



AGENDA REPORT

Meeting Date: April 2, 2013
Item Number: G-7
To: Honorable Mayor & City Council
From: City Attorney
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. Ordinance

RECOMMENDATION

The City Attorney recommends that the City Council adopt the ordinance.

INTRODUCTION

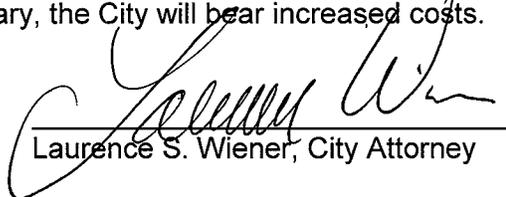
This ordinance revises the definition of "hedge" for view restoration purposes to more broadly include groupings of individual plants. The ordinance also revises provisions of the view restoration ordinance allocating enforcement costs between the City and view owners.

DISCUSSION

At the City Council meeting of February 19, 2013, the City Council conducted a public hearing and, upon conclusion of the hearing, introduced this ordinance.

FISCAL IMPACT

The proposed ordinance broadens the definition of hedge, which may result in a larger case load for code enforcement officers and possible additional costs due to prosecutions of code violations. The ordinance also shifts to the City a greater share of the cost of defense and enforcement of view restoration permits. Should litigation of one or more view restoration permits become necessary, the City will bear increased costs.



Laurence S. Wiener, City Attorney

Attachment 1

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.”

Section 4. The City Council hereby amends Subsection 2 of Section 2616 F “Hedges” and adds subsection 3 to Section 2616 F of Chapter 3 of Title 10 of the Beverly Hills Municipal Code to read as follows:

“2. Hedges: Except as permitted by an agreement between adjacent downslope and upslope neighbors, hedges planted outside of the front yard setback on a slope between adjacent downslope and upslope properties where the upslope property faces the Los Angeles Area Basin shall not extend above the higher of:

- i. The finished grade of the level pad on the upslope property; or,
- ii. Fourteen feet (14’) from the level pad of the downslope property.

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

If the City determines that two or more plants have become a hedge and violated the provisions of this section on three separate occasions within a two year period, then the plants shall be removed by the Foliage Owner.

3. Definitions:

'Hedge', as used in this paragraph F, shall be defined as growth of vegetation taller than twelve inches (12"), consisting of two (2) or more individual plants, including without limitation trees, that are cultivated or maintained in such a manner so that the horizontal distance between the nearest points of two plants is less than eight feet (8').

'Located in a line of sight from the upslope property to the Los Angeles Area Basin', as used in this Paragraph F, means that the plane established by the fence or hedge, either at the height of the fence or hedge or if extended upward, would intersect a sight line from the upslope property to the Los Angeles Area Basin."

Section 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. Publication. The City Clerk shall cause this Ordinance to be published at least once in a newspaper of general circulation published and circulated in the City within fifteen (15) days after its passage in accordance with Section 36933 of the Government

Code, shall certify to the adoption of this Ordinance, and shall cause this Ordinance and his certification, together with proof of publication, to be entered in the Book of Ordinances of the Council of this City.

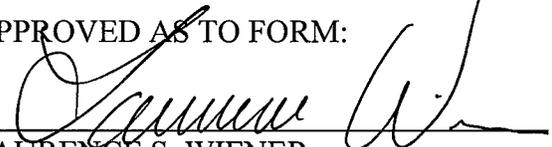
Section 7. This Ordinance shall go into effect and be in full force and effect at 12:01 a.m. on the thirty-first (31st) day after its passage.

Adopted:
Effective:

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

ATTEST:

(SEAL)
BYRON POPE
City Clerk

APPROVED AS TO FORM:


LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

JEFFREY C. KOLIN
City Manager



SUSAN HEALY KEENE, AICP
Director of Community Development