation;
- (7) Potential restorative actions to address trees alleged to disrupt a view, impact of such restorative actions on trees, and long-term maintenance activities to prevent future potential view disruption; and,
- (8) Tree management recommendations.

The survey shall be signed or stamped by a registered Landscape Architect, Arborist or Forester.

If a foliage owner does not grant access to his/her property for the purpose of conducting a tree survey, a tree survey report shall be prepared with as much of the above information as possible, using other information sources such as photographs taken from other properties, satellite photographs from commercially available sources, public record permit information for work performed on foliage owner's property, and other similar information sources.

(Q) VIEW OWNER: Any owner or owners of real property in Trousdale Estates that has a protectable view and who alleges that the growth of foliage located on a

property within five hundred feet (500') of their property is causing substantial disruption of a protectable view. "View owner" shall include one or more owners of the same property.

(R) VIEW RESTORATION GUIDELINES:

Guidelines for implementation of the ordinance prepared by the Community Development Department, adopted by the Planning Commission, and made available to the public.

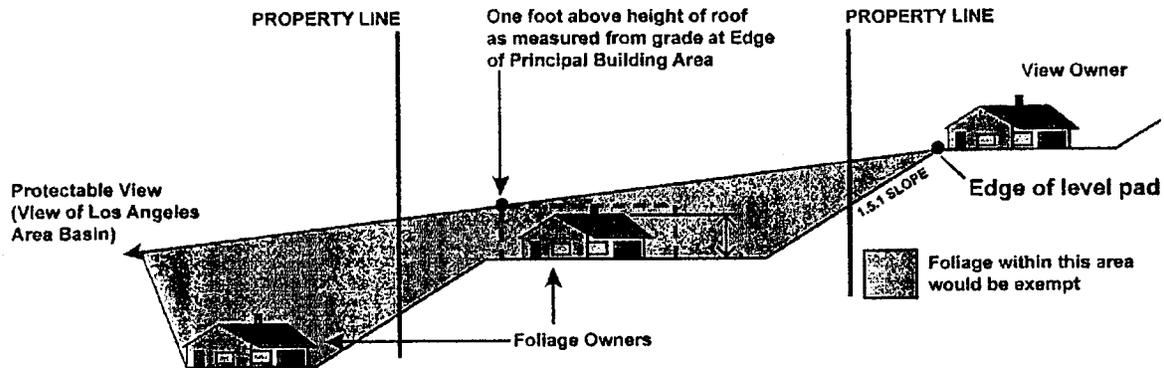
(S) VIEW RESTORATION PROPERTY SURVEY: A survey completed by a certified professional, such as an ALTA (American Land Title Association) survey, of view owner's site and foliage owner's site that may include calculation of the safe harbor plane as defined in this Article and any other information or calculations as may be of assistance to a reviewing authority pursuant to this section.

If access to the foliage owner's property is necessary to complete the survey and the foliage owner does not grant access to his/her property for the purpose of conducting the survey, a view restoration property survey report shall be prepared using other information sources such as measurements taken from other properties, photographs taken from other properties, satellite photographs from commercially available sources, public record permit information for work performed on foliage owner's property, and other similar information sources.

(T) VIEWING AREA: An area from which a protectable view is assessed, located on the level pad that contains the primary residential structure. A viewing area shall be a room of the primary residential structure (excluding hallways, laundry rooms, closets and garages), or a patio, deck or landscaped area adjacent to the primary residential structure that does not extend beyond the level pad. There may be one or more viewing areas on a property. The Reviewing Authority shall establish the Viewing Area or Areas as part of its finding that the View Owner has a Protectable View. The Reviewing Authority may designate a location as a Viewing Area if, in the opinion of the Reviewing Authority, an average resident would often observe a Protectable View from that area.

10-8-103 EXEMPTION. The provisions of this article shall not apply to foliage where the highest point of the foliage is below a safe harbor plane as defined in this Article. The exemption applies to foliage on foliage owner's property. Foliage shall be maintained in accordance with all other requirements of this Code, including landscape maintenance standards.

Safe Harbor Area



Prepared by the Community Development Department

10-8-104 PROCEDURES. Except for violations of Section 10-3.2616, complaints received by the City regarding foliage blocking views in Trousdale Estates shall be addressed through the View Restoration Permit pre-application procedures in this Article. The procedures in this Article will be augmented by the View Restoration Guidelines.

The procedures set forth below shall be followed in order for a view owner to pursue remedies available in this Article. More than one view owner may pursue remedies simultaneously with one or more foliage owners as determined by the parties involved.

(A) Parties' Option to Enter Binding Arbitration; Effect of Arbitration Decision. Nothing in this ordinance is intended to preclude interested parties from agreeing to resolve the dispute or disputes through binding arbitration, in which case compliance with the procedures set forth in this Section shall not be required. View Owners who are subject to a binding arbitration decision shall be precluded from applying for a View Restoration Permit as to any Foliage Owner who is a party to the binding arbitration decision.

(B) Initial Neighbor Outreach.

(1) If a view owner wishes to pursue remedies available in the Article, the view owner shall notify each foliage owner in writing of concerns regarding disruption of the view owner's protectable view by foliage on foliage owner's property (the "Initial Neighbor Outreach"). This Initial Neighbor Outreach shall be on a form provided by the City in the View Restoration Guidelines on file in the City, shall be signed by the view owner, and shall include a signed statement from view owner that view owner or the view owner's representative shall offer to meet with each foliage owner. The Initial Neighbor Outreach notification shall clearly identify the remedy sought by view owner and include a good faith estimate of the cost of the remedy, and an offer to pay that amount.

(2) Agreement to participate in the Initial Neighbor Outreach by each foliage owner shall be voluntary, but each foliage owner shall have no more than thirty (30) days from service of written request to respond to the view owner, unless foliage owner

requests a ten (10) business days extension in writing or the response period is otherwise extended by mutual agreement of the view owner and the foliage owner. Failure to respond shall be considered rejection by the foliage owner. The Initial Neighbor Outreach should be followed by discussions between view owner and each foliage owner to attempt to reach a mutually agreeable solution.

(3) If the view owner and a foliage owner are unable to resolve the matter, or if a foliage owner fails to respond to the Initial Neighbor Outreach, the view owner may proceed with a mediation process. To participate in the City-sponsored mediation process, the view owner shall submit to the City proof of the Initial Neighbor Outreach in the form of a certified letter and mailing receipt. If a foliage owner did not respond to the Initial Neighbor Outreach, then the view owner shall also provide an affidavit, signed under penalty of perjury, indicating the non-response of foliage owner.

(4) If, pursuant to an agreement between the view owner and a foliage owner, the view owner or foliage owner may damage or remove, or cause to be damaged or removed, any protected tree as defined in Section 10-3-2900 of this Code, a tree removal permit must first be obtained in accordance with the requirements of Section 10-3-2900.

(C) Mediation.

(1) If the parties are unable to reach agreement through the Initial Neighbor Outreach process and the view owner wishes to pursue remedies available in this Article, then, as a prerequisite, the view owner shall notify each foliage owner of an offer to mediate. The notice shall be on a form provided by the City in the View Restoration Guidelines, shall be signed by view owner, and shall include a signed statement from the view owner that the view owner or the view owner's representative shall offer to meet with each potential foliage owner and a mediator. The notice shall clearly identify the remedy sought by the view owner and include a good faith estimate of the cost of the remedy.

(2) Acceptance of mediation by each foliage owner shall be voluntary, but each foliage owner shall have no more than thirty (30) days from service of a written request for mediation to accept or reject the offer of mediation, unless the foliage owner requests a ten (10) business days extension in writing or the response period is otherwise extended by mutual agreement of the foliage owner and the view owner. Failure to respond shall be considered rejection. Each mediation session may involve one or more view owners and one or more foliage owners at the discretion of the parties involved.

(3) The view owner and each foliage owner shall comply with requirements in the View Restoration Guidelines regarding submittal of information to the mediator.

(4) 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 at this stage. If an agreement is reached between the parties as a result of mediation, the mediator will encourage the participants to prepare, and can assist in the preparation of, a private agreement for the parties to sign.

(5) If the view owner and a foliage owner are unable to resolve the matter, or if a foliage owner fails to respond to the mediation notice or to participate in the mediation process as prescribed in the View Restoration Guidelines, then the view owner may proceed to file for a View Restoration Permit.

(6) If, pursuant to an agreement between the view owner and a foliage owner, the view owner or foliage owner may damage or remove, or cause to be damaged or removed, any protected tree as defined in Section 10-3-2900 of this Code, a tree removal permit must first be obtained in accordance with the requirements of Section 10-3-2900.

(D) City Advisory Opinion. A view owner may request a non-binding advisory opinion at any time prior to the view owner filing an application for a view restoration permit in accordance with the requirements of Section 10-8-106. If the view owner wishes to pursue the process set forth in Section 10-8-106, the view owner must wait twelve (12) months from receipt of the City Advisory Opinion to file a view restoration permit application.

10-8-105 CONTINUATION OF PROCESS AFTER AGREEMENT. If the view owner and a foliage owner enter into a private agreement as a result of Initial Neighbor Outreach or mediation before the filing of a View Restoration Permit application, and that agreement is not adhered to by parties to the agreement, the parties may pursue civil litigation; however, if the view owner wishes to pursue remedies available in this Article, then the view owner may continue with the pre-application process at the step after the step at which the agreement was entered into, provided that less than two (2) years have passed since the date of the private agreement. If the view owner wishes to pursue remedies available in this Article and more than two (2) years have passed since the date of the private agreement, then the view owner shall begin view restoration procedures with the Initial Neighbor Outreach.

10-8-106 VIEW RESTORATION PERMIT.

(A) View Restoration Permit:

After exhaustion of the pre-hearing steps set forth in Section 10-8-104, and upon application by a view owner in a form satisfactory to the Director of Planning and Community Development, the reviewing authority may issue a View Restoration Permit to a view owner with a protectable view as defined in this section where the protectable view from a viewing area is substantially disrupted by foliage as defined in the Article and the reviewing authority makes all of the findings as set forth in this section.

(B) Reviewing Authority:

The reviewing authority for a View Restoration Permit application shall be the Planning Commission. If a View Restoration Permit application includes review of a protected tree or trees as defined in Section 10-3-2900 of the Beverly Hills Municipal Code, then the reviewing authority may order the removal of the tree or trees pursuant to Section 10-3-2902 as part of the restorative action required by a View Restoration Permit.

(C) Application:

Application for a View Restoration Permit shall be in writing on a form prescribed by the Director of Community Development and shall include but not be limited to the following information:

(1) Proof that view owner has attempted or completed the following procedures as required in this section:

Initial Neighbor Outreach; and,
Mediation.

(2) Identification of the specific remedy sought by view owner and an estimate of cost.

(3) A view restoration property survey documenting that the subject foliage is on foliage owner's property, that the foliage owner's property is within five hundred feet (500') of view owner's property, and the foliage is above the safe harbor plane.

(4) A Tree survey.

If an applicant does not submit the necessary information and the application remains incomplete for six (6) months after the City, in writing, deems the application incomplete, the Director of Community Development shall deny the application without prejudice, and shall provide notice to the applicant of that determination.

Once a complete application has been received, the City shall send a formal notice of the application to the foliage owner including a copy of the application, a copy of the View Restoration Guidelines and a request for an invitation to staff and the reviewing authority to visit foliage owner's property with foliage owner's authorization.

(D) Verification of Information:

All applicants for a View Restoration Permit shall submit an affidavit, signed under penalty of perjury, that the information provided in the application and other submitted documents is complete, true, and accurate based on the applicants' knowledge and reasonable investigation.

(E) Public Hearing Notice:

The reviewing authority shall hold a public hearing concerning each application for a View Restoration Permit.

Notice of any hearing held pursuant to this section shall be mailed at least thirty (30) days prior to such hearing by United States mail, postage paid to the applicant and all

owners and residential occupants of property within five hundred feet (500') of the view owner's and foliage owner's properties, as shown on the latest equalized assessment roll.

(F) Public Hearing:

The Director of Community Development or the reviewing authority may, at its discretion, require the review or additional review of any view restoration case by a qualified soils engineer, landscape architect, arborist, or other appropriate professional, based on the specific conditions of foliage owner's property. Foliage owner authorization shall be required prior to accessing the foliage owner's property. If foliage owner does not permit access to foliage owner's property, the reviewing authority shall review the case using other information as may be available, including information provided by the view owner.

(G) Restrictions and Conditions:

In approving a View Restoration Permit, the reviewing authority may impose such restrictions or conditions, including restorative action, as it deems necessary or proper to restore a Protected View; protect the foliage owner's reasonable enjoyment of its property; protect the public health, safety and welfare; or any combination thereof.

(H) Appeals; Effective Date:

Any decision of the Planning Commission made pursuant to this section may be appealed to the City Council by view owner or foliage owner pursuant to the provisions set forth in Title 1, Chapter 4, Article 1 of this Code. The appeal period shall commence at the date of mailing of the Notice of Decision.

Any decision of the Planning Commission made pursuant to this section takes effect fourteen (14) days from the issuance of a notice of decision unless an appeal is filed. If appealed, then the effective day is the date on which the City Council acts.

(I) Findings:

(1) The reviewing authority may issue a View Restoration Permit to remove or alter foliage on any lot that is all or partly within five hundred feet (500') of a View Owner's property if it makes all of the following findings:

(a) The View Owner has a Protectable View. The Reviewing Authority shall determine the Viewing Area or Areas in order to make this finding.

(b) The View Owner has substantially complied with the Initial Neighbor Outreach and mediation procedures of this Article.

(c) The View Owner's Protectable View is substantially disrupted by foliage on Foliage Owner's property that is not exempt under Section 10-8-103. The following criteria shall be considered in determining whether or not a Protectable View is substantially disrupted:

(i) **Foliage Position within a Protectable View.** Foliage located in the center of a Protectable View is more likely to be found to substantially disrupt a view than foliage located on the Protectable View's periphery.

(ii) **Foliage Size and Density.** Foliage that by virtue of its size and density obstructs a large portion of a protectable view is more likely to be found to substantially disrupt the view than is foliage that obstructs only a small portion of the Protectable View. Trees located in close proximity to each other and maintained in such a way as to collectively form an uninterrupted "green barrier" are more likely to be found to substantially disrupt a view than are individual trees.

(iii) **View Diminished by Other Factors.** The extent to which the view has been or is diminished by other factors such that removal of the foliage at issue will not substantially restore the Protectable View. Other factors that may be considered include, but are not limited to, permitted structures, and foliage that is not on a private property within five hundred feet (500') of the View Owner's property.

(d) With respect to any tree protected pursuant to Section 10-3-2902, removal of the tree will not:

(i) Adversely affect the neighboring properties or the general welfare or safety of the surrounding area; or,

(ii) Adversely affect the garden quality of the City.

(2) The Reviewing Authority may allow foliage to substantially disrupt a Protectable View if the Reviewing Authority makes one or more of the following findings:

(a) The foliage is important to the integrity of an existing landscape plan.

(b) Alteration of the foliage will unreasonably impact the privacy and security of the Foliage Owner.

(c) Alteration of the foliage will have a substantial adverse impact on stability of a hillside, drainage, or erosion control.

(d) Restoration of the Protectable View would not substantially enhance a reasonable person's enjoyment of the view owner's property taken as a whole.

(J) Restorative Action: The Reviewing Authority may, through issuance of a View Restoration Permit, require restorative action on foliage owner's property. All restorative action must be performed by a licensed and bonded tree or landscape service unless mutually agreed upon by the view owner and the foliage owner. Restorative action may include, but is not limited to the following:

(1) Trimming, culling, lacing, or reducing foliage to a height or width to be determined by the reviewing authority but not below the safe harbor plane.

(2) Requiring the complete removal of the foliage when the reviewing authority finds that the trimming, culling, lacing, or reduction of the foliage is likely to kill the foliage, threaten the public health, safety, or public welfare, or will destroy the aesthetic value of the foliage that is to be pruned or reduced. Removal of a healthy tree not on a list of nuisance trees maintained by the City is to be avoided unless the reviewing authority determines such removal is necessary to avoid substantial disruption of a protected view.

(3) Requiring replacement foliage when the reviewing authority finds that removal without replacement will cause a substantial adverse impact on one or more of: a) the public health, safety and welfare; b) the privacy of the property owner; c) shade provided to the dwelling or property; d) the energy efficiency of the dwelling; e) the stability of the hillside; f) the health or viability of the remaining landscaping; or g) the integrity of the landscape plan.

(K) Notice of Decision:

(1) Written Decision Required: The action taken by the reviewing authority shall be set forth in writing.

(2) Notice of Decision: Within five (5) days after the issuance of a decision by the reviewing authority, the Director of Community Development shall cause a copy of the decision to be mailed through the United States mail, postage prepaid, to each of the following persons:

(i) The view owner, using the mailing address set forth in the application;

(ii) Each foliage owner that is named on the application, as listed on a current Tax Assessor's roll and to the occupant of the Foliage Owner's property if the Foliage Owner's address is different than the property on which the foliage is located.

The failure of the person addressed to receive a copy of the decision shall not affect the validity or effectiveness of any decision.

(L) Indemnification:

View owner shall defend, indemnify and hold harmless the City, its agents, officers, attorneys and employees from any claim, action or proceeding (collectively "Action") against the city or its agents, officers, attorneys or employees to attack, set aside, void or annul the Entitlements that may be granted by the City through issuance of a View Restoration Permit, and for any and all costs incurred in enforcing the View Restoration Permit, except for those costs of enforcement as the City may recover from a foliage owner. Indemnitor shall reimburse the city for any court costs and attorney's fees that the City may be required by a court to pay as a result of such Action. City may, at its sole and absolute discretion (1) participate in the defense of such Action undertaken by View Owner, or (2) retain separate counsel whose attorneys' fees and costs shall be paid by View Owner. Such participation in the defense of such

Action or the retention of separate counsel by the City shall not relieve View Owner's obligations under this provision. The City shall promptly notify the View Owner of any such Action.

View owner shall indemnify the City against any and all claims resulting from the issuance, defense, implementation, or enforcement of the View Restoration Permit.

**10-8-107 DECISIONS INTENDED TO RUN WITH THE LAND;
DISCLOSURE.**

Decisions regarding view restoration shall be binding on all current and future owners of view owner's property and foliage owner's property, and such decisions must be disclosed by each owner to subsequent owners of the property.

**10-8-108 PRIVATE RIGHT OF ACTION;
ENFORCEMENT BY VIEW OWNER AND ATTORNEY'S FEES.**

The City shall take such action, as appropriate, to ensure initial compliance with a view restoration permit. After an initial determination by the City that a Foliage Owner has complied with a View Restoration Permit, any further dispute regarding the Foliage Owner's compliance with the View Restoration Permit shall be resolved by a civil action initiated by the View Owner.

At any time, before or after an initial determination of compliance with a View Restoration Permit by the City, any View Owner may sue in Los Angeles superior court to enjoin violation of, or compel compliance with, a View Restoration Permit. The prevailing party in any such civil action between a View Owner and a Foliage Owner shall be entitled to recover its reasonable attorney fees and costs incurred in the litigation.

10-8-109 LANDSCAPE STANDARDS.

The View Restoration Guidelines shall include landscape standards that include a list of nuisance trees that should not be planted in hillside view areas.

10-8-110 APPORTIONMENT OF COSTS.

It is the intent that procedural fees referenced in this section shall reflect the actual cost of administrative activities required of the City to implement this Ordinance. Additional clarification of fees and costs may be included in the View Restoration Guidelines.

(A) Initial Neighbor Outreach:

(1) **Procedural Costs.** Any costs associated with obtaining information, mailing the required notice, or preparing an agreement shall be borne by the view owner. The view owner shall pay the cost of a view restoration property survey or tree survey if such a survey is completed.

(2) Restorative Action. The cost of restorative action agreed upon by the view owner and the foliage owner shall be borne by the view owner unless otherwise agreed to by the foliage owner.

(3) Maintenance Costs. The cost of subsequent maintenance of foliage on the foliage owner's property shall be allocated as agreed upon by the parties.

(B) Mediation:

(1) Procedural Costs. Any costs associated with obtaining information, mailing the required notice, or preparing an agreement shall be borne by the view owner. The view owner shall pay the cost of a view restoration property survey or tree survey if such a survey is completed.

(2) Restorative Action. The cost of restorative action agreed upon by the view owner and the foliage owner shall be borne by the view owner unless otherwise agreed to by the parties.

(3) Maintenance Costs. The cost of subsequent maintenance of foliage on the foliage owner's property shall be allocated as agreed upon by the parties.

(C) View Restoration Permit with Public Hearing:

(1) Procedural Costs. View owner shall bear the cost of application fees and other application costs including the view restoration property survey and tree survey and the cost of any other information requested by the reviewing authority.

(2) Restorative Action.

(a) The foliage owner shall pay one hundred percent (100%) of the cost of restorative action if the foliage owner did not participate in mediation and the reviewing authority finds restorative action is required.

(b) The view owner and foliage owner shall each pay fifty percent (50%) of the cost of restorative action if the foliage owner participated in mediation and the reviewing authority finds restorative action is required.

(3) Maintenance After Initial Restorative Action. The foliage owner shall pay for subsequent maintenance of the foliage consistent with the View Restoration Permit.

(D) Appeal to City Council

(1) Procedural Costs. Appellant shall bear the costs of the appeal application including the appeal fee, public notice cost, and any other application costs.

(2) Restorative Action. The cost of restorative action resulting from an appeal to the City Council shall be apportioned in the same way as the cost of restorative action pursuant to a decision by the Planning Commission.

(3) Maintenance After Initial Restorative Action. The foliage owner shall pay for subsequent maintenance of the foliage consistent with the View Restoration Permit.

Section 4. To limit any fiscal impact of the Trousdale Estates View Restoration Program, the City shall conduct no more than ten (10) View Restoration Permit hearings per calendar year. The City may establish a means of accepting applications for View Restoration Permit hearings that ensures all property owners equal opportunity to receive a hearing.

Section 5. The City Council hereby amends the definitions of the terms "Arborist" and "Tree" set forth in Section 10-3-2900 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code to read as follows, with all other definitions listed in Section 10-3-2900 remaining without amendment:

"ARBORISTS: An individual certified as an arborist by the International Society of Arboriculture (ISA), or an individual who is currently listed as a Consulting Arborist by the American Society of Consulting Arborists (ASCA)."

"TREE: A woody perennial plant, consisting usually of a single elongated main stem or trunk and many branches."

Section 6. The City Council hereby adds a new paragraph D. to Section 10-3-2904 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code to read as follows, with all other portions of Section 10-3-2904 remaining without amendment:

"D. The removal of a protected tree pursuant to a View Restoration Permit issued by the City in accordance with the provisions of Section 10-8-106 of the City's Municipal Code."

Section 7. 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 8. The City Council hereby finds on the basis of the whole record before it, including the initial study and any comments received, that there is no substantial evidence that this proposed ordinance will have a significant effect on the environment and that the negative declaration prepared in connection with this ordinance represents the independent judgment and analysis of the City and the City Council. Therefore, the City Council hereby adopts the Negative Declaration and approves this Ordinance, and authorizes the Mayor to execute the Ordinance on behalf of the City. The documents and other material which constitute the record of proceedings upon which this decision is based are located in the City's Community Development Department. The custodian of records is the Director of Community Development.

Section 9. Trial Period. A report regarding the implementation of this ordinance shall be provided to the Planning Commission and City Council within 12 months of the effective date of the ordinance.

Section 10. 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 11. 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.

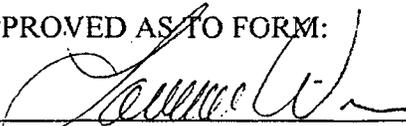
Adopted: December 6, 2011
Effective: January 6, 2012



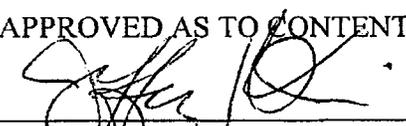
BARRY BRUCKER
Mayor of the City of Beverly Hills,
California

ATTEST:


BYRON POPE (SEAL)
City Clerk

APPROVED AS TO FORM:


LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:


JEFFREY KOLIN
City Manager



SUSAN HEALY KEENE AICP
Director of Community Development

Attachment 6

**Planning Commission Resolution No. 1654
Regarding View Restoration Guidelines**

RESOLUTION NO. 1634

A RESOLUTION OF THE PLANNING COMMISSION OF THE
CITY OF BEVERLY HILLS ADOPTING GUIDELINES FOR
IMPLEMENTATION OF THE TROUSDALE VIEW
RESTORATION ORDINANCE

WHEREAS, the City Council, on December 6, 2011, adopted an ordinance of the City of Beverly Hills amending the Beverly Hills Municipal Code to adopt a View Restoration Program for the Trousdale Estates Area of the City; and,

WHEREAS, Beverly Hills Municipal Code Section 10-8-102(R) "View Restoration Guidelines," directs the Community Development Department to prepare View Restoration Guidelines to be adopted by the Planning Commission and made available to the public; and,

WHEREAS, the Planning Commission considered the View Restoration Guidelines attached hereto as Exhibit A (the "Guidelines") at a study session on December 19, 2011 and at a duly noticed public hearing on January 12, 2012, March 8, 2012, and March 22, 2012, at which times it received oral and documentary evidence relative to the proposed Guidelines.

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

Section 1. This project is an implementation action of the previously adopted Trousdale View Restoration Ordinance, for which a Negative Declaration was adopted after the project was assessed in accordance with the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the City and no significant environmental impacts were identified. The records related to this determination are on file with

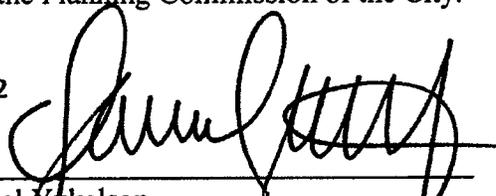
the City's Community Development Department, 455 N. Rexford Drive, Beverly Hills, California, 90210.

Section 2. The Planning Commission hereby adopts the Guidelines substantially as set forth in Exhibit A, which is attached hereto and incorporated herein by reference.

Section 3. The Planning Commission hereby authorizes staff to make the following changes to the Guidelines without further Planning Commission approval: the addition of graphics intended to better illustrate terms and concepts in the Guidelines; and, the addition of language necessitated due to any amendment of the Trousdale View Restoration Ordinance as may be approved by the City Council.

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: **March 22, 2012**



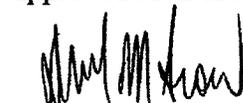
Daniel Yankelson
Chair of the Planning Commission of the
City of Beverly Hills, California

Attest:



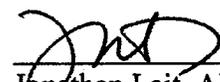
Secretary

Approved as to form:



David M. Snow
Assistant City Attorney

Approved as to content:



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

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS.
CITY OF BEVERLY HILLS)

I, JONATHAN LAIT, Secretary of the Planning Commission and City Planner of the City of Beverly Hills, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. 1634 duly passed, approved and adopted by the Planning Commission of said City at a meeting of said Commission on March 22, 2012, and thereafter duly signed by the Secretary of the Planning Commission, as indicated; and that the Planning Commission of the City consists of five (5) members and said Resolution was passed by the following vote of said Commission, to wit:

AYES: Commissioners Fisher, Rosenstein, Cole, Vice Chair Corman, and Chair Yukelson.

NOES: None.

ABSTAIN: None.

ABSENT: None.



JONATHAN LAIT, AICP
Secretary of the Planning Commission /
City Planner
City of Beverly Hills, California



Trousdale View Restoration Guidelines

View Restoration Guidelines

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View Restoration Guidelines

1. Purpose

The Trousdale View Restoration Ordinance was adopted by the City Council on December 6, 2011 (**Attachment 1**). The intent of the ordinance is to encourage Trousdale neighbors to reach early resolution when addressing restoration of views that have been substantially disrupted by foliage growth on neighboring properties. The purpose of the View Restoration Guidelines is to assist Trousdale property owners in understanding and using the Trousdale View Restoration Ordinance. The Guidelines provide a step-by-step guide to the view restoration process adopted in the City's ordinance. Neighbors may find compromise solutions outside of the City's view restoration process; however, if a property owner wishes to preserve the opportunity to apply to the City for a decision in a view restoration case, the City's view restoration process must be followed. A public hearing is considered a last resort to resolve view blockage issues, in part because of increased cost and time for all property owners. To encourage early resolution of disputes, the process is set up so that Foliage Owners do not incur any cost if they participate in the early steps of the process, but Foliage Owners do incur cost if a View Owner is granted a View Restoration Permit by the Planning Commission.

Neighbors are advised that while the ordinance is intended to help restore views, the ordinance also acknowledges a balance between views and the importance of residential privacy and security, maintaining the garden quality of the City, insuring the safety and stability of the hillsides, and trees and vegetation in the City as an integral part of a sustainable environment. Neighbors are advised to be mindful of other neighbors' concerns, to be cordial, and are encouraged to find compromise solutions.

The ordinance applies to foliage that meets the following criteria:

- located on a property in Trousdale within 500 feet of a View Owner's property
- alleged to block a view of the Los Angeles area basin. (This includes city lights and views toward the ocean but does not include ridges or canyons not located in a line of sight to the Los Angeles area basin.)
- growing above the Safe Harbor Exemption Area (See page 6).

The Guidelines reference sections of the Trousdale View Restoration Ordinance which is part of the Beverly Hills Municipal Code (BHMC), Sections 10-8-101, *et seq.*, and available online at the City's website, www.beverlyhills.org. The City's website includes a webpage for the Trousdale View Restoration Ordinance and all applicable documents, all of which can be accessed at [[include web link here for View Restoration web page](#)].

2. Alternative Dispute Resolution

Private Agreements. Neighbors are encouraged to resolve view obstruction issues among themselves. Neighbors may agree to allow foliage to grow higher than the limits set in the Trowsdale View Restoration ordinance so long as there are no health and safety issues (e.g. maintaining trees that are diseased and unstable or foliage that blocks traffic visibility) and so long as the foliage is not maintained in violation of other City codes, such as the City's hedge height regulations, so that it negatively impacts neighbors. **Attachment 2** to the Guidelines is a private agreement template neighbors may use and modify to suit their needs. The City would not be a party to private agreements and would not monitor or enforce such agreements.

To encourage private agreements, the ordinance allows a View Owner who enters into a private agreement with a neighboring Foliage Owner pursuant to the Initial Neighbor Outreach or Mediation steps, to resume the City's view restoration process if the private agreement proves unsuccessful (see Section 6. "Continuation of View Restoration Process after Agreement").

Binding Arbitration. Neighbors have the option, at any time, to agree to binding arbitration as an alternative to the City view restoration process. Additional information on the arbitration process (alternative dispute resolution) is available through the following source:

Los Angeles County Superior Court - <http://www.lasuperiorcourt.org/adr/forms/LAADR005.pdf>

View Restoration Guidelines

3. Key Terms

The Guidelines use a number of terms defined in the Trousdale View Restoration Ordinance (Section 10-8-102). Two key terms are defined below and the most commonly referenced terms are included in a Glossary as **Attachment 3** to the Guidelines.

VIEW OWNER: Section 10-8-102 (Q) of the View Restoration ordinance define View Owner as follows:

VIEW OWNER: Any owner or owners of real property in Trousdale Estates that has a protectable view and who alleges that the growth of foliage located on a property within five hundred feet (500') of their property is causing substantial disruption of a protectable view. "View Owner" shall include one or more owners of the same property.

The terms "foliage" and "protectable view" are defined in Attachment 3. As stated in the definition above, the foliage alleged to disrupt the view must be located on a property within 500 feet of the View Owner's property. The 500-foot distance is measured from the edge of the View Owner's property. Even if only a small portion of a neighboring property is within 500 feet of the View Owner's property, foliage on all parts of that neighboring property may be subject to the ordinance. A View Owner may need professional assistance to determine if particular foliage blocking a view is located on a Trousdale property with 500 feet of the View Owner's property.

FOLIAGE OWNER: Section 10-8-102 (E) of the View Restoration ordinance define Foliage Owner as follows:

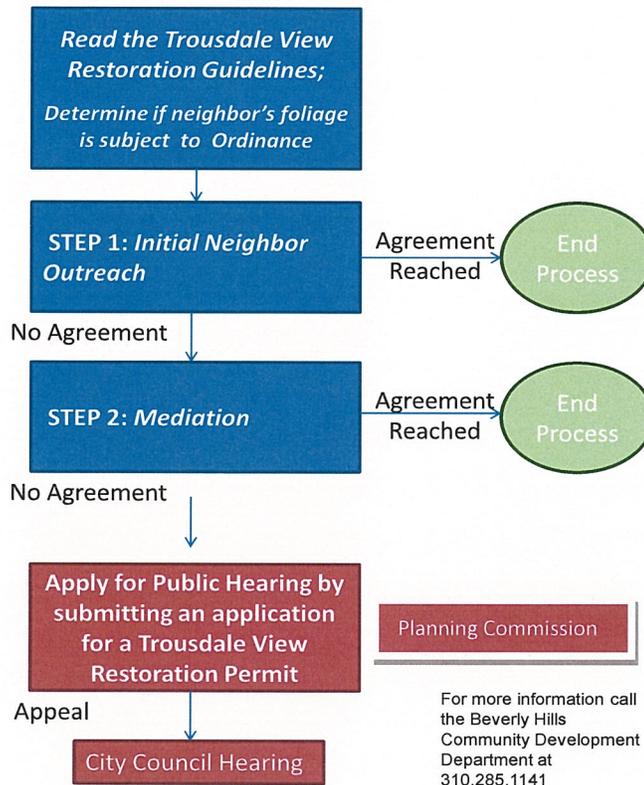
FOLIAGE OWNER: An owner of real property in Trousdale Estates upon which is located foliage that is subject to an action filed pursuant to this article and which property is within five hundred feet (500') of a view owner's property. "Foliage owner" shall reference one or more owners of the same property.

View Restoration Guidelines

4. Trousdale View Restoration Process Overview

View Restoration Process Flow Chart

BHMC Title 10, Chapter 8



Enforcement: The Trousdale View Restoration Ordinance provides for one-time enforcement of a City View Restoration Permit decision. The first step in City enforcement, the Administrative Penalty process, would be conducted at no charge to the View Owner; however, if enforcement escalates to a City prosecution process, the City's prosecution costs would be paid by the View Owner. The cost could be substantial to the View Owner if the Foliage Owner declines to comply with the City's decision. (See Attachment 11 for additional information.)

Litigation: The Trousdale View Restoration Ordinance includes indemnification language that requires an applicant to pay the City's litigation costs if a City decision made on behalf of that applicant is litigated. This cost could be substantial for all parties. It is noted that the City Council is reviewing ways to reduce the financial burden of this requirement on applicants.

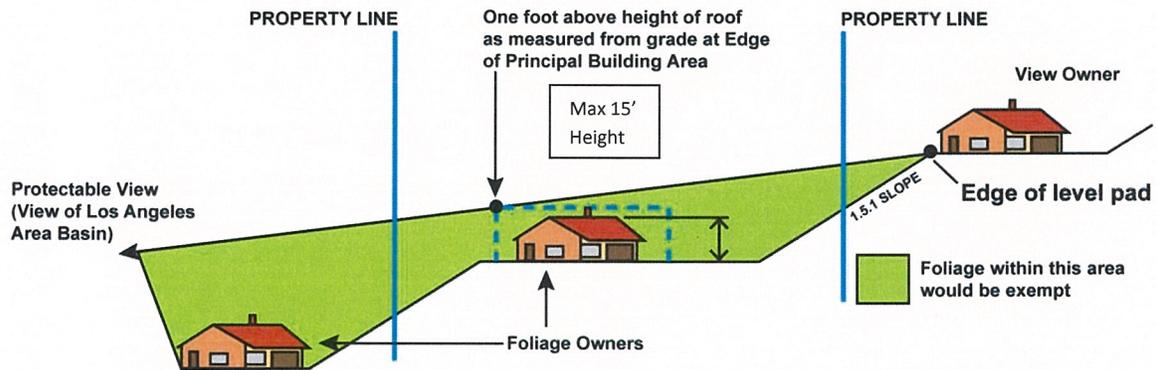
5. View Restoration Procedures

Determine if neighbor's foliage is subject to the ordinance

5 A. Safe Harbor Exemption

Not all foliage is subject to the Trousdale View Restoration Ordinance. To create more certainty for property owners, the ordinance defines an area on each property, called the "Safe Harbor Area," where foliage is exempt from the Ordinance. (See illustration below)

Safe Harbor Area



Prepared by the Community Development Department

In the illustration above, the View Owner is at the upper right and all foliage growing in the green area is exempt from the Trousdale View Restoration Ordinance, as it relates to the pictured View Owner. The intent was to exempt foliage that is unlikely to substantially disrupt a View Owner's view.

See **Attachment 3** (Glossary) for definitions of "Safe Harbor Plane" and "Safe Harbor Area."

It is the responsibility of the View Owner to pay for any surveys necessary to determine the Safe Harbor Area. A Safe Harbor Survey will be required as part of an application to the Planning Commission for a Trousdale View Restoration Permit.

View Restoration Guidelines

Step 1: Initial Neighbor Outreach

Property owners who wish to use the City's view restoration process must complete Initial Neighbor Outreach and Mediation, before an application may be made for a City public hearing.

5 B. Initial Neighbor Outreach (See **Attachment 4** for related forms)

Initial Neighbor Outreach consists of the following steps:

1. Contact Foliage Owner(s)

View Owners are encouraged to contact Foliage Owner(s) by telephone or in person, if possible; however, if agreement is not reached through informal contact, the View Owner must send a notice by certified mail to the Foliage Owner(s) and the View Owner must maintain a return receipt. The notice must be sent to the Beverly Hills street address for the particular property. In addition, the notice must be sent to the official mailing address as represented on the Los Angeles County Assessor's rolls. A View Owner may contact the City at 310.285.1141 for assistance in determining a Foliage Owner's official mailing address so long as the View Owner is able to identify on a map the property on which the foliage is located. It is noted that a View Owner may need professional assistance to determine if particular foliage blocking a view is located on a particular Trousdale property and whether that property is located within with 500 feet of the View Owner's property.

2. Notice to Foliage Owner(s)

The Initial Neighbor Outreach notice shall be on the City's form or in a substantially similar format (Notice Template is **Attachment 4a**). The notice must be signed by the View Owner or the View Owner's authorized representative. The notice shall contain the following:

- General description of the View Owner's claim of disruption of a protectable view (identify direction of the view, the foliage alleged to block the view)
- Remedy sought by the View Owner (foliage to be trimmed, removed, etc.; any proposal to replace foliage)
- A good faith estimate of the cost of the remedy and an offer to pay that cost.¹
- An offer to meet with the Foliage Owner.

It is also recommended that the View Owner provide photographs to the Foliage Owner that illustrate the alleged view disruption.

¹ This requirement was included because an early offer to pay by the View Owner is an incentive to the Foliage Owner to cooperate at this step to come to a mutually agreeable solution.

View Restoration Guidelines

3. Foliage Owner's Response

A Foliage Owner's participation in Initial Neighbor Outreach is voluntary. Each Foliage Owner shall have 30 calendar days from service of written notice to respond to the View Owner unless the Foliage Owner either requests a ten business day extension in writing or a different response period is determined by mutual agreement of the View Owner and Foliage Owner.

4. Agreement Reached

If a Foliage Owner responds to an Initial Neighbor Outreach notice, the View Owner and Foliage Owner should engage in discussion in an attempt to reach a mutually agreeable solution. If agreement is reached, it is recommended that the parties prepare a private written agreement. See page 3 of the Guidelines regarding "Private Agreements."

5. Apportionment of Cost

- **Procedural Costs.** Any costs associated with obtaining information, mailing the required notice, or preparing an agreement shall be borne by the view owner. The view owner shall pay the cost of a view restoration property survey or tree survey if such a survey is completed.
- **Restorative Action.** The cost of restorative action agreed upon by the View Owner and the Foliage Owner shall be borne by the View Owner unless otherwise agreed to by the Foliage owner.
- **Maintenance Cost.** The cost of subsequent maintenance of foliage on the Foliage Owner's property shall be allocated as agreed upon by the parties.

6. Non-Response or Agreement Not Reached

If the View Owner and a Foliage Owner are unable to resolve the matter, or if a Foliage Owner fails to respond to the notice during the response period, the View Owner may proceed to Step 2: Mediation. To proceed to Step 2, the View Owner shall provide an affidavit, signed under penalty of perjury, indicating either: that the Foliage Owner participated in the initial neighbor outreach that did not conclude in an agreement between the parties; or, non-response of the Foliage Owner (Affidavit is also attached as **Attachment 4b**).

View Restoration Guidelines

Step 2: Mediation

Property owners wishing to continue with the City's view restoration process but unsuccessful in resolving a dispute through the Neighbor Outreach process, must offer to have the dispute mediated. View owners should maintain a copy of the Initial Neighbor Outreach certified letter sent to the Foliage Owner(s), return receipt, and the affidavit attesting to lack of agreement or non-response of the Foliage Owner at the Initial Neighbor Outreach step. These documents will be required if the View Owner eventually applies for a View Restoration Permit hearing before the Planning Commission.

5 C. Mediation (See **Attachment 5** for related forms)

Mediation consists of the following steps:

1. Contact Foliage Owner(s)

View Owners must send a notice by certified mail to the Foliage Owner(s). The notice mailing requirements are the same as for the Initial Neighbor Outreach step (see page 7, "Contact Foliage Owners"). The View Owner must maintain a return receipt.

2. Notice to Foliage Owner(s)

The Mediation notice shall be on the City's form or in a substantially similar format (Notice Template is **Attachment 5a**). The notice must be signed by the View Owner or the View Owner's authorized representative. The notice shall contain the following:

- An offer to meet with the Foliage Owner and a mediator.
- General description of the View Owner's claim of disruption of a protectable view (direction of the view, generally identify the foliage alleged to block the view)
- Remedy sought by the View Owner (foliage to be trimmed, removed, etc.; any proposal to replace foliage)
- A good faith estimate of the cost of the remedy.

It is also recommended that the View Owner provide photographs to the Foliage Owner that illustrate the alleged view disruption.

View Restoration Guidelines

3. Foliage Owner's Response

A Foliage Owner's participation in Mediation is voluntary. Each Foliage Owner shall have 30 calendar days from service of written notice to respond to the View Owner unless the Foliage Owner either requests a ten business day extension in writing or a different response period is determined by mutual agreement of the View Owner and Foliage Owner failure to respond shall be considered refusal by the Foliage Owner to participate in mediation.

4. Mediation Session

Each mediation session may involve one or more View Owners and one or more Foliage Owners at the discretion of the parties involved. If Mediation is agreed to by a View Owner and one or more Foliage Owners, each party to the Mediation must provide the following materials to the mediator:

- View Restoration Mediation Information Form (**Attachment 5b**)
- Photos of the Properties:

For View Owners: Photos showing the alleged view, the area on the View Owner's property from which the view is observed, and any other areas or features the View Owner chooses to present.

For Foliage Owners: Photos showing the sight line up to the View Owner's property, photos of the foliage in question, and any other areas or features the Foliage Owner chooses to present.

Photographs should reflect the entire view of the Los Angeles area basin from the View Owner's property as would be seen by the natural eye. Photographs should not be taken with fish eye lenses, zoom lenses or other equipment that distorts the view as seen by the natural eye.

- Any other reports or documents the parties wish to present.

A View Owner who wishes to use the City-sponsored mediator (a mediator under contract to the City) shall contact the mediator and submit to the mediator proof of the Initial Neighbor Outreach in the form of a copy of the certified letter sent to the Foliage Owner(s), return receipt, and the affidavit attesting to lack of agreement or non-response of the Foliage Owner. This allows City staff to track use of the City's contract mediator and ensures that parties using the City's contract mediator are bona fide view restoration applicants. Alternatively, the View Owner may use any mediator mutually agreed to by the View Owner and Foliage Owner(s).

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.

View Restoration Guidelines

5. Agreement Reached

If an agreement is reached between the parties as a result of mediation, the mediator will encourage the participants to prepare, and can assist in the preparation of, a private agreement for the parties to sign. See page 3 of the Guidelines regarding "Private Agreements."

6. Apportionment of Cost

Unless otherwise agreed to by the parties, costs shall be apportioned according to the following:

- **Procedural Costs.** Any costs associated with obtaining information, mailing the required notice, or preparing an agreement shall be borne by the view owner. The view owner shall pay the cost of a view restoration property survey or tree survey if such a survey is completed.
- **Restorative Action.** The cost of restorative action agreed upon by the View Owner and the Foliage Owner shall be borne by the View Owner unless otherwise agreed to by the parties.
- **Maintenance Cost.** The cost of subsequent maintenance of foliage on the Foliage Owner's property shall be allocated as agreed upon by the parties.

7. Non-Response or Agreement Not Reached

If the View Owner and a Foliage Owner are unable to resolve the matter through mediation, or if a Foliage Owner fails to respond to the mediation notice or to participate in the mediation process, the View Owner may proceed to file for a View Restoration Permit. To proceed to a View Restoration Permit application, the View Owner shall provide an affidavit, signed under penalty of perjury, indicating either: participation by the Foliage Owner in mediation but lack of agreement; or, non-response of the Foliage Owner (Affidavit is also attached as **Attachment 5c**).

6. Continuation of View Restoration Process after Agreement

To encourage private agreements, the ordinance allows a View Owner who enters into a private agreement with a neighboring Foliage Owner pursuant to the Initial Neighbor Outreach or Mediation steps, to resume the City's view restoration process if the private agreement proves unsuccessful.

A View Owner may resume the City's View Restoration process at the next step after which a private agreement was entered into, provided that less than two years have passed since the date of the private agreement. For example, if neighbors reach agreement at the Initial Neighbor Outreach step and that agreement is not maintained, the View Owner may proceed to the Mediation step so long as the View Owner can show completion of the Initial Outreach step.

7. Permit Required For Removal of Certain Trees

Please note that trees in the City are protected by the City's ordinance regulating the removal or damage of certain trees on private, single-family residential property. Before any trees are damaged or removed, please consult Beverly Hills Municipal Code Section 10-3-2901. A copy of the City's Tree Removal Permit Application for the removal of protected trees is attached and includes a summary of the City's tree preservation regulations (**Attachment 6**). This application must be completed and submitted to the City's Building Department if any protected trees may be damaged or removed pursuant to an Initial Neighbor Outreach or Mediation process. One of the permitted reasons for removing a protected tree is that "The protected tree proposed for removal is obstructing an existing view of the Los Angeles area basin from a habitable building on the property where such tree is located."

View Restoration Guidelines

8. City Advisory Opinion (See **Attachment 7** for forms)

A View Owner has the option to request a non-binding view restoration Advisory Opinion from City staff for a fee. A non-binding opinion is for information purposes only and would not affect any subsequent City decisions regarding a view restoration case. This may be an option for View Owners who are unsure if they have a protectable view that is being substantially disrupted and would like an impartial opinion. It may also be an option for View Owners who do not wish to go through a public hearing process. In both cases, the view owner would gain additional information that may be helpful in working with neighbors to resolve view issues.

The fee for a City Advisory Opinion is included on the list of fees attached (**Attachment 10**). This is the minimum required to cover the City's cost to provide a written opinion to the View Owner. Please note that City fees change each year, usually on July 1.

The request for a City Advisory Opinion would be made on a form provided by the City. It is noted that the written opinion would be a public document available to anyone who requests it.

If a view owner requests and receives a City Advisory Opinion, the View Owner must wait one year (12 months) to apply for a View Restoration Permit. During this 12-month period, the View Owner may complete the Initial Neighbor Outreach and Mediation steps and, if there is no resolution, complete a View Restoration Permit application; however, the application may not be submitted until 12 months have elapsed from the date of the City Advisory Opinion.

View Restoration Guidelines

9. Trousdale View Restoration Permit Process

Please See **Attachment 8**, the Trousdale View Restoration Permit Application, for forms.

Submitting an Application

If a View Owner completes the Early Neighbor Outreach and Mediation steps without resolving the view problem, and the View Owner wishes to proceed with a public hearing process, the View Owner may complete and submit a View Restoration Permit application form (**Attachment 8a**) to the Community Development Department with the appropriate filing fees (**Attachment 10**). An application may be submitted by only one View Owner but the application may name one or more Foliage Owners. The addition of foliage owners to an application will increase the application fee as more staff time is involved.

Once a Complete View Restoration Permit Application has been Submitted

1. Assigned to Planner/Complete Application

The application is assigned to a planner. The planner determines if the application is complete.² The planner will contact the applicant and indicate if the application is complete or incomplete. If incomplete, the planner provides the applicant a list of missing information in writing. Incomplete applications will not be processed until the application is complete. If the applicant does not submit the necessary information and the application remains incomplete for six (6) months, the City shall administratively withdraw the application and return the application materials to the applicant.

Once an application is deemed complete, the following steps shall occur to process the application and prepare for a Planning Commission hearing.

2. Notification of Foliage Owner(s)

Staff notifies the Foliage Owner(s) in writing, that a formal request for a View Restoration Permit hearing has been filed with the City, attaching a copy of the application, a copy of the View Restoration Guidelines and an authorization form that would allow staff and the Planning

² A View Restoration Permit application is not for a development project and is not subject to the Permit Streamlining Act.

View Restoration Guidelines

Commission to visit the Foliage Owner's property. Staff or City officials may visit a Foliage Owner's property only with the Foliage Owner's written authorization. The signed authorization may be emailed to staff by the Foliage Owner.

3. Site Visits

Staff schedules and conducts site visits to the View Owner and Foliage Owner properties. If a Foliage Owner does not permit access to his/her property, the Planning Commission shall review the case using other information as may be available, including information provided by the View Owner. Although a Foliage Owner has discretion as to whether to allow staff or City officials onto his/her property, lack of access to the Foliage Owner's property may make it difficult for staff and the Planning Commission to evaluate issues raised by the Foliage Owner when considering an application.

4. Public Notice

Staff prepares and mails notices to all property owners within 500 feet of the View Owner's property at least 30 days prior to the hearing, using the address labels submitted by the View Owner with the application.

It is noted that pursuant to Planning Commission and City Council direction, it is expected that is public notice requirement will be revised in the near future to include only the parties to the View Restoration Permit application.

5. Staff Report

Staff prepares a staff report to the Planning Commission that includes the following:

- a. Application
- b. Information on each property involved.
- c. Staff analysis of the findings that must be made to issue a View Restoration Permit.
- d. Photos (also included in surveys required in application).
- e. Staff recommendation.

The staff report is distributed to the Planning Commission, applicant and Foliage Owner(s) the week prior to the public hearing date.

6. Public Hearing

Planning Commission public hearings are held on the second and fourth Thursdays of each month. A View Restoration Permit hearing will be preceded by a bus tour, to which members of

View Restoration Guidelines

the public are invited. The tour is for the Planning Commission to review the sites involved in the case, and is not an opportunity for interested parties to provide testimony to the Commission.

The Planning Commission may, at its discretion, require the review of any case by a qualified soils engineer, arborist, landscape architect or other appropriate professionals based on the specific conditions of the case. The applicant shall be responsible for these additional costs. Staff will advise the applicant of the estimated cost for additional expert information. If the applicant refuses to pay for that expense, the application will be withdrawn by staff.

After all public testimony has been heard from any interested parties, the Planning Commission closes the public hearing and deliberates. Planning Commission decisions must be supported by substantial evidence in the record before the Commission. The Planning Commission reaches a decision by reviewing the required findings that must be made as set out in the ordinance (Section 10-8-106(I)). All of the findings must be made by the Planning Commission before a View Restoration Permit may be granted. (See **Attachment 8b** for the findings.)

When the Commission reaches a decision, a resolution approving or denying the permit is prepared by staff reflecting the Commission's decision. Resolutions may be prepared in advance of the Planning Commission hearing and revised at the meeting pursuant to Commission direction or may be prepared after the meeting and returned to a subsequent Planning Commission meeting for approval.

7. Resolution: Restorative Action

If the Planning Commission is able to make the required findings and approves a View Restoration Permit, the resolution will include conditions of approval that specify the Restorative Actions that must be taken to restore the view. This includes specifying foliage, including trees, that need to be trimmed or removed. This may include a long-term foliage maintenance schedule to be incorporated into the conditions of approval. (See **Attachment 9** for Restorative Actions.)

Determination of restorative actions would usually be made based on the tree survey that was part of the application, the site visits and testimony at the hearing. All restorative action must be performed by a licensed and bonded tree or landscape service unless otherwise mutually agreed upon by the parties.

Restorative action may include trimming, culling, lacing, removal or removal and replacement of foliage including trees. The resolution will indicate the period of time within which the restorative actions must be completed taking into consideration the health of the foliage and common nesting seasons.

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8. Notice of Decision

Once the Planning Commission makes a decision and adopts a resolution, staff shall mail a written notice of decision within five days of the decision to the applicant and each Foliage Owner named on the application. Copies of the final resolution will be attached to the notice of decision.

9. Completion of Restorative Action & Apportionment of Cost

It will be the responsibility of the View Owner and Foliage Owner to ensure the Restorative Actions are performed pursuant to the resolution. The responsibility for the cost of the Restorative Action will be specified in the resolution, pursuant to the ordinance:

(1) Procedural Costs. View owner shall bear the cost of application fees and other application costs including the View Restoration Property Survey and Tree Survey and the cost of any other information requested by the reviewing authority.

(2) Restorative Action.

(a) The Foliage Owner shall pay one hundred percent (100%) of the cost of Restorative Action if the Foliage Owner did not participate in mediation and the reviewing authority finds Restorative Action is required.

(b) The View Owner and Foliage Owner shall each pay fifty percent (50%) of the cost of Restorative action if the foliage owner participated in mediation and the reviewing authority finds restorative action is required.

Once the restorative work is performed, staff will document compliance with the resolution with digital photographs. Staff will provide copies of these images to the View Owner and Foliage Owner(s) and will maintain copies with the final resolution in the City's files.

10. Maintenance After Initial Restorative Action

The Foliage Owner shall ensure ongoing compliance with the Resolution and shall pay for subsequent maintenance of the foliage consistent with the View Restoration Permit.

11. Non-Compliance with View Restoration Permit/City Enforcement

If, after a period of time specified in the resolution, the restorative work is not performed, the applicant may request, in writing, that the City proceed with enforcement of the resolution. (See **Attachment 11** for letter template to request City enforcement).

The first step in City enforcement, the Administrative Penalty process, would be conducted at no charge to the View Owner; however, if enforcement escalates to a City prosecution process, the City's prosecution costs would be paid by the View Owner. Once the City has confirmed that a view has been restored pursuant to a View Restoration Permit, any further dispute regarding a

View Restoration Guidelines

Foliage Owner's compliance with a View Restoration Permit may be resolved by a civil action initiated by the View Owner. (See Ordinance section 10-8-108.) In other words, after initial City enforcement, if foliage grows back and disrupts the view in violation of a View Restoration Permit, the View Owner may sue the Foliage Owner to gain compliance but the City will not be involved in enforcement of the View Restoration Permit at this point.

12. Limit on Number of Hearings Annually

Pursuant to the adopted ordinance, the Planning Commission shall conduct no more than ten (10) View Restoration Permit hearings per calendar year. This does not include potential appeals to the City Council. The City will track this figure so applicants and potential applicants are aware of potential waiting periods for a hearing.

13. Appeal to City Council

A decision of the Planning Commission on a view-related permit may be appealed to the City Council within 14 days of the Planning Commission's decision. Appeal forms are available in the City Clerk's office which may be contacted at 310.285.2400. The form must be submitted to the City Clerk within 14 days of the decision with the required fee (See **Attachment 10** for fees). The public hearing process before the City Council would be substantially the same as the public hearing process before the Planning Commission. After considering the written and oral testimony at the appeal hearing, the City Council may take one of the following actions:

1. Affirm the decision of the Planning Commission or make a different decision based on the findings that must be made;
2. Refer the matter back to the Planning Commission to conduct further proceedings.

14. Decisions Intended to Run With the Land (Section 10-8-107)

Decisions regarding view restoration shall be binding on all current and future owners of view owner's property and foliage owner's property, and such decisions must be disclosed by each owner to subsequent owners of the property.

10. Landscape Standards for Trousdale

The following information regarding appropriate and inappropriate landscaping for Trousdale Estates is intended to assist property owners in planting trees and shrubs that will not result in current or future obstruction of neighbors' views. Nothing in this section should be construed to apply to City trees.

The City recommends that trees meeting the following criteria should not be newly planted in Trousdale:

- Grows rapidly and exceed a 14-15 foot height at maturity;
- Cannot be topped or easily and repeatedly pruned to maintain appropriate heights;
- A known fire hazard.

Following is a list of trees considered nuisance trees that meet the above criteria that should not be newly planted in Trousdale Estates. This list is not intended to capture all tree species that may not be appropriate for Trousdale Estates. Specific sites, conditions and irrigation needs may require site-specific landscaping solutions.

Nuisance Trees/Foliage:

- Eucalyptus
- Pine
- Italian Cypress
- Ficus
- Canary Island Date Palm
- King Palm
- Queen Palm

Recommended Trees

Recommended trees are those that meet the following criteria:

Grow to a maximum size that would not likely result in disruption of a view (maximum height of 14-15 feet);

Can be easily and repeatedly pruned to maintain appropriate heights;

Are appropriate to the climate and water conditions of Beverly Hills and would not negatively impact to slope stability.

Examples of appropriate trees include the following:

View Restoration Guidelines

- Western redbud
- Dwarf fruitless olive

Planting New Trees

Property owners should consider the following when planting new trees or large shrubs:

Views

Location: Will the planting location potentially be in a neighbor's line of sight to a view of the Los Angeles Area Basin?

Landscape Type: Would it be more appropriate to plant a shrub or a small tree so as not to block a neighbor's view now or in the future?

Fire Safety and Prevention

Location and Landscape Type: Will the planting location be in close proximity to structures? Are the plants of a fire retardant type? (Please see the City's Fire Department web page regarding the City's Brush Clearance Program for additional direction).

Slope Stability/Erosion Control

If located on a slope, are the plants appropriate for slope conditions in a naturally arid environment? If the plants on a slope require a great deal of water, could watering potentially destabilize the slope?

Landscape Maintenance

It is a property owner's responsibility to maintain foliage located on his/her property. This includes regular pruning of plants if necessary to maintain appropriate size.

NOTE: If you are unfamiliar with landscaping, you may wish to contact a professional for assistance such as a landscape architect or designer or a nursery that offers plant selection assistance.