



## CITY OF BEVERLY HILLS STAFF REPORT

**Meeting Date:** January 25, 2011

**To:** Honorable Mayor & City Council

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

**Subject:** Trousdale Estates View Restoration

**Attachments:** Draft Ordinance  
View Restoration Process Flow Chart

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### **INTRODUCTION**

In response to a request by Trousdale Estates residents, the City Council, on April 7, 2009, directed staff to consider regulations addressing views obstructed by foliage in the Trousdale Estates and Hillside Areas. Staff is introducing a proposed Trousdale Estates view restoration ordinance during a study session to provide an opportunity for Councilmembers to become familiar with the proposed ordinance. Staff took the preliminary step of arranging a meeting on January 7, 2011 for the City Council liaison to the Planning Commission (Vice Mayor Brucker and Councilmember Brien) to review the proposed ordinance with Planning Commissioners Nanette Cole and Craig Corman (the Planning Commission View Restoration Subcommittee).

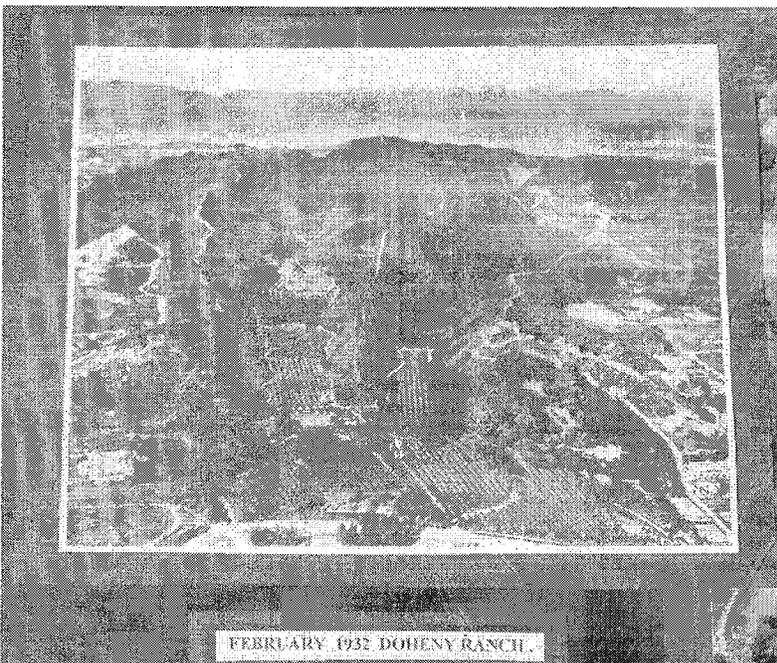
The ordinance was recommended to the City Council by the Planning Commission in December, 2010 and represents a year and a half of work by the Planning Commission and City residents to develop regulations with broad support. There are, however, policy considerations regarding staffing and cost to the City related to enforcement of view restoration determinations that would be made pursuant to the ordinance if an ordinance is adopted. This report introduces this policy issue and staff recommends further, detailed discussion of various enforcement options be directed to an ad hoc committee. Staff is also seeking direction as to any additional information the City Council may require in preparation for a public hearing on the proposed ordinance.

### **BACKGROUND**

Pursuant to Council's direction, on May 28, 2009, the Planning Commission began a discussion of view preservation in the hillside areas that ultimately included seven public meetings with

dozens of speakers, eight Planning Commission subcommittee meetings and two bus tours. Early in the review process, the Planning Commission realized the complexity of developing view restoration standards and determined that the City's two hillside areas, the Hillside Area and Trousdale Estates, may require different standards due to their different characteristics. As a result, the Commission decided to focus its view restoration discussion on Trousdale Estates as a pilot area to develop view restoration standards that could also serve as a model for the larger and more complex Hillside Area.

The City Council was advised by the Community Development Department of the change in scope of the view restoration ordinance in a staff report presented at the City Council's November 30, 2010 study session. In addition to narrowing the focus of the view restoration discussion to Trousdale, the Planning Commission, in response to public comment, clarified that the present discussion would address only foliage and trees on private property, not City trees and foliage that may be blocking private views.



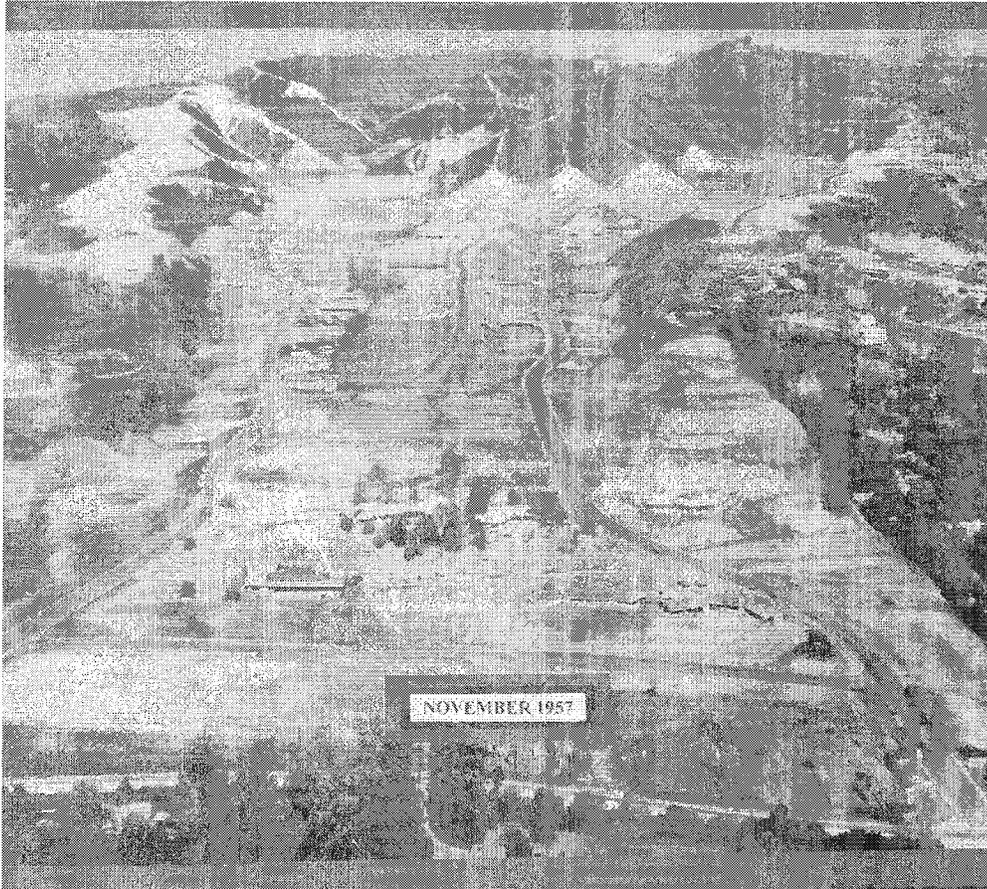
The City of Beverly Hills annexed Trousdale Estates' 402 acres on July 26, 1955. Trousdale Estates required major grading to create 596 single-family residential lots with flat building pads and a majority of lots with views (see photo below). The 596 lots in Trousdale represent ten percent (10%) of the single-family homes in the City and almost four percent (4%) of total housing units in the City. This is compared with the 984 lots in the Hillside Area, developed individually or in small tracts over a period of time with a variety of building pad and view situations. Trousdale has a history of view preservation standards since such standards

were included in many, if not all, of the Codes, Covenants and Restrictions documents (CC&Rs), that were placed on the Trousdale tracts by the developer, Paul W. Trousdale, beginning in 1955. These CC&Rs regulated development in Trousdale Estates including height, density, setbacks and maintenance of views:

“No hedge or hedgerow, or wall or fence or other structure shall be planted, erected, located or maintained upon any lot in such location or in such height as to unreasonably obstruct the view from any other lot or lots in said tract.” (language from a set of Trousdale CC&Rs)

Although the CC&Rs had expired by 2000, much of their content and intent was incorporated by the City Council into the City's Zoning Code in 1985. One regulation that was not incorporated into the City's Codes was a standard preventing obstruction of views by foliage. Since the CC&Rs expired, there have been no regulations in Trousdale Estates requiring the maintenance of foliage such that it does not obstruct a view; however, the City's Zoning Code does include standards that address the obstruction of views by structures in both the Hillside Area and

Trousdale Estates. In the Hillside area there is a view preservation review that applies to new development and in Trousdale, the maximum fourteen-foot height limit for structures essentially prevents structures from obstructing views.



**Trousdale Estates Graded 1957**

## **DISCUSSION**

The City's goal in developing a view restoration ordinance, as expressed by the Planning Commission in the attached ordinance in the "Purpose and Intent" section (page 2 of the attached ordinance) and reinforced in the "Required Findings" section (page 10 of the attached ordinance), is as follows:

Restore and preserve certain views from substantial disruption by the growth of privately owned trees and foliage while also providing for the following important City values:

- Residential privacy and security;
- Garden quality of the City;
- Safety and stability of the hillsides; and,
- Trees and vegetation in the City as an integral part of a sustainable environment, including energy efficiency.

This goal would be accomplished by establishing a process by which residential property owners in Trousdale Estates may seek to restore and preserve certain views with an emphasis on the following key issues:

- early neighbor resolution of view restoration complaints;
- an understanding that there should be no expectation that any particular view or views would be restored or preserved;
- outreach and education so residents consider the potential to block neighbors' views before planting foliage and when maintaining foliage; and,
- development of a view restoration process that would not result in any significant additional cost to the City.

### **View Restoration Ordinance Proposed by the Planning Commission**

View restoration ordinances typically have three main components:

1. Regulations: establishment of a right to a view, definition of a view, criteria to determine views that merit protection, and findings to determine when a protected view has been disrupted;
2. Review Process: development of a process to administer the above regulations; and,
3. Enforcement: direction as to how decisions resulting from the process shall be enforced.

Below is a summary of the three components of the view restoration ordinance proposed by the Planning Commission.

#### **1. Regulations**

The ordinance defines key terms and certain defined terms used in this report are included below for reference:

##### **A. Definitions**

**Foliage:** A general term used to refer to an aggregation of plants and trees including hedges.

**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.

The distance at which foliage could be considered to be blocking a view was the subject of much public discussion and 500' represents a consensus that is also consistent with a number of other cities' view preservation ordinances.

**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.

**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. A protectable view shall not include views of vacant land that is developable under the Beverly Hills Municipal Code.

This definition is, in part, based on the existing view preservation regulations for the Hillside Area of the City which specifies a view as a view of the Los Angeles area basin from the level pad which contains the primary residential building on a property. The definition here of “protectable view” and the definition of view in the existing Hillside Area development standards also differ in that the Hillside Area view is a view within 300’ (not 500’) of the subject property.

**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 may be a room of the primary residential structure at level finished grade, or a patio, deck or landscaped area at level finished grade that does not extend beyond the level pad. There may be one or more viewing areas on a property. For purposes of this section, a protectable view shall be determined from a point thirty-six inches (36”) above the finished grade of the level pad.

There was a great deal of discussion as to whether this definition was too broad as it allows the viewing area to be from a number of locations on the property rather than requiring the applicant or staff to choose one view to be considered. In addition, it is noted that for the purposes of this Trousdale view restoration section, the point at which the protectable view is determined (36” above finished grade; approximately a seated position) is different than the point at which view is determined under the existing Hillside Area view preservation code section in which the view is determined from a point six feet (6’) above the finished grade of the pad (approximately a standing position at eye-level). A majority of the Planning Commission agreed that more flexibility to determine the viewing area was warranted because of the limits on the definition of protectable view (Los Angeles Area basin only) and the further limits imposed by the required findings for a view restoration permit (Page 10 of the ordinance, “J Required Findings”).

**Protected View:** A protectable view that has been determined by the reviewing authority to merit restoration.

**Restorative Action:** Any specific steps taken affecting foliage that would result in the restoration or preservation of a protected view.

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

## **B. Objective Standards**

The Planning Commission tried to identify clear, objective standards, such as maximum hedge heights, that could address as many view obstruction situations as possible without the need for a more time intensive and costly discretionary review process. The Planning Commission found it very difficult to create objective standards that would not result in unintended consequences, such as the destruction of trees that do not actually block any views. Pursuant to specific issues observed during its bus tours, the Planning Commission decided to focus on hedge height since hedges are currently regulated by Code.

Zoning Code regulation of wall, fence and hedge height in the City, including Trousdale Estates, is intended to provide for individual privacy and security while preserving the open garden quality of the City. Hedges in Trousdale are allowed by Code to be as high as eight feet (8') depending on location on the property. A hedge is defined in the Code and the Code does not take into account whether that hedge happens to be located near a property line that is adjacent to or near a neighbor's flat pad with a view. As a result, there are cases in Trousdale where a legal hedge completely obscures an upslope neighbor's view. To address this situation, the Planning Commission has proposed adding a section to the Trousdale hedge standards as follows:

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

Individual trees, as well as tree foliage located more than eight feet above grade, are not considered to be part of a hedge pursuant to current Code and are therefore not regulated as to height. In other words, a hedgerow (tree hedge), with foliage above eight feet, currently has no maximum height limit. The Planning Commission had extensive discussions about whether to revise the definition of hedge in the Code or to add a definition for hedgerow but ultimately decided that the general issue of hedge height is a complex and wider issue and that it was most effective to focus on alleviating a clear and specific problem with the above proposed language.

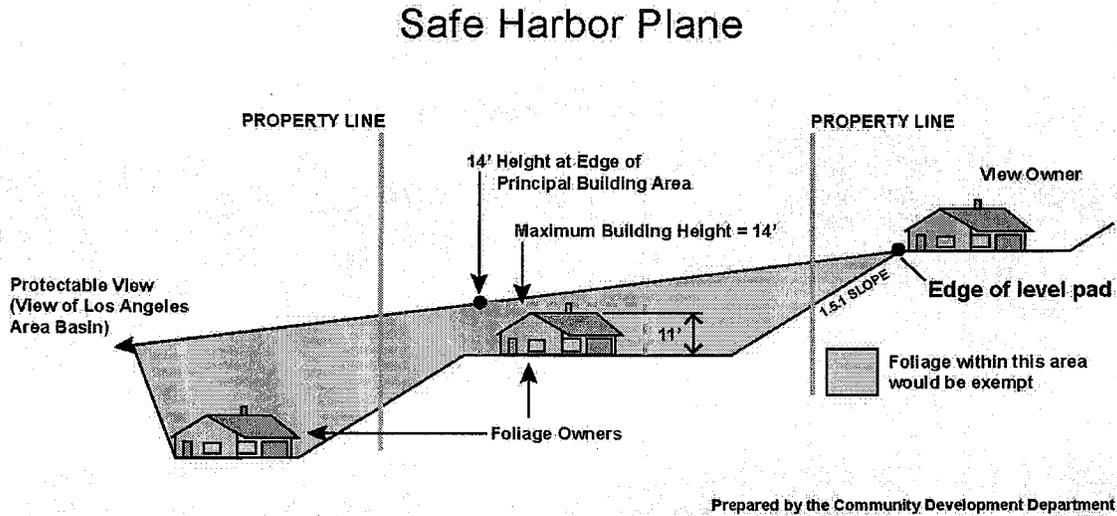
## **C. Foliage Exempt from Ordinance (Safe Harbor Plane)**

The Planning Commission also took steps to narrow the focus of view restoration regulations to foliage that could be reasonably seen to potentially block views; other foliage would be exempt from the ordinance. The purpose of the exemption is two-fold:

- (1) eliminate frivolous complaints that might arise from issues unrelated to actual view obstruction; and,
- (2) provide guidance to residents as to foliage that is acceptable and not subject to a view restoration complaint.

The exemption area or "safe harbor plane," as proposed by the Planning Commission, would be measured from the edge of the level pad of a view owner's property to a point on the adjacent down-slope property representing the maximum height of a structure that could be built on that property (14'). The Subcommittee reasoned that if a house could

be built on a foliage owner's flat pad to a certain maximum height, foliage could occupy that area without reasonably affecting the View Owner's view (see illustration below). It is noted that staff plans to create additional illustrations of concepts in the proposed ordinance to assist the community in better understanding it.



## 2. View Restoration Process

Many other cities have tackled view restoration, developing ordinances that have withstood legal challenges, thereby providing a guideline for Beverly Hills. All of the ordinances that staff has reviewed have a similar process to administer view restoration regulations: a series of steps beginning with neighbor discussion, progressing to mediation and sometimes to binding or non-binding arbitration. At this point in the process, the ordinances differ, with some offering no additional steps beyond the ability to file a civil court action, while other ordinances provide an avenue for city review, and possibly city enforcement of view restoration decisions.

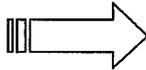
Staff presented the Planning Commission with two models for a view restoration ordinance that employ steps as described above but differ markedly in the role the city plays in the overall process: one approach, established by the Town of Tiburon in 1991, establishes nonbinding guidelines for a voluntary process requiring little City staff time (see table below). The other approach, established by the City of Rancho Palos Verdes in 1989, includes comprehensive guidelines administered by City staff with extensive City enforcement of regulations and decisions; the Tiburon model, relying on negotiations and civil actions between private parties, was the approach originally presented to the City by Trousdale residents in 2009.

In response to public testimony, the Planning Commission agreed that the Tiburon model did not provide enough assistance to residents but that a Beverly Hills ordinance should avoid some of the bureaucracy of the Rancho Palos Verdes model. Other cities that have been developing view restoration ordinances more recently are embracing hybrid approaches that set up view preservation/restoration regulations and provide an avenue for

applicants to receive a City decision but remove the City from enforcement due to fiscal, staffing and litigation concerns.

**View Restoration Review Process**

Tiburon	Rolling Hills Estates Malibu/Sausalito	Beverly Hills	Rancho Palos Verdes
Private Cause of Action Model	Hybrid Model	Hybrid+ Model	City Review & Enforcement Model
Informal Negotiation	Initial Discussion	Neighbor Outreach	Negotiation
Mediation	Mediation	Mediation	Mediation
Binding Arbitration	Binding Arbitration	Non-Binding Arbitration	
	City Advisory Opinion	Planning Commission	Planning Commission
Private Court Action	Private Court Action	(appeal)	(appeal)
		City Council	City Council
No City Enforcement	No City Enforcement	City Enforcement	City Enforcement
<b>Little City Involvement</b>		<b>Maximum City Involvement</b>	



Proposed Beverly Hills View Restoration Process

The goal of the view restoration process is to provide a way for residents to seek relief for disruption of views by foliage that is not subject to the City’s hedge standards. At the same time, the City must ensure it has adequate resources to administer the process. The Planning Commission has proposed a view restoration review model that falls in between the Tiburon and Rancho Palos Verdes models but is closer to the latter:

- Code Enforcement. Many inquiries or complaints about view obstruction would begin with a call to City Code Enforcement. Staff would determine if the inquiry could be addressed through existing standards in the code, such as those regarding hedge height, or if the inquirer should be directed to the City’s View Restoration Guidelines.
- Three-Step Pre-Hearing Process. This is a private agreement process with little City staff involvement beyond provision of View Restoration Guidelines, and possibly a City contract with a professional mediator. These three steps must be completed before a view owner may apply to the Planning Commission for a public hearing. Following are the three steps:

Initial Neighbor Outreach

View owner sends a notice to foliage owner that includes View Restoration Guidelines, states the issue, offers to meet and states the remedy sought. Parties meet and confer.

Mediation

If Initial Neighbor Outreach is unsuccessful, view owner sends a notice to foliage owner offering mediation which is assistance from a neutral third-party negotiator. The City currently offers free mediation to community members and the Planning Commission is recommending the City Council consider extending this to the view restoration process as an inducement to resolve issues early. The City of Rancho Palos Verdes has found it advantageous to contract with a mediator experienced with view restoration cases who has been able to resolve a majority of cases at this level.

#### Non-Binding Arbitration.

If mediation is unsuccessful, view owner sends a notice to foliage owner offering non-binding arbitration which is adjudication of the case by a neutral, experienced legal professional such as an ex-judge. The arbitrator would render a written decision pursuant to the ordinance standards.

- Planning Commission public hearing. If issues remain unresolved after all three pre-hearing steps have been completed, an application may be made to the City and staff would process an application similar to other single-family residential permit applications. The Planning Commission would render a decision through a resolution.
- Appeal. Planning Commission cases may be appealed to the City Council.
- Apportionment of Costs (administrative fees and restorative action costs). The proposed process costs very little at the earliest step, Initial Neighbor Outreach, can become a bit more costly at the Mediation step, (particularly if additional hours of mediation are needed or legal assistance is sought), and becomes much more costly at the Non-Binding Arbitration stage due to the cost of the arbitrator, the potential need for professional reports and the costs of legal representation if sought by the parties involved. The escalating cost in time and dollars is viewed as an incentive for parties to settle disputes earlier. Other cities with view restoration ordinances have found that many cases can be settled at the Mediation level. This still leaves many cases to be resolved, particularly when an ordinance is first adopted due to pent-up demand for view restoration. At the Arbitration and Planning Commission levels, the ordinance includes guidelines to assign some restorative action costs to the foliage owner pursuant to formulas based on the level of foliage owner participation and whether the decisions rendered by the arbitrator or Planning Commission favor the view owner or foliage owner.

### **3. Enforcement**

The City would not be involved in enforcing private agreements made by parties during the three-step pre-hearing process. The ordinance recommended by the Planning Commission does not provide for any special direction regarding enforcement of Planning Commission decisions; therefore, if the proposed ordinance were adopted, the City would enforce view restoration resolutions and provide enforcement in the same manner as other zoning code violations, pursuant to the City's adopted administrative penalty process (BHMC Section 1-3-300). The experience of other cities is that this will ultimately include costly abatement actions on the foliage owner's property. In addition, view restoration cases are somewhat unique in that problems grow back. The proposed ordinance is clear that maintenance of foliage subsequent to initial restorative actions is the responsibility of the foliage owner; however the experience of other cities is that many cases require continued enforcement due to the growth of foliage that is not maintained in accordance with Planning Commission decisions.

#### **Policy Issues**

There are policy considerations regarding staffing and cost to the City related to enforcement of view restoration determinations that would be made pursuant to the ordinance if an ordinance is adopted. Below is a discussion of these policy issues and staff recommends further, detailed discussion of various enforcement options be directed to an ad hoc committee.

#### **Cost of View Restoration Program to Applicants (View Owners) and City**

##### Cost to View Owners

Trousdale Estates residents have expressed concern at public hearings about the cost to view owners of filing view restoration applications pursuant to the proposed ordinance. The City of Rancho Palos Verdes ordinance requires the view owner to pay all administrative and professional fees associated with processing a view restoration case as well as most of the restorative action costs for two reasons:

- The view owner is the main beneficiary of any restorative actions taken to restore a view; and,
- It can be difficult for a city to recoup costs from a foliage owner.

The proposed Beverly Hills ordinance initially recommended that the view owner would be responsible for most costs, unless otherwise agreed to by the parties involved. Pursuant to the public hearing process, the ordinance was revised so that as a view restoration case proceeds through the steps, more costs would be switched to the foliage owner from the view owner depending on the parties' level of active participation in resolving the case and whether there is a decision or judgment requiring restorative action on the foliage owner's property.

There is no doubt that processing a view restoration case could become very expensive for a view owner depending on how quickly a case is resolved and at what step in the process.

**Pre-Hearing Process:**

Notice Costs – Three certified letters = \$10.00 (assumes one foliage owner).

Initial Neighbor Outreach – no additional cost unless parties pay for a professional report (e.g. a tree survey).

Mediation Cost – City currently pays \$200 for three hours of mediation plus a quarterly case management fee. Experienced view restoration mediation would be a little more expensive and successful mediation can take ten hours = \$1,000 per mediation.

Non-Binding Arbitration – Includes daily case management costs (\$400 to \$500 per day per party) plus hourly costs for the arbitrator which can vary greatly depending on level of experience, with the low end being \$450 - \$500 per hour. The full cost could be \$5,000 to \$50,000 for an arbitration, depending on the length of time and the cost of the arbitrator.

**Planning Commission Hearing:**

The City's application fees could total \$10,000 to \$15,000 depending on the view restoration application fee determined by the Council based on the actual cost of processing such a case, public notice costs and other administrative fees.

Tree Survey (required for the Planning Commission application). This would likely be a minimum of \$1,000. The Planning Commission may also request additional professional reports, such as a soils report, depending on the specific case.

The costs above do not include the cost of any additional professional reports the parties may obtain or that may be required by the Planning Commission or City Council on appeal.

**Civil Court Option:**

Alternatively, view owners have the option to file civil court cases now, or could file such cases more effectively with City regulations in place since such regulations would establish statutory rights for view owners to pursue view restoration. Filing a lawsuit involves some of the same costs and some different costs than the proposed view restoration process. Depending on the time involved in such a lawsuit brought by a view owner, the cost to the view owner could be \$10,000 to \$150,000, or more.

**Cost to the City**

View Restoration Guidelines are required to be completed if an ordinance is adopted and staff plans to conduct an educational outreach program to Trousdale residents. This outreach program is expected to include public communications, a web page and workshops which could consume many hours of staff time. Once these implementation efforts have been completed, staff believes the cost to the City of view restoration cases proceeding through the pre-hearing process will consist mainly of providing information through an increased number of telephone

calls and additional public counter appointments. If the City Council considers funding some portion of mediation services that would result in additional cost to the City.

Cases that result in applications to the Planning Commission will require at least 40 hours of staff time per application and perhaps more hours for more complicated projects. It is expected that as many as sixty (60) view restoration cases will take advantage of the new process within the first six months to one year of adoption. The City Council can impose fees to cover the cost of such applications and then the issue would be whether enough experienced staff would be available to process such applications in a timely manner.

### Enforcement Cost

Costs to the City can escalate with enforcement of Planning Commission decisions or decisions resulting from appeals to the City Council. The Planning Commission expressed concern about potential costs associated with enforcement; however, budget and staffing issues are within the purview of the City Council. Enforcement involves gaining compliance with decisions which, for view restoration, would usually be requirements that view-blocking foliage be trimmed or removed. The City of Rancho Palos Verdes has two planners devoted full-time to its view restoration program and they spend much of their time on enforcement and maintenance issues. While it is true that over time more view preservation cases in Rancho Palos Verdes have been handled through the mediation process, thereby reducing the number of cases referred to the Planning Commission for review, the amount of work associated with maintaining views of property owners who have already been through the view restoration process has greatly expanded as more cases have been reviewed over time.

The City Council may wish to consider options with regard to enforcement other than the City's usual process of using the City's administrative penalty process followed by a prosecution process, should compliance not be achieved. The options fall under two categories and it is recommended that an ad hoc committee further flesh out the details:

### City Involvement with Enforcement

If the City participates in enforcement of Planning Commission view restoration decisions, it is difficult to create an enforcement process that would result in no additional cost to the City but there are ways to reduce the fiscal burden:

#### Cost

City requires view owner to deposit funds to cover City's enforcement costs if view owner requests City enforcement of a resolution; costs would be reimbursed to view owner if foliage owner pays.

#### Staffing

City could consider using an on-call code enforcement consultant, paid through fees deposited by view owner, to address workload issues.

### No City Involvement with Enforcement

A decision would be rendered by the Planning Commission and it would be the responsibility of the parties involved to carry it out. Non-compliance or disagreements could be addressed through the civil court system; the City would incur no costs. This is

how enforcement of view restoration/preservation is handled in Tiburon, Rolling Hills Estates, Sausalito and is being recommended by the staff in Malibu which is currently developing an ordinance. With the benefit of the Rancho Palos Verdes experience, which includes large expenditures from the City's general fund to support view restoration, other cities are adopting hybrid models of view restoration that provides regulations and a process for residents to resolve disputes, including a City opinion or decision, but no city enforcement.

**FISCAL IMPACT**

There would be staff costs associated with development of view restoration guidelines, outreach to and education of Trousedale residents, processing applications to the Planning Commission for view restoration, staff and attorney costs to enforce Planning Commission decisions and to continue enforcement on a regular basis. The City Council may establish fees to cover the cost of processing Planning Commission applications but staff has recommended additional discussion of potential enforcement procedures to determine future fiscal impact.

**RECOMMENDATION**

Staff recommends that the City Council appoint an ad hoc committee to further discuss key policy issues and either place this item on a future study session or schedule a public hearing of the proposed ordinance.

 For:

Susan Healy Keene, AICP

Approved By

## **Attachment 1**

Draft Ordinance Recommended by Planning Commission

December 16, 2010

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 \_\_\_\_\_ 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 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 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 the ordinance will result in significant adverse impacts on the environment, and hereby adopts a 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.

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 not the intent of this ordinance to create an expectation that any particular view or views would be restored or preserved. 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.

### **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) **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.

(C) **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.

(D) **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.

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

(F) **HEDGE:** Foliage or landscaping as defined in BHMC 10-3-100.

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

**(H) 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.

**(I) 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. A protectable view shall not include views of vacant land that is developable under the Beverly Hills Municipal Code.

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

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

**(L) SAFE HARBOR PLANE:** The plane defined by points at the edge of view owner’s level pad to points at a maximum height of fourteen feet (14’) as measured from grade at the edge of an adjacent down-slope foliage owner’s principal building area that is farthest from the side of view owner’s level pad facing a protectable view. (See illustration in section 10-8-103.)

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

**(N) 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 as defined in this section:

- (1) Species of each tree based on scientific 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 as defined in this section.

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.

**(O) 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 reference one or more owners of the same property.

**(P) VIEW RESTORATION GUIDELINES:**

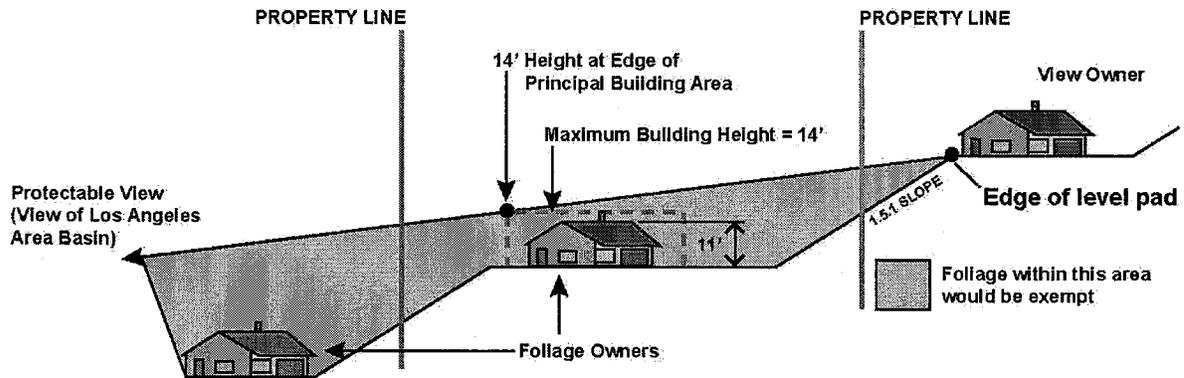
Guidelines for implementation of the ordinance to be prepared by the Community Development Department, adopted by the Planning Commission, and made available to the public.

**(Q) 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.

**(R) 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 may be a room of the primary residential structure at level finished grade, or a patio, deck or landscaped area at level finished grade that does not extend beyond the level pad. There may be one or more viewing areas on a property. For purposes of this section, a protectable view shall be determined from a point thirty-six inches (36") above the finished grade of the level pad.

**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 Plane



Prepared by the Community Development Department

**10-8-104 PROCEDURES.** Violations of the Zoning or Building Code standards shall be addressed through the City's Code Enforcement Process. All other complaints received by the City regarding foliage blocking views in Trousdale Estates shall be addressed through the pre-hearing 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 the Article. More than one view owner may pursue remedies simultaneously with one or more foliage owners as determined by the parties involved.

**(A) Initial Neighbor Outreach.**

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

(2) Acceptance of 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 view owner, unless foliage owner requests a ten (10) day extension in writing or the response period is otherwise extended by mutual agreement of view owner and foliage owner. Failure to respond shall be considered rejection by foliage owner. The

notification should be followed by discussions between view owner and each foliage owner to attempt to reach a mutually agreeable solution.

(3) If view owner and a foliage owner are unable to resolve the matter, or a foliage owner fails to respond to the Initial Neighbor Outreach notice, view owner may proceed with a mediation process. To participate in the City-sponsored mediation process, view owner shall submit to the City proof of 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 notice, view owner shall also provide an affidavit, signed under penalty of perjury, indicating non-response of foliage owner.

(4) If, pursuant to an agreement between view owner and a foliage owner, 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 the BHMC on his/her property, a tree removal permit must first be obtained in accordance with the requirements of BHMC 10-3-2900.

**(B) Mediation.**

(1) If parties are unable to reach agreement through the Initial Neighbor Outreach process and view owner wishes to pursue remedies available in the Article, view owner shall contact a mediator, pursuant to View Restoration Guidelines. View owner shall notify each foliage owner of an offer to mediate. Said notice shall be on a form provided by the City in the View Restoration Guidelines on file in the City, shall be signed by view owner, and shall include a signed statement from view owner that view owner or view owner's representative shall offer to meet with each potential foliage owner and a mediator. The notification shall clearly identify the remedy sought by 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 written request for mediation to accept or reject the offer of mediation, unless foliage owner requests a ten (10) day extension in writing or the response period is otherwise extended by mutual agreement of foliage owner and view owner. Failure to respond shall be considered rejection. Each mediation session may involve one or more view owner and one or more foliage owner at the discretion of the parties involved.

(3) 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 view owner and a foliage owner are unable to resolve the matter, or a foliage owner fails to respond to the mediation notice or comply with the mediation process as prescribed in the View Restoration Guidelines, view owner may proceed with a non-binding arbitration process.

(6) If, pursuant to an agreement between view owner and a foliage owner, 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 the BHMC on his/her property, a tree removal permit must first be obtained in accordance with the requirements of BHMC 10-3-2900.

**(C) Non-binding Arbitration.**

(1) If parties are unable to reach agreement through the Initial Neighbor Outreach process or through the mediation process, and view owner wishes to pursue remedies available in the Article, view owner shall offer by written notice to each foliage owner to submit the dispute to Non-binding Arbitration as prescribed in the View Restoration Guidelines. 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 view owner that view owner or view owner's representative shall offer to participate in non-binding arbitration with each potential foliage owner. The notification shall clearly identify the remedy sought by view owner and include a good faith estimate of the cost of the remedy.

(2) Acceptance of non-binding arbitration by each foliage owner shall be voluntary but each foliage owner shall have no more than thirty (30) days from service of written request for non-binding arbitration to accept or reject the offer of non-binding arbitration, unless foliage owner requests a ten (10) day extension in writing or the response period is otherwise extended by mutual agreement of the view owner and foliage owner.

(3) If foliage owner accepts non-binding arbitration with view owner, the parties shall agree on a specific arbitrator within twenty-one (21) days. If the parties are unable to agree on an arbitrator within this period of time, the City's designated arbitrator shall be retained. A conference with an arbitrator shall take place not more than seventy-five (75) days from the date an arbitrator is designated unless otherwise agreed to by the parties. If non-binding arbitration is rejected by a foliage owner, view owner shall provide the arbitrator with an affidavit signed under penalty of perjury indicating non-response of foliage owner and the arbitrator shall proceed with review, using the available information.

(4) View owner and each foliage owner shall comply with requirements in the View Restoration Guidelines regarding submittal of information to the arbitrator. The arbitrator may request additional information at the arbitrator's discretion.

(5) The arbitrator shall use the provisions of this Article and other relevant provisions of the Municipal Code to reach a fair resolution of the dispute, and shall submit a complete written report by certified mail to view owner and to each foliage owner that originally received written request from View Owner for non-binding arbitration. This report shall include the arbitrator's conclusions with respect to the required findings in this section, a

list of all recommended restorative actions, a schedule by which the restorative actions should be completed, and the allocation of the costs of restorative actions among the various parties pursuant to Section 10-8-109.

(6) If view owner and a foliage owner are unable to resolve the matter through non-binding arbitration, view owner may proceed with a public hearing process as set forth in Section 10-8-106.

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

**10-8-105 CONTINUATION OF PROCESS AFTER AGREEMENT.** If view owner and foliage owner enter into a private agreement at any point in the pre-hearing process, and that agreement is not adhered to by foliage owner and view owner wishes to pursue remedies available in the Article, view owner may continue with the pre-hearing 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 view owner wishes to pursue remedies available in the Article and more than two (2) years have passed since the date of the private agreement, view owner shall begin view restoration procedures with 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 stated 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 tree or trees subject to Section 10-3-2900 of the Beverly Hills Municipal Code, the reviewing authority shall conduct that review concurrent with review of the 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 completed the following procedures as required in this section:

Initial Neighbor Reconciliation;  
Mediation; and,  
Non-binding Arbitration.

(2) A copy of the arbitrator's report.

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

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

(5) Tree survey.

If an applicant does not submit the necessary information and the application remains incomplete for six (6) months, 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 to foliage owner including a copy of the application, View Restoration Guidelines and an invitation to have staff and the reviewing authority visit foliage owner's property with foliage owner's approval.

**(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 their 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 subject property, 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 their 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 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 satisfy the findings required for such permit.

**(H) Effective Date:**

Any decision of the reviewing authority 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) Appeals:**

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.

**(J) Required Findings:**

Reviewing Authority may issue a View Restoration Permit if it makes all of the following findings:

(1) Foliage to be removed is located on foliage owner's property, any part of which is within five hundred feet (500') of view owner's property.

(2) View owner has substantially complied with the Initial Neighbor Reconciliation, mediation, and non-binding arbitration procedures of this Article.

(3) 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) Protectable views from view owner's property that the reviewing authority deems relevant, individually and in combination, and the relative importance of the protectable views sought to be restored.

(ii) 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.

(iii) 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 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.

(iv) View Diminished by Other Factors. The extent to which the view has been or is diminished by factors other than private foliage.

(v) View from Primary Living Area. The view most often observed by the occupants of the property from the primary living area. Primary living area for the purposes of this section shall mean the portion or portions of a residence from which a view is observed most often by the occupants relative to other portions of the residence. The determination of primary living area is to be made on a case by case basis by the reviewing authority.

(vi) Integrity of the Landscape Plan. The importance of foliage to the integrity of an existing landscape plan.

(vii) Any findings and conclusions in the arbitrator’s report.

(4) The proposed trimming, removal, or removal with replacement of foliage will balance the reasonable expectation of view restoration of view owner with the reasonable expectation of privacy and security of foliage owner.

(5) Trimming, removal, or removal with replacement of foliage on foliage owner’s property will not have a substantial adverse impact on stability of a hillside, drainage of the property, erosion control, energy usage (loss of shade), or on biological resources such as wildlife habitat.

(6) Removal of a protected tree as defined in 10-3-2900 will not:

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

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

**(K) Restorative Action:**

The Planning Commission 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 view owner and foliage owner. Cost of subsequent maintenance of foliage on foliage owner’s property shall be borne by foliage owner unless otherwise agreed to by view 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 restore a protected view in accordance with the findings.

(3) Requiring replacement foliage when the reviewing authority finds that removal without replacement will cause a significant 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.

**(L) 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) View owner, using the mailing address set forth in the application;

(ii) Each foliage owner and each occupant of foliage owner's property as listed on a current Tax Assessor's roll.

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

**(M) Indemnification:**

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 LANDSCAPE:**

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

## **10-8-109 APPORTIONMENT OF COSTS:**

It is the intent that administrative fees referenced in this section shall reflect the actual cost of administrative activities required to implement the Article. 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 view owner. View owner shall pay the cost of a view restoration property survey or tree survey if such a survey is completed.

(2) Restorative Action. Cost of restorative action agreed upon by view owner and foliage owner shall be borne by view owner unless otherwise agreed to by foliage owner. Cost of subsequent maintenance of foliage on foliage owner's property shall be borne by foliage owner unless otherwise agreed to by the parties.

### **(B) Mediation**

(1) Procedural Costs. The City may provide up to three hours of free mediation cost for each application.

(2) The parties may elect to continue mediation beyond three hours with the cost borne by view owner unless otherwise agreed to by foliage owner. If the parties elect to choose their own mediator, the cost shall be borne by view owner unless otherwise agreed to by view owner and foliage owner. View owner shall pay the cost of a view restoration property survey or tree survey if such a survey is completed and shall bear costs associated with preparation of a mediation agreement, unless otherwise agreed to by the parties.

(3) Restorative Action. Foliage owner shall pay ten percent (10%) of the cost of restorative action resulting from mediation in which foliage owner participates, unless the parties agree to a different arrangement. Cost of subsequent maintenance of foliage on foliage owner's property shall be borne by foliage owner unless otherwise agreed to by the parties.

### **(C) Non-binding Arbitration**

(1) Procedural Costs. The cost of the arbitrator and preparation of the arbitrator's report shall be borne by view owner unless otherwise agreed to by the parties. View owner shall pay the cost of a view restoration property survey or tree survey on foliage owner's property if such a survey is completed, and shall bear costs associated with preparation of an agreement as a result of arbitration, unless otherwise agreed to by the parties.

(2) Restorative Action. Foliage owner shall pay twenty percent (20%) of the cost of restorative action resulting from non-binding arbitration in which foliage owner participates, unless the parties agree to a different arrangement. Foliage owner shall pay fifty percent (50%) of the cost of restorative action resulting from non-binding arbitration in which

foliage owner does not participate, unless the parties agree to a different arrangement. Cost of subsequent maintenance of foliage on foliage owner's property shall be borne by foliage owner unless otherwise agreed to by the parties.

**(D) View Restoration Permit with Public Hearing**

(1) Procedural Costs. View owner shall bear the cost of application fees and other applications 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) Foliage owner shall pay one hundred percent (100%) of the cost of restorative action if foliage owner did not participate in non-binding arbitration or did not agree in writing with the arbitrator's recommended restorative action and the reviewing authority finds restorative action is required in the same amount or more than recommended in the arbitrator's report. Foliage owner shall pay fifty percent (50%) of the cost of restorative action if foliage owner participated in non-binding arbitration but did not agree in writing with the arbitrator's recommended restoration and the reviewing authority finds restorative action is required in an amount less than required by the arbitrator's report.

(b) View owner shall pay one hundred percent (100%) of the cost of restorative action if foliage owner agreed in writing with the arbitrator's recommended restorative action and view owner proceeds to a public hearing seeking more restorative action than recommended by the arbitrator.

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

Section 4. The City Council hereby adds a new subsection F to section 2616 of Article 26 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code to read as follows, with all other parts of Section 2616 remaining without amendment:

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

Section 5. 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 6. The City Council hereby adopts a Negative Declaration and approves this Ordinance, and authorizes the Mayor to execute the Ordinance on behalf of the City.

Section 7. Trial Period. A report regarding the implementation of this ordinance shall be provided to the Planning Commission within 24 months of the effective date of the ordinance.

Section 8. 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 9. 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:

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JIMMY DELSHAD  
Mayor of the City of Beverly Hills,  
California

ATTEST:

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(SEAL)  
BYRON POPE  
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

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LAURENCE S. WIENER  
City Attorney

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JEFFREY KOLIN  
City Manager

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SUSAN HEALY KEENE AICP  
Director of Community Development

## **Attachment 2**

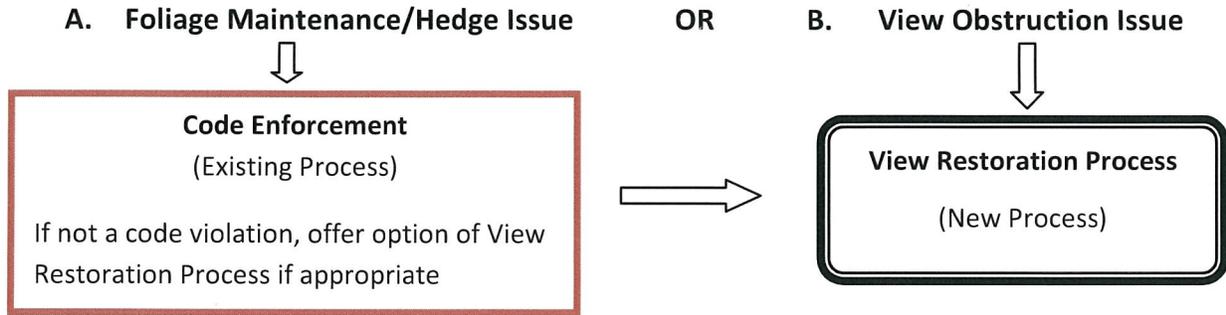
View Restoration Process Flow Chart

December 16, 2010

# VIEW RESTORATION PROCESS Flow Chart

## Process Recommended by Planning Commission

View obstruction complaint in Trousdale Estates; Code Enforcement Staff to Determine:



**View Restoration Process Guidelines:**  
 Provided by Community Development Staff and available online and at public counter; contains detailed instructions, graphics, forms and contacts to guide residents through process

### Pre-hearing Process

Residents are encouraged to use the guidelines to resolve issues. A Planning Commission public hearing cannot be scheduled unless this process is completed.

**Initial Neighbor Outreach**  
 Parties attempt to resolve conflict themselves using Guidelines

- View Owner sends certified notice to Foliage Owner(s)
- Foliage Owner has 30 days to respond
- Parties Meet

*View Owner responsible for costs*  
*No professional reports required*

Agreement → Process Ends  
 No Participation or No Agreement: → Mediation

**Mediation**  
 Neutral third party facilitates conflict resolution  
 City offers 2-3 hours mediation (must be approved by City Council)

- View Owner sends certified notice to Foliage Owner(s)/30-days to respond
- Parties Meet w/Mediator

*View Owner responsible for any mediation fees*  
*No professional reports required*

Agreement → Process Ends  
 No Participation or No Agreement → Non-Binding Arbitration

### Non-Binding Arbitration

Neutral legal professional reviews evidence; provides report

- View Owner sends certified notice to Foliage Owner(s)/30-days to respond
- Parties choose arbitrator; View Owner chooses if Foliage Owner non-participating
- Arbitrator renders written decision whether all parties participate or not

**View Owner responsible for fees; Restorative Costs are apportioned per formula in ordinance**

Agreement → Process Ends

No Participation or No Agreement → Planning Commission Hearing

### Restorative Action/Enforcement

If parties come to an agreement at any point during the above process but one or more party is not satisfied with disposition of the agreement, parties may seek a civil court remedy; the City will not enforce private agreements. Alternatively, a View Owner may choose to continue with the View Restoration Process at the step after the last step completed, provided certain deadlines are met.

## Public Hearing Process

### Planning Commission

Formal Application includes:

Proof that View Owner has completed the following procedures as required in this section:

Initial Neighbor Reconciliation, and  
Mediation, and  
Non-Binding Arbitration; A copy of the Arbitrator's Report.

Tree/Land Survey(s) required

Planning Commission may approve a View Restoration Permit if findings can be made.

Planning Commission may request any professional reports needed to render decision

Restorative Actions shall be determined by Planning Commission pursuant to judgment & reports

**Costs shall be allocated pursuant to formula in Code. All maintenance of foliage on Foliage Owners' property subsequent to restorative actions is to be performed and paid for by Foliage Owner unless otherwise agreed to by View Owner.**

### Appeal to City Council

Appellant shall bear cost of fee; cost of restorative actions shall be determined in the same way as at PC

### Resolution Enforcement

Resolutions would be enforced by City or could be an on-call code enforcement consultant, reimbursed through fees.