Attachment 2

City Council Agenda Report for August 7, 2012

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

Susan Healy Keene

Approved By