



AGENDA REPORT

Meeting Date: April 2, 2013

Item Number: E-1

To: Honorable Mayor & City Council

From: Susan Healy Keene, AICP, Director of Community Development
Michele McGrath, Principal Planner

Subject: A RESOLUTION OF THE COUNCIL OF THE CITY OF BEVERLY HILLS SETTING APPORTIONMENT PLAN AND DEPOSIT AMOUNT WITH REGARD TO LITIGATION THAT MIGHT ARISE AS A RESULT OF TROUSDALE VIEW RESTORATION PERMITS APPROVED BY THE CITY.

Attachments:

1. Proposed Resolution
2. Trousdale View Restoration Ordinance (pertinent sections)
3. City Council Agenda Report for February 19, 2013

RECOMMENDATION

Staff recommends that the City Council adopt a resolution setting a cost apportionment plan and deposit amount with regard to litigation that might arise as a result of Trousdale View Restoration permits approved by the City.

INTRODUCTION

At its February 19, 2013 meeting, the City Council held a public hearing to consider an ordinance amending the City's Trousdale View Restoration Program. The City Council moved the ordinance to second reading which is scheduled for the April 2, 2013 City Council meeting. At the February 19 meeting, the City Council also discussed recommendations of the City Council Trousdale View Restoration Ad Hoc Committee regarding fiscal responsibilities of Trousdale property owners who receive View Restoration Permits from the City. The attached resolution is intended to reflect the City Council's direction from that meeting with regard to this issue.

BACKGROUND

The Trousdale View Restoration program was developed through two ordinances:

- Trousdale Fence and Hedge Ordinance, adopted August 16, 2011: regulates maximum hedge and fence heights on certain slopes in Trousdale and includes a new definition of hedge for the purpose of the ordinance; and,
- 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.

Trousdale Fence and Hedge Ordinance

This ordinance amended fence and hedge standards in Trousdale and violations of the standards are addressed through the City's administrative enforcement procedures. Similar to other Municipal Code violations, costs associated with enforcement and litigation of the City's fence and hedge standards would be the responsibility of the City.

Trousdale View Restoration Ordinance

This ordinance created a process that could result in a City public hearing and decision (Trousdale View Restoration Permit). Initial enforcement of a Trousdale View Restoration Permit would be undertaken by the City and this is clearly stated in Section 10-8-108 of the adopted ordinance. The recent amendments to the ordinance clarify that the cost of initial enforcement would be borne by the City until a judicial process is initiated; at that point the view owner would be responsible for the cost of enforcing the View Restoration Permit including depositing an amount with the City to ensure the City is reimbursed for the judicial process costs. (See Attachment 2, Beverly Hills Municipal Code Section 10-8-106 M and Section 10-8-108)

Other cities with view preservation and restoration ordinances have experienced a high level of litigation associated with such ordinances. As a result, staff, residents and the City Council deemed it important to address this issue up front by clarifying the roles of the various parties with regard to litigation and the cost of litigation that may result from the issuance of View Restoration Permits. (See Attachment 2, Beverly Hills Municipal Code Section 10-8-106 L)

The Trousdale View Restoration Ordinance is clear that the City has control over decisions made by the City in connection with associated litigation. The Ordinance is also clear that costs attributable solely to defending the legality of the Trousdale View Restoration ordinance would not be charged to a view owner. On the other hand, litigation costs attributable to the issuance of a Trousdale View Restoration Permit are to be apportioned according to City Council resolution. In addition, the ordinance requires the City Council to set by resolution, an amount to be deposited with the City by a view owner to ensure the City is reimbursed for the view owner's portion of litigation costs. This report addresses the Trousdale View Restoration Ordinance's directive that the City Council shall adopt a resolution that apportions litigation costs and sets a litigation cost deposit amount (key ordinance language below).

BHMC 10-8-106 L:

"The view owner shall fulfill this obligation [to defend, indemnify and hold harmless the city with regard to litigation] by depositing with the city an amount established by City

Council resolution and allowing that amount to be drawn upon by the city to reimburse the city for (i) its actual costs to defend any action and (ii) any damages or penalties assessed to the city as a result of the action (collectively, the "city costs"). Alternatively, the view owner may deposit with the city security, satisfactory in form and content to the City Attorney, guaranteeing reimbursement to the city of the city costs up to the amount established by City Council resolution."

DISCUSSION

Apportionment of Litigation Costs

The following litigation cost apportionment plan was recommended by the City Council View Restoration Ad Hoc Committee and presented to the City Council at the February 19, 2013 public hearing:

<u>Litigation Costs</u>	<u>Responsible Party</u>
0 - \$100,000	View Owner bears cost
\$100,001 – \$200,000	City bears cost of that portion of total litigation costs exceeding \$100,000
\$200,001 – \$300,000	View Owner and City split the cost of that portion of the total litigation costs between \$200,000 and \$300,000
Over \$300,000	City bears that portion of the cost exceeding \$300,000.

This plan would result in a total expenditure cap of \$150,000 in litigation costs for a view owner and is recommended to the City Council in the draft resolution.

Enforcement and Litigation Cost Deposit

The Trousdale View Restoration Permit procedures require a view owner to provide a deposit to the City if a judicial process is required for the City to enforce a View Restoration Permit or if litigation is initiated in connection with issuance of a View Restoration Permit. A deposit amount of \$150,000 was recommended by the Ad Hoc Committee and presented to the City Council at the February 19, 2013 public hearing. This figure would cover the potential cost to the City of conducting a judicial process to enforce a View Restoration Permit and would cover a view owner's responsibility to the City for costs associated with litigation of a View Restoration Permit. A deposit amount of \$150,000 is recommended to the City Council in the draft resolution.

A view owner may deposit the sum with the City or, pursuant to the Trousdale View Restoration Permit procedures, the view owner may deposit with the City a security guaranteeing reimbursement to the City up to the amount established through the resolution (see "Apportionment of Litigation Costs" above).

Review of Trousdale View Restoration Ordinance

At the February 19, 2013 City Council meeting, the Council requested that staff provide a review of the Trousdale View Restoration Ordinance within two years of adoption of the amendments or sooner if deemed necessary. The draft resolution includes a requirement for staff to return to the City Council within two years to review the apportionment plan and deposit amount to determine how well the schedule has worked and to adjust the dollar thresholds and deposit amount if necessary.

Staff is committed to seeking ways to further assist view owners with the deposit such as accepting either a bond or letter of credit as a security deposit, or, for deposits of cash, placing the deposits in an interest-bearing account that would benefit the view owner.

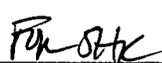
FISCAL IMPACT

The fiscal impact of the Trousdale View Restoration ordinance on the City has been discussed at City Council public hearings, most recently on February 19, 2013, and this resolution is the result of City Council direction at these hearings. It is anticipated that the adopted Trousdale View Restoration Ordinance will result in City enforcement actions and possible litigation that will have a fiscal impact on the City. Through the proposed resolution, the City seeks to reduce some litigation costs by sharing some litigation costs with view owners who have been granted View Restoration Permits by the City. Depending on the number of legal challenges the cost of litigation to the City could be substantial.

PUBLIC NOTICE

A public hearing notice was mailed on March 19, 2013 to all interested parties who have on file with the City a written request for mailed notice of meetings on new or increased fees or service charges. In addition to the required notice, staff has emailed meeting notices and staff reports to a list of local interested parties. As of the time of this report no written communications have been received

Susan Healy Keene, AICP
Director of Community Development

 
Approved By _____

Attachment 1

City Council Resolution

RESOLUTION NO. 13-R-

A RESOLUTION OF THE COUNCIL OF THE CITY OF BEVERLY HILLS SETTING APPORTIONMENT PLAN AND DEPOSIT AMOUNT WITH REGARD TO LITIGATION THAT MIGHT ARISE AS A RESULT OF TROUSDALE VIEW RESTORATION PERMITS APPROVED BY THE CITY.

The Council of the City of Beverly Hills hereby finds, resolves, and determines as follows:

Section 1. On December 6, 2011, the City Council adopted the Trousdale View Restoration Ordinance that provides a set of regulations and a discretionary review process to assist property owners in restoring and maintaining views in the Trousdale Estates area of the City. The City Council conducted duly noticed public hearings on August 7, 2012 and February 19, 2013 to consider revisions to the ordinance. At the February 19, 2013 public hearing, the City Council introduced an ordinance amending the Trousdale View Restoration Ordinance. The ordinance, as introduced, provides that the City Council shall establish by resolution a deposit amount that will fulfill the obligation of a view owner to reimburse the City for costs to defend the City from any claim resulting from issuance of a View Restoration Permit. The ordinance further provides that the City Council shall also establish by resolution a deposit amount that will fulfill the obligation of a view owner to reimburse the City for costs to enforce a View Restoration Permit through the judicial process. A View Owner shall not be responsible for reimbursing the City for any enforcement costs incurred prior to the initiation of a judicial process.

Section 2. Pursuant to Section 10-8-106 L of Chapter 8 of Title 10 of the Beverly Hills Municipal Code, the City Council hereby establishes the following litigation cost

apportionment plan with regard to payment of costs for litigation arising from City issuance of a View Restoration Permit:

<u>Total Litigation Costs</u>	<u>Responsible Party</u>
0 - \$100,000	View Owner bears cost
\$100,001 – \$200,000	City bears cost of that portion of total litigation costs exceeding \$100,000
\$200,001 – \$300,000	View Owner and City split the cost of that portion of the total litigation costs between \$200,000 and \$300,000
Over \$300,000	City bears that portion of the total litigation costs exceeding \$300,000.

Section 3. Pursuant to Sections 10-8-106 L and 10-8-106 M of Chapter 8 of Title 10 of the Beverly Hills Municipal Code, the City Council hereby establishes that an amount of \$150,000.00 shall be deposited with the City by a View Owner to reimburse the City for City costs to defend any action challenging a View Restoration Permit and to reimburse the City for any damages or penalties assessed to the City as a result of that action. Similarly, in the event that the City must initiate a judicial process to enforce a View Restoration Permit, the View Owner shall deposit \$150,000 to reimburse the City for costs to enforce the View Restoration Permit through the judicial process.

Upon resolution of any challenge to a View Restoration Permit, and upon completion of any judicial process to enforce a View Restoration Permit, the City shall return any unused portion of the deposit made pursuant to Sections 106 L and 106 M.

Section 4. Notice of the establishment of a cost apportionment plan and deposit amount and of the public meeting was mailed on March 19, 2013 to interested parties who have on file with the City a written request for mailed notice of meetings on new or

increased fees or service charges. On April 2, 2013 the City Council considered this resolution at a duly noticed public meeting. Evidence, both written and oral, was presented at said meeting.

Section 5. The City Clerk shall certify to the passage, approval, and adoption of this resolution, and shall cause this resolution and his Certification to be entered in the Book of Resolutions of the City of Beverly Hills.

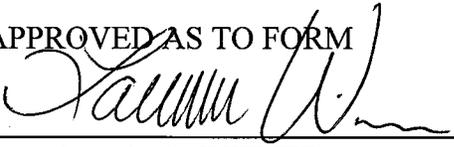
Adopted:

JOHN A. MIRISCH
Mayor of the City of Beverly Hills,
California

ATTEST:

BYRON POPE (SEAL)
City Clerk

APPROVED AS TO FORM



LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT

JEFFREY C. KOLIN
City Manager



SUSAN HEALY KEENE
Director of Community Development

Attachment 2

Trousdale View Restoration Ordinance

(Pertinent sections of revised ordinance as presented to the City Council for approval on the April 2, 2013 Consent Calendar)

ORDINANCE NO. 13-O- _____

AN ORDINANCE OF THE CITY OF BEVERLY HILLS
AMENDING BEVERLY HILLS MUNICIPAL CODE SECTION
10-8-106 REGARDING TROUSDALE VIEW RESTORATION
PERMIT PROCEDURES AND AMENDING BEVERLY HILLS
MUNICIPAL CODE SECTION 10-3-2616 REGARDING
DEVELOPMENT STANDARDS FOR WALLS, FENCES AND
HEDGES IN THE TROUSDALE ESTATES AREA OF THE
CITY

THE CITY COUNCIL OF THE CITY OF BEVERLY HILLS HEREBY

ORDAINS AS FOLLOWS:

Section 1. The City Council considered this Ordinance at a duly noticed public hearing on February 19, 2013 and, at the conclusion of the hearing, introduced this Ordinance. Evidence, both written and oral, was presented during the hearing.

Section 2. The Ordinance has previously been environmentally reviewed pursuant to the provisions of the California Environmental Quality Act (Public Resources Code Sections 21000, et seq. ("CEQA")), the State CEQA Guidelines (California Code of Regulations, Title 14, Sections 15000, et seq.), and the City's Local CEQA Guidelines. Based on the initial study, the adopted negative declaration, the comments received thereon, and the record before the Planning Commission, the Planning Commission found there were no substantial changes to the Ordinance or the environment that would require the preparation of a subsequent negative declaration. The Ordinance has been revised by the City Council subsequent to the Planning Commission review because the City Council found that minor technical changes or additions were necessary to achieve the goal of the ordinance to assist Trousdale property owners to restore and maintain views; however, none of the conditions described in CEQA Guidelines Section 15162 calling for the preparation of a subsequent negative declaration have occurred. An addendum to the negative declaration has been prepared pursuant to Section 15164 of the

CEQA Guidelines. This allows for the lead agency to prepare an addendum to an adopted negative declaration if only minor technical changes or additions are necessary or none of the conditions described in CEQA Guidelines Section 15162 calling for the preparation of a subsequent EIR or negative declaration have occurred: there are no changed circumstances or new information, which were not known at the time the negative declaration was adopted, that would require the preparation of a subsequent negative declaration or major revisions to the adopted negative declaration. Therefore, the negative declaration and addendum represent the independent judgment of the City and there is no substantial evidence that the approval of the Ordinance, as modified, may have a significant effect on the environment. The City Council hereby adopts the addendum to the negative declaration. The documents and other material which constitute the record on which this decision is based are on file with the City's Community Development Department, 455 N. Rexford Drive, Beverly Hills, California, 90210. The custodian of records is the Director of Community Development.

Section 3. The City Council hereby amends Section 106 L of Chapter 8 of Title 10, and adds Section 106 M of Chapter 8 of Title 10 of the Beverly Hills Municipal Code to read as follows:

"L. Indemnification: View Owner shall defend, indemnify and hold harmless the City, its agents, officers, attorneys and employees from any claim, action or proceeding brought by a party other than the view owner 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 or that otherwise challenges, or seeks damages resulting from, the issuance, defense,

implementation, or enforcement of a View Restoration Permit (collectively "action").

The View Owner shall fulfill this obligation by depositing with the City an amount established by City Council resolution and allowing that amount to be drawn upon by the City to reimburse the City for (i) its actual costs to defend any action and (ii) any damages or penalties assessed to the City as a result of the action (collectively, the "city costs"). Alternatively, the View Owner may deposit with the City security, satisfactory in form and content to the City Attorney, guaranteeing reimbursement to the City of the city costs up to the amount established by City Council resolution. The City shall not draw upon such deposit or otherwise be reimbursed for any city costs attributable solely to defending the legality of the provisions of Title 10, Chapter 8. Nothing in this reimbursement obligation shall provide to the View Owner any control over decisions made by the City in connection with an action.

M. Enforcement Costs: View Owner shall also be responsible for reimbursing the City for any and all costs incurred in enforcing a View Restoration Permit through the judicial process, except for those costs of enforcement as the City may recover from a Foliage Owner. View Owner shall not be responsible for reimbursing the City for any costs incurred prior to the initiation of a judicial process. The View Owner shall fulfill this obligation by depositing with the City an amount established by City Council resolution and allowing that amount to be drawn upon by the City

to reimburse the City for its actual costs of enforcement. Alternatively, the View Owner may deposit with the City security, satisfactory in form and content to the City Attorney, guaranteeing reimbursement to the City of its enforcement costs up to the amount established by City Council resolution. Nothing in this reimbursement obligation shall provide to the View Owner any control over decisions made by the City or the City Prosecutor in connection with the enforcement process. Additionally, nothing in this section is intended to modify the provisions of Title 10, Chapter 8, Section 108.”

Attachment 3

City Council Agenda Report

Amendments to Trousdale View Restoration Ordinances

February 19, 2013



AGENDA REPORT

Meeting Date: February 19, 2013

Item Number: D-2

To: Honorable Mayor & City Council

From: Susan Healy Keene, AICP, Director of Community Development
Michele McGrath, Principal Planner

Subject: AN ORDINANCE OF THE CITY OF BEVERLY HILLS AMENDING BEVERLY HILLS MUNICIPAL CODE SECTION 10-8-106 REGARDING TROUSDALE VIEW RESTORATION PERMIT PROCEDURES AND AMENDING BEVERLY HILLS MUNICIPAL CODE SECTION 10-3-2616 REGARDING DEVELOPMENT STANDARDS FOR WALLS, FENCES AND HEDGES IN THE TROUSDALE ESTATES AREA OF THE CITY.

Attachments:

1. Proposed Ordinance (Amendments to Trousdale Ordinances)
2. City Council Agenda Report for August 7, 2012
3. Trousdale Fence and Hedge Height Ordinance, adopted 8/16/11
4. Trousdale View Restoration Ordinance, adopted 12/6/11
5. Ordinance Revising Permit Procedures for Trousdale View Restoration Permit, adopted
6. Initial Study and Negative Declaration (environmental review)
7. Addendum to Negative Declaration

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 and Amending Beverly Hills Municipal Code Section 10-3-2616 Regarding Development Standards for Walls, Fences and Hedges in the Trousdale Estates Area of the City" be introduced and read by title only.

INTRODUCTION

At its August 7, 2012 meeting, the City Council held a public hearing to consider amendments 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.

At that meeting, the City Council approved a change in the public notice requirement for a View Restoration Permit hearing, and also reviewed a number of other changes to the two ordinances as recommended by the Planning Commission. The City Council provided direction for the proposed amendments below to be returned to the City Council for consideration after review of two other proposed changes (cap on litigation costs and definition of "hedge") by a City Council Ad Hoc Committee composed of Mayor Brien and Councilmember Brucker.

City Council-Requested Amendments (included in the attached draft ordinance)

Trousdale View Restoration Ordinance (BHMC 10-8-100)

- The City will pay to defend the legality of the provisions of the Trousdale View Restoration Ordinance (also referred to as defending a facial challenge) and the View Owner will pay to defend a challenge to a City View Restoration Permit decision. The City Council directed the Ad Hoc Committee to separately consider a cap on View Owner costs for the latter situation.
- The current ordinance requires the City to ensure initial compliance with a View Restoration Permit (BHMC Section 10-8-108). New Code language would clarify that the City will be responsible for costs incurred to enforce a City View Restoration Permit, prior to initiation of a judicial process (prosecution). The View Owner would pay for judicial process costs (prosecution costs) to enforce the Permit, if there is non-compliance at the conclusion of the non-judicial enforcement process.

Trousdale Fence and Hedge Height Ordinance (BHMC 10-3-2606)

- "Two or more plants" (including trees) growing together shall be part of the definition of "hedge" (this is a change from the current "three or more plants").
- If the City has determined that two or more plants have become a hedge and violated the provisions of this Code section on three separate occasions within a two-year period, the plants shall be removed. Staff has added language that would allow one plant to remain since, pursuant to the proposed definition of "hedge," one plant would not constitute a hedge.

City Council Direction to the Ad Hoc Committee to Consider:

- An appropriate amount for a cap on a View Owner's potential litigation costs with regard to a View Restoration Permit.

- Further revising the definition of hedge used in the Trousdale fence and hedge ordinance, particularly the word "obscure," with the goal of clarifying the definition and capturing in a City Code Enforcement process more properties where foliage may be potentially disrupting or could potentially disrupt a view.

BACKGROUND

- August 2011 The Trousdale Fence and Hedge Ordinance was adopted
- December 19, 2011 The City Council conducted a three-month review of the ordinance at a Study Session. 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.
- January 23, 2012 The Ad Hoc Committee of then-Mayor Brucker and then-Vice Mayor Brien met 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.
- June 14, 2012 The Planning Commission held a public hearing 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.
- August 7, 2012 The City Council held a public hearing to discuss amendments recommended by the Planning Commission; the City Council approved a change to the public notice requirements for Trousdale View Restoration Permits and directed the City Council View Restoration Ad Hoc Committee (Mayor Brien and Councilmember Brucker) to discuss certain proposed changes and to make recommendations.
- September 24, 2012 The City Council View Restoration Ad Hoc Committee held a meeting; discussion was continued to an additional Ad Hoc meeting.
- January 14, 2013 A second Ad Hoc Committee meeting was held; the Committee agreed on recommendations to City Council as provided in this report.

DISCUSSION

Trousdale View Restoration Ordinance: Cap on View Owner's Potential Litigation Costs

The indemnification language in the currently adopted 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 (see "Indemnification" language below). The City Council, at its August 7, 2012 meeting, directed staff to revise the Trousdale View Restoration Ordinance so the City will pay to defend a facial challenge to the ordinance and the View Owner will pay to defend a challenge to a City View Restoration Permit decision. The City Council directed the Ad Hoc Committee to separately consider a cap on View Owner costs for the latter situation.

After two Ad Hoc Committee meetings, with participation by interested Trousdale residents, the Ad Hoc Committee recommended the following schedule for payment of litigation costs associated with a View Restoration Permit:

0 - \$100,000	View Owner bears cost
\$101,000 – \$200,000	City bears cost
\$201,000 – \$300,000	View Owner and City split the cost
Over \$301,000	City bears cost.

The Ad Hoc Committee proposed including in the Trousdale View Restoration Ordinance a review of this schedule in two years to determine the how well this schedule has worked and to adjust the dollar thresholds if necessary.

The Ad Hoc Committee also discussed requiring a View Owner to deposit an amount of money with the City to ensure the City would be reimbursed for its portion of the litigation costs. The Committee agreed to recommend an amount of \$150,000 since this would cover up to \$250,000 in litigation expenses pursuant to the payment schedule above, and \$250,000 in expenses could be reasonably expected to be incurred by this type of litigation. The Committee also discussed ways the City could assist View Owners with the deposit amount. As a result, the proposed amendment includes language allowing a View Owner to deposit with the City security, satisfactory to the City, guaranteeing reimbursement to the City of the City's costs up to the amount established in the above payment schedule. The Committee further discussed additional ways to assist View Owners with the deposit of bond such as depositing a View Owner's bond in an interest-bearing account that would benefit the View Owner.

The attached draft ordinance would revise the "indemnification" section of the Trousdale View Restoration Ordinance (BHMC 10-8-106 L) to refer to a City Council resolution that sets out the litigation payment schedule and the deposit amount required of a View Owner involved in View Restoration Permit litigation. Staff recommends setting out dollar figures in a resolution rather than including them in a Zoning Code amendment since any future changes to the municipal code would require a lengthier process than a change to a resolution. Staff proposes presenting a resolution to the City Council in April 2013, incorporating direction as provided at this meeting.

Currently Adopted Code section regarding Indemnification (BHMC Sec. 10-8-106 L):

"Indemnification: View Owner shall defend, indemnify and hold harmless the City, its agents, officers, attorneys and employees from any claim, action or proceeding (collectively "action") against the City or its agents, officers, attorneys or employees to attack, set aside, void or annul the entitlements that may be granted by the City through issuance of a View Restoration Permit, and for any and all costs incurred in enforcing the View Restoration Permit, except for those costs of enforcement as the city may recover from a Foliage Owner. Indemnitor shall reimburse the City for any court costs and attorney 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."

Proposed Code sections regarding Indemnification and Enforcement Costs, included in the attached draft Ordinance (Attachment 1):

"L. Indemnification: View Owner shall defend, indemnify and hold harmless the City, its agents, officers, attorneys and employees from any claim, action or proceeding brought by a party other than the view owner 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 or that otherwise challenges, or seeks damages resulting from, the issuance, defense, implementation, or enforcement of a View Restoration Permit (collectively "action").

The View Owner shall fulfill this obligation by depositing with the City an amount established by City Council resolution and allowing that amount to be drawn upon by the City to reimburse the City for (i) its actual costs to defend any action and (ii) any damages or penalties assessed to the City as a result of the action (collectively, the "city costs"). Alternatively, the View Owner may deposit with the City security, satisfactory in form and content to the City Attorney, guaranteeing reimbursement to the City of the city costs up to the amount established by City Council resolution. The City shall not draw upon such deposit or otherwise be reimbursed for any city costs attributable solely to defending the legality of the provisions of Title 10, Chapter 8. Nothing in this reimbursement obligation shall provide to the View Owner any control over decisions made by the City in connection with an action.

M. Enforcement Costs: View Owner shall also be responsible for reimbursing the City for any and all costs incurred in enforcing a View Restoration Permit through the judicial process, except for those costs of enforcement as the City may recover from a Foliage Owner. View Owner shall not be responsible for reimbursing the City for any costs incurred prior to the initiation of a judicial process. The View Owner shall fulfill this obligation by depositing with the City an amount established by City Council resolution and allowing that amount to be drawn upon by the City to reimburse the City for its actual costs of enforcement. Alternatively, the View Owner may deposit with the City security, satisfactory in form and content to the City Attorney, guaranteeing reimbursement to the City of its enforcement costs up to the amount established by City Council resolution.

Nothing in this reimbursement obligation shall provide to the View Owner any control over decisions made by the City or the City Prosecutor in connection with the enforcement process. Additionally, nothing in this section is intended to modify the provisions of Title 10, Chapter 8, Section 108."

Amendments 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.

The City Council, at its August 7, 2012 meeting, directed staff to return with an ordinance reducing the number of plants/trees included in the definition of hedge from three to two plants and clarifying that once a growth of foliage is determined to be a hedge, it is always considered a hedge for the purposes of this Code section. Three code enforcement actions with regard to the same hedge within a two-year period will require removal of that hedge. The Ad Hoc Committee supported these recommendations and, pursuant to City Council direction, the Committee recommended further revising the definition as follows:

"Hedge, as used in this paragraph F, shall be defined as growth of vegetation, taller than twelve inches (12"), consisting of ~~three (3)~~ two (2) or more individual plants, that is cultivated or maintained in such a manner so that the horizontal distance between the nearest points of two (2) plants is less than eight feet (8'). ~~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 Ad Hoc Committee discussed whether eight, nine or ten feet is the appropriate horizontal distance and staff recommends eight feet since it is a substantial change from the existing definition and should achieve the City Council's goal of assisting more Trousdale residents with a City code enforcement process.

City Enforcement of Hedges in Trousdale

Staff believes the proposed changes in the definition of hedge in the Trousdale Fence and Hedge Height Ordinance will result in additional code enforcement cases that might have otherwise been referred to the View Restoration Permit process. These cases generally take many hours to resolve, as reported previously by staff, but staff has also reported a high confidence level that most (but not all) current cases can be resolved successfully. It is noted that a majority of property owners taking advantage of the City hedge enforcement process will still need to go through a View Restoration Permit process to fully address foliage that may be disrupting a view.

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 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 Fence and Hedge Height 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 effect on the environment was identified. An addendum to the negative declaration has been prepared (Attachment 7) pursuant to Section 15164 of the CEQA Guidelines. This allows the City to prepare an addendum to an adopted negative declaration if only minor technical changes or additions are necessary and none of the conditions described in CEQA Guidelines Section 15162 calling for the preparation of a subsequent EIR or negative declaration have occurred. The negative declaration and addendum represent the independent judgment of the City and there is no substantial evidence that the approval of the Ordinance may have a significant effect on the environment.

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. In addition, if there are challenges to the City's decisions implementing the View Restoration Ordinance, the proposed amendments place an increased burden on the City to bear the cost of defending against the challenges.

PUBLIC NOTICE

A public hearing notice was mailed on February 8, 2013 to all property owners in Trousdale Estates. Notice was published in the *Beverly Hills Courier* and the *Beverly Hills Weekly*, two newspapers of local circulation. In addition to the required notice, staff has emailed meeting notices and staff reports to a list of interested parties. As of the time of this report no additional letters have been received by the Planning Division.

Susan Healy Keene, AICP
Director of Community Development


Approved By