



Planning Commission Report

Meeting Date: May 26, 2011

Subject: An ordinance of the City of Beverly Hills amending the Beverly Hills Municipal Code to establish regulations regarding the restoration and maintenance of certain defined views from single-family residential property in the Trousdale Estates area of the City that are substantially impaired by certain foliage maintained on other private property or properties.

Recommendation: Conduct public hearing, reconsider draft ordinance and make a recommendation to the City Council.

REPORT SUMMARY

Pursuant to a request from a City Council/Planning Commission Ad Hoc Committee on view restoration, the draft Trousdale View Restoration Ordinance, recommended to the City Council by the Planning Commission, has been referred to the Planning Commission for review with the benefit of comments from the Ad Hoc Committee. It is requested that the Planning Commission determine whether it wishes to revise its prior recommendation regarding the ordinance. Should the Planning Commission need additional meetings to review potential changes to the draft ordinance, the Ad Hoc Committee requested that the Commission move forward with any part of the ordinance that does not require further consideration. Attached is the prior ordinance showing some changes as recommended by staff based on additional review pursuant to the Ad Hoc committee discussion.

BACKGROUND

Pursuant to City Council direction, on May 28, 2009, the Planning Commission began to consider regulations addressing residential views obstructed by foliage in the City's hillside areas. The discussion ultimately included seven public meetings with dozens of speakers, eight Planning Commission subcommittee meetings and two bus tours.

An ordinance was recommended to the City Council by the Planning Commission in December, 2010, representing a year and a half of work by the Planning Commission and City residents to develop regulations with broad support. The regulations define key terms such as "protectable view" and "viewing area," establish findings to determine what constitutes substantial disruption of a protected view, and establish criteria to determine appropriate view restoration actions. To apply the regulations to specific cases, the Planning Commission proposed a view restoration review process with several

Attachment(s):

1. Planning Commission Adopted Resolution
2. Proposed Ordinance
3. Ad Hoc Committee Packet 4-20-11
4. View Restoration Process/Cost Tables C and D

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standards for Trousdale Estates to include additional height limits for foliage such as hedges that meet certain criteria related to obstruction of views.

After an initial City Council/Planning Commission liaison meeting had been held with Mayor Brucker and Vice Mayor Willie Brien in January, 2011, the draft ordinance was introduced to the City Council in a study session on January 25, 2011. The City Council expressed support for the proposed regulations but concern about the potential cost to view owners and to the City for the proposed review process, including the time and cost involved to enforce City decisions on view restoration cases. To address these concerns, the City Council directed that an Ad Hoc Committee of two Councilmembers and two Planning Commissioners meet with staff and interested members of the community to discuss these issues and report back to the City Council.

Ad Hoc Meeting

The Ad Hoc Committee consisting of Mayor Brucker, Vice Mayor Brien, and Planning Commissioners Cole and Corman met on April 20, 2011. Also present were Assistant City Manager Aluzri, City Attorney Wiener, Planning staff and members of the public. Staff provided the Ad Hoc Committee with additional information about the cost of various review processes (attached) and more general information about costs to the City. The participating Councilmembers offered the following comments:

- Support for expanding a non-discretionary, Code enforcement solution to view obstruction problems to provide relief to some property owners without encouraging the unnecessary trimming or removal of trees that may not actually block views;
- General support for the Planning Commission-recommended view restoration review process, including Planning Commission review of view restoration cases, with the suggestion that the Planning Commission consider including a City Advisory Opinion early in the process to allow the parties the benefit of a quicker and less expensive third-party assessment of view obstruction that may encourage the parties to negotiate an earlier resolution of issues;
- Include in the Planning Commission-recommended process the option for parties to choose binding arbitration at any time (binding arbitration off-ramp);
- Support for the City administering enforcement of Planning Commission decisions; the City would attempt to recoup enforcement costs from foliage owners;
- Support for reducing the cost of the process for view owners where possible, including further transfer of costs to foliage owners, particularly in cases where foliage owners are uncooperative in the process; and,
- Immediately move forward with any part of the ordinance that may allow view owners to address view obstruction more immediately.

The City Attorney advised the Ad Hoc Committee of the legal exposure to the City if it adopts a view restoration process, because these types of ordinances are often subject to facial challenges, in addition to challenges to how the ordinance is applied to specific situations. Legal exposure rises if a view restoration process includes Planning Commission review of individual cases because the City can be drawn into any challenge to a decision made pursuant to the ordinance. Cases that end up in front of the Planning Commission will be those in which parties could not reach resolution at an earlier level and there will be at least one party, possibly more, who will likely not be satisfied by a Planning Commission decision, resulting in a higher likelihood that such cases could result in litigation and high costs for the City. The Ad Hoc Committee asked for additional information about the cost to the City of the view restoration process including the cost for enforcement of decisions resulting from the process, and the cost for the City to attempt to recover its enforcement costs.

Code Enforcement Solution

A code enforcement solution means adding objective standards to the Code that are clear and measurable and do not require discretionary review. An example would be a maximum height for hedges. The ordinance recommended by the Planning Commission includes an amendment to the "Walls, Hedges and Fences" section of the Trousdale development standards to provide a code enforcement solution to the problem of tall hedges that grow in such locations as to completely obscure neighbors' views. The language recommended by the Planning Commission is as follows:

"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 adjacent upslope property in any area where the upslope property may have a view of the Los Angeles Basin."

This would limit hedges within five feet of an upslope property line to a maximum height that does not exceed the height of the level pad of the upslope neighbor where the upslope neighbor's property may have a protectable view.

The Ad Hoc Committee discussed potential ways to expand the code enforcement solution to capture as many obvious view obstruction situations as possible. Since a code enforcement solution is a "one size fits all" solution and includes no discretionary review, it is important to consider all potential negative results and unintended consequences prior to adopting such regulations.

The following potential opportunities to expand a code enforcement solution were suggested by the Ad Hoc Committee:

- Expand the proposed hedge height amendment to include a larger area (e.g. within *ten* horizontal feet from the edge of the level pad).

The Planning Commission View Restoration Subcommittee developed the five-foot standard after extensive review, basing it on the five-foot minimum required side setback in Trousdale, observation in the field and the desire, pursuant to the purpose of the ordinance, to balance the need for privacy with the desire for views. Staff has again reviewed this issue and has concluded that expanding the area subject to this standard would result in unintended consequences including the inability of some residents with minimum side

setbacks and a low slope differential between neighboring pads to have a privacy hedge in the side setback. Staff would recommend the Planning Commission discuss whether walls and fences should be subject to the same standard proposed for hedges since tall hedges currently near property lines and blocking views could be replaced by opaque walls or fences from 6 feet to eight feet tall, depending on location, pursuant to Code.

- Consider how to include standards for tree hedges which are not currently regulated in the Code.

The Planning Commission View Restoration Subcommittee and full Commission discussed extensively the merits of developing a definition for tree hedge or "hedgerow" and regulating hedgerows like hedges. Staff revisited this issue and again concluded, in concurrence with the Planning Commission's previous discussion, that creating a code standard that would require that trees be reduced in height to a certain level, without a determination that the trees do, in fact, substantially disrupt a protectable view, would result in the removal of mature trees that may not block a view.

- Creating a "safe harbor" for views (designating a plane over which foliage must be cut) that would go along with the Planning Commission-recommended "safe harbor" for trees (a plane under which foliage is not subject to a view restoration process). The area in between these two planes would be the area subject to a view restoration process.

After studying the suggestion it is staff's conclusion that a Code standard that would required that trees in certain locations, above a certain plane, must be cut to a pre-determined height would not be consistent with the draft ordinance's purpose to balance the benefits of trees with the desire for views since there would be no determination that particular trees are actually blocking views.

Review Process Alternatives

The Ad Hoc Committee was provided with a View Restoration Review Process Table (attached) that compares four different view restoration review models:

- A. Regulations Only Model
- B. Binding Arbitration (Tiburon Model)
- C. City Advisory Opinion Model
- Planning Commission Recommended Model

The Ad Hoc Committee reviewed the options and, pursuant to the Committee's comments as summarized above, this report focuses the possibility of expanding the proposed hedge height standard in the ordinance (code enforcement solution) and on the following two models two options:

- Planning Commission Recommended Model
- City Advisory Opinion Model.

Planning Commission Recommended Model

This model provides a Planning Commission public hearing option should the earlier review steps prove unsuccessful to resolve the dispute. A Planning Commission decision could be appealed to the City Council. This model results in a decision by the City and includes City enforcement of Planning Commission/City Council decisions. This is very different from the City Advisory Opinion Model that would result in a binding decision by an arbitrator, enforced by the parties to the dispute through the court system.

The Ad Hoc Committee and staff support clarifying in this model that parties may agree to binding arbitration at any point in the process and this is reflected on the attached table. The Ad Hoc Committee also expressed concern that the non-binding arbitration step is a time-consuming and costly step that potentially yields little result. Finally, the Ad Hoc Committee discussed inserting a non-binding City opinion earlier in the review process, potentially after the Initial Neighbor Reconciliation step, to give parties a quick and inexpensive preview of what the City may decide in the future. Staff is concerned that an early City opinion, based only on a quick staff inspection of the potential view and alleged disruption, could be a problem if it conflicts with a later recommendation by staff or the Planning Commission. Other cities have adopted a City Advisory Opinion for view restoration review processes that do not include any other City decision, such as a Planning Commission decision. Staff has included a City Advisory Opinion in the alternate review process model presented in this report.

The Planning Commission-recommended model provides a great deal of City control but would also require the most City resources, without the possibility of recouping all costs. This is in conflict with the Planning Commission, City Council and Ad Hoc Committee directive that the view restoration process should be cost-neutral to the City. Staff has studied all options possible to develop a cost-neutral ordinance that includes both a Planning Commission review process and City enforcement and has come to the conclusion that that such a process cannot be cost neutral to the City and will also likely cost the City hundreds of thousands of dollars in litigation costs. Should the Planning Commission continue to recommend this process, staff provides alternatives with regard to enforcement for the Planning Commission to consider in the interest of conserving City resources (see Table).

City Advisory Opinion Model

This model would require interested parties to follow a review process, including an offer of binding arbitration from a View Owner to a Foliage Owner, in the interest of achieving early resolution and avoid litigation. If resolution is not achieved through the process, parties may seek civil action. Staff understands the Planning Commission and Ad Hoc Committee's interest in adopting a process that includes a City decision; however, as stated previously, such a process will be costly to the City. As a compromise solution, staff proposes the Binding Arbitration model (Tiburon model) with the addition of a non-binding City Advisory Opinion. Such an assessment from the City, early in the process, may assist the View Owner in gaining compliance from a Foliage Owner or in deciding whether to engage in litigation. The City would not have a role in enforcement of any decisions or agreements resulting from this process as the City would have a difficult time legally enforcing binding arbitration decisions. This model results in little legal risk to the City beyond a prima facie challenge to the ordinance although, due to staff's involvement in an early opinion, staff may be deposed and asked to testify in litigation resulting from this process.

Apportionment of Costs

The ordinance recommended by the Planning Commission proposed that all application fees should be paid by the View Owner. Cost for restorative action would be borne entirely by the view Owner at the early steps but would transfer to the Foliage Owner based on the level of Foliage Owner participation in the process and the level of restorative action required. Pursuant to a suggestion from the Ad Hoc Committee, the Planning Commission may wish to consider whether more costs can be transferred from the View Owner to the Foliage Owner.

View Restoration Guidelines

The ordinance recommended by the Beverly Hills Planning Commission includes a requirement that the City develop View Restoration Guidelines. The Guidelines would provide a step-by-step guide for View Owners (persons claiming a blocked view) and Foliage Owners (persons who own the foliage alleged to block a view). The Guidelines would include process flow charts, sample letters to Foliage Owners, sample agreements, information as to how to contact experts that may be needed, depending on the regulations and review process adopted. The intent of the Guidelines would be to make the process as transparent and time and cost efficient for View Owners and Foliage Owners as possible. Staff will be developing an outline for the draft guidelines for Planning Commission and City Council review.

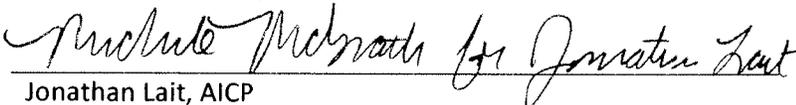
PUBLIC OUTREACH AND NOTIFICATION

A public notice for this meeting was published in the Beverly Hills Courier on May 13, 2011 and mailed to each property owner in Trousdale Estates on May 16, 2011. As of the time of this report one letter has been received by the Planning Division and it will be forwarded to the Commission separately.

ENVIRONMENTAL ASSESSMENT

This project has been assessed in accordance with the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the City, and no significant unmitigated environmental impacts are anticipated; therefore, a negative declaration was prepared and a resolution adopted by the Planning Commission on December 16, 2011 recommending the City Council adopt a negative declaration for the ordinance. A Notice of Intent to Adopt a Negative Declaration was issued on June 11, 2010, and a period for public comment on the environmental documentation ran from June 18, 2010 through July 8, 2010.

Report Reviewed By:


Jonathan Lait, AICP

Assistant Director of Community Development / City Planner

Planning Commission Adopted Resolution

RESOLUTION NO. 1599

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BEVERLY HILLS RECOMMENDING ADOPTION OF AN ORDINANCE OF THE CITY OF BEVERLY HILLS AMENDING THE BEVERLY HILLS MUNICIPAL CODE TO ADOPT A VIEW RESTORATION PROGRAM FOR THE TROUSDALE ESTATES AREA OF THE CITY

WHEREAS, the Planning Commission has considered the proposed amendment to the City of Beverly Hills Municipal Code, as set forth and attached hereto as Exhibit A and more fully described below (the "Ordinance"); and,

WHEREAS, the Planning Commission considered the zone text amendment set forth in the proposed Ordinance at study sessions on May 28, 2009 and June 25, 2009 and at duly noticed public hearings on June 24, 2010, October 28, 2010, November 23, 2010, and December 16, 2010 at which times it received oral and documentary evidence relative to the proposed Amendment; and,

WHEREAS, the Planning Commission finds that the proposed Ordinance is required for the public health, safety, and general welfare, and that such Ordinance is consistent with the general objectives, principles, and standards of the General Plan;

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

Section 1. An initial study of the potential environmental impact of this ordinance was prepared. The initial study concluded that the proposed 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 the proposed Ordinance, the Planning Commission finds that there is no evidence suggesting that the Ordinance would result in significant adverse impacts on the environment, and hereby recommends that the City Council adopt 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 2. The Planning Commission does hereby find that the proposed Zone Text Amendment as set forth in the proposed Ordinance is intended to restore and preserve certain views from substantial disruption by the growth of trees, vegetation, or a combination thereof while providing for residential privacy and security; maintaining the garden quality of the City; insuring the safety and stability of the hillsides; and, acknowledging the importance of trees and vegetation in the City as an integral part of a sustainable environment. It is the further intent to establish a process by which residential property owners in Trousdale Estates may seek to restore and preserve certain views, with an emphasis on early neighbor resolution of view restoration issues. It is also the intent of this ordinance to educate residents to consider the potential to block neighbors' views before planting foliage and in maintaining foliage. It is not the intent of this ordinance to create an expectation that any particular view or views would be restored or preserved.

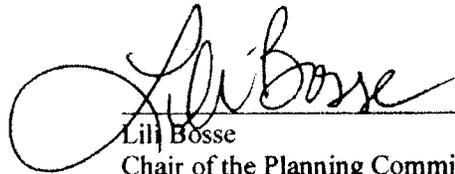
The City's General Plan includes the following policies that relate to this proposed Ordinance because they address maintenance of natural resources including vegetation: LU 2.3 Hillside Development; OS 1 Natural and Open Space Protection: OS 1.1 Resource

Preservation; OS 6 Visual Resource Preservation: OS 6.1 Protection of Scenic Views and OS 6.4 Minimize Removal of Existing Resources. The proposed Ordinance stresses the importance of balancing the desire for views with the maintenance of trees and includes the following statement, “[r]emoval of a healthy tree not on a list of nuisance trees maintained by the City is to be avoided unless the reviewing authority determines such removal is necessary to restore a protected view in accordance with the findings.” Based on the goal of the Ordinance to balance the desire for views with the maintenance of trees and language that specifically limits the removal of healthy trees, it is anticipated that only a small number of trees would require removal as a result of the Ordinance; therefore, the Ordinance would be consistent with the goals and policies of the General Plan.

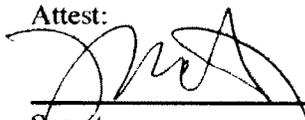
Section 3. The Planning Commission does hereby recommend that the City Council adopt the proposed Ordinance approving and enacting the proposed Amendment substantially as set forth in Exhibit A, which is attached hereto and incorporated herein by reference.

Section 4. The Secretary of the Planning Commission shall certify to the passage, approval, and adoption of this resolution, and shall cause this resolution and his/her Certification to be entered in the Book of Resolutions of the Planning Commission of the City.

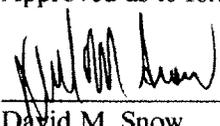
Adopted: **December 16, 2010**



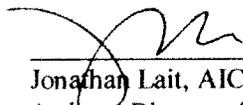
Lili Bosse
Chair of the Planning Commission of the
City of Beverly Hills, California

Attest:


Secretary

Approved as to form:


David M. Snow
Assistant City Attorney

Approved as to content:


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

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

I, JONATHAN LAIT, Secretary of the Planning Commission and City Planner of the City of Beverly Hills, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. 1599 duly passed, approved and adopted by the Planning Commission of said City at a meeting of said Commission on December 16, 2010, and thereafter duly signed by the Secretary of the Planning Commission, as indicated; and that the Planning Commission of the City consists of five (5) members and said Resolution was passed by the following vote of said Commission, to wit:

AYES: Commissioners Cole, Corman, Furie, Vice Chair Yukelson, and
 Chair Bosse.

NOES: None.

ABSTAIN: None.

ABSENT: None.



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

Proposed Ordinance
(Previously Recommended by PC)

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:

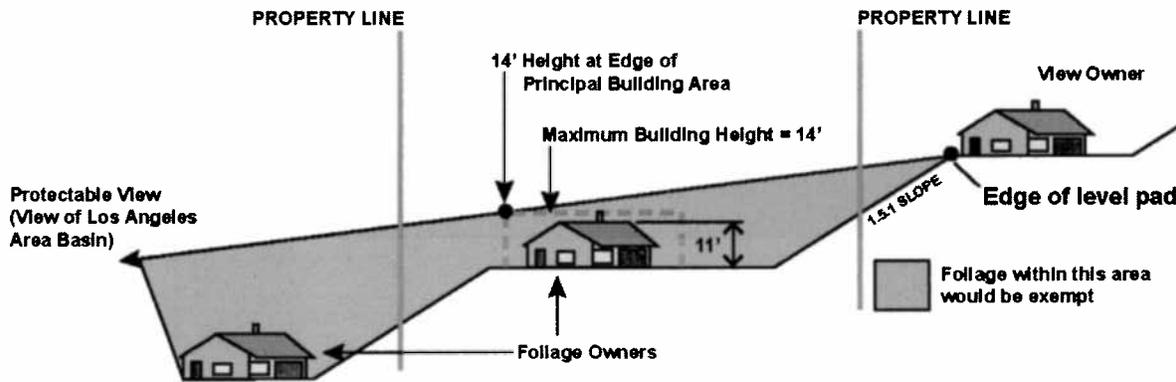
Guidelines for implementation of the ordinance to be prepared by the Community Development Department, adopted by the Planning Commission, and made available to the public.

(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 and that not more than the actual administrative costs shall be collected by the City or its representatives. 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 twenty four (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:

JIMMY DELSHAD
Mayor of the City of Beverly Hills,
California

ATTEST:

_____ (SEAL)

BYRON POPE
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

LAURENCE S. WIENER
City Attorney

JEFFREY KOLIN
City Manager

SUSAN HEALY KEENE AICP
Director of Community Development

Ad Hoc Committee Packet

4-20-11

Beverly Hills City Council
View Ordinance Ad Hoc Committee Meeting
April 20, 2011

Introduction

The Planning Commission has recommended a set of regulations to assist Trousdale residents in addressing the issue of views blocked by foliage on neighbors' property. The regulations define key terms such as "view," establish standards to determine what constitutes a protected view and potential disruption of a protected view, and provide findings/criteria to determine the level of disruption of a protected view and appropriate view restoration actions. This is a large part of the work that was completed by the Planning Commission and community and presented to the City Council in a study session on January 25, 2011. To apply the proposed regulations to specific cases, the Planning Commission proposed a view restoration review process with several steps, including Planning Commission review. The ordinance also proposed a formula for allocating view restoration costs among the parties involved. The City Council expressed support for the proposed regulations but also expressed concern about the potential cost of the proposed review process to View Owners and to the City. To address this concern, the City Council requested that an Ad Hoc Committee of Councilmembers and Planning Commissioners meet with staff and interested members of the community to discuss different view restoration processes and report back to the City Council.

Review Process Alternatives

Attached is a View Restoration Review Process Table that compares four different view restoration review models that may be used to apply the proposed Beverly Hills view restoration regulations to individual disputes. Also attached are four tables, one for each potential review process, showing costs and issues. For the purpose of this discussion View Owners shall mean persons claiming a blocked view and Foliage Owners shall mean persons who own foliage alleged to block a view. The four proposed models are:

- A. Regulations Only Model

The City would adopt regulations establishing the right to seek restoration of a view but would not establish a review process nor have a role in decision-making or enforcement of any decisions or agreements resulting from this process. Interested parties would be responsible for taking advantage of adopted view restoration regulations; the City would provide only information about the regulations.

- B. Binding Arbitration (Tiburon Model)

The City would adopt view restoration regulations that would require interested parties to follow a review process, including an offer of binding arbitration from a View Owner

to a Foliage Owner, in the interest of achieving early resolution and avoiding litigation. If resolution is not achieved through the process, parties may seek civil action; there is no City involvement in administration, decision-making or enforcement beyond the provision of information about the regulations.

- C. City Advisory Opinion Model

This is the same as the Binding Arbitration Model except, if there is no resolution at the early steps in the review process and the Foliage Owner declines binding arbitration, the View Owner may seek a City Advisory opinion to receive a neutral assessment of the View Owner's claim. Such an assessment may assist the View Owner in gaining compliance from a Foliage Owner or in deciding whether to engage in litigation. The City would not have a role in enforcement of any decisions or agreements resulting from this process.

- D. Planning Commission Recommended Model

This model would replace binding arbitration with non-binding arbitration and add a possible Planning Commission public hearing should the earlier review steps prove unsuccessful to resolve the dispute. A Planning Commission decision could be appealed to the City Council. The Planning Commission directed that any ordinance adopted should be cost-neutral to the City but contemplated a City role in enforcement of Planning Commission/City Council decisions; this would require a large deposit from the View Owner to conduct enforcement if enforcement became necessary. Alternatively, the City may consider having a role in decision-making but not in enforcement of decisions, designating enforcement a "private right of action" (see "Enforcement" below).

View Restoration Process Table

The attached table compares the four different view restoration review models. Except for the "Regulations Only" model, the other three models have as the first two steps in each process, "Initial Neighbor Outreach" and "Mediation." As described above, the models vary after the mediation step, resulting in differing timelines and costs to the parties and City.

View Restoration Guidelines

The ordinance recommended by the Beverly Hills Planning Commission includes a requirement that the City develop View Restoration Guidelines. The Guidelines would provide a step-by-step guide for View Owners (persons claiming a blocked view) and Foliage Owners (persons who own the foliage alleged to block a view). The Guidelines would include process flow charts, sample letters to Foliage Owners, sample agreements, information as to how to contact experts that may be needed, depending on the regulations and review process adopted. The intent of the Guidelines would be to make the process as transparent and time and cost efficient for View Owners and Foliage Owners as possible.

ATTACHMENT
View Restoration Review Process Costs

The anticipated process costs associated with each of the potential review steps are described in detail below. These costs do not reflect legal costs parties may elect to incur as part of a view restoration review process. The costs generally increase from Model A, "Regulations Only" to Model D, "Planning Commission Hearing." At the end of this report is a discussion of enforcement costs and of the allocation of process costs among the involved parties.

Initial Neighbor Outreach (Informal Negotiation or Initial Discussion)

For comparison purposes, the amount of \$150 is used to represent the cost of Initial Neighbor Outreach; a description of the process and more detailed costs follow.

For Initial Neighbor Outreach, the View Owner is required to send a letter to each Foliage Owner who has foliage allegedly blocking the View Owner's view, stating the View Owner's issue and recommended action (i.e. trimming certain trees). The only cost would be a certified notice to each Foliage Owner, which is approximately \$3.00 per letter. There would be no additional cost unless parties decide to obtain a professional report (e.g. a Tree Survey). In all cities surveyed, any cost incurred at this stage is paid by the View Owner unless the parties agree to a different arrangement. It is noted that certified mail is not available to contact owners living outside of the U.S. but a U.S. post office certificate of mailing may be used for select international mailing services at a cost of \$6.50. It is further noted that a View Owner may need to hire a professional surveyor, at a cost of approximately \$200 per hour, to determine the location and owner of property containing trees potentially blocking a view.

Mediation

For comparison purposes the amount of \$1,500 is used to represent the cost of mediation; a description of the process and more detailed costs follow.

Mediation is a discussion among parties facilitated by a neutral third party. The cost varies depending on the level of experience of the mediator, number of hours of mediation and the number of parties involved. The City currently offers mediation services to constituents for disputes that are not covered by the City's Municipal Code, including view blockage disputes in Trousdale Estates. For this service, the City contracts with the non-profit Center for Civic Mediation (formerly Dispute Resolution Services) of the Los Angeles County Bar Association. The cost to the City for each case (three hours of free mediation) is \$200.00 plus a quarterly case management fee of \$1,000. Additional mediation in excess of three hours is charged at an hourly rate to the parties involved. The Planning Commission has recommended to the City Council that it consider continuing three hours of free mediation for parties to a view restoration dispute as an incentive for early resolution but this is not necessary for the program to be successful. Should the City Council wish to consider providing some free mediation, City staff would have to track these cases at the mediation stage which would require a small amount of staff time.

The mediation service offered by the Center for Civic Mediation is a training program and it is difficult to guarantee the mediators used or their level of experience. The City of Rancho Palos Verdes, which has the most experience administering a view restoration ordinance in Southern California, contracts with an experienced view restoration mediator as its staff has found this a better system to achieve early resolution of disputes. An experienced view restoration mediator would be more costly on an hourly basis (\$115 to \$125 an hour) but may have reduced case management fees. This information was provided by the most experienced view restoration mediator in Southern California who works with the cities of Rancho Palos Verdes and Rolling Hills Estates and is advising Malibu on development of its ordinance. According to this mediator, a mediator contracting with a city may be able to provide a reduced rate based on volume of cases and, on average, successful view restoration mediation can take ten-plus hours at a cost of approximately \$1,000 - \$1,500 per mediation for a city-sponsored program. Experienced mediation not associated with a city-sponsored process may cost a little more.

Arbitration (Binding and Non-Binding)

For comparison purposes the amount of \$15,000 is used to represent the cost of arbitration; a description of the process and more detailed costs follow.

Arbitration is a process where a case is presented to an impartial professional arbitrator (often an ex-judge) who issues a written decision, known as an "award." It is considered a cost-effective alternative to litigation. Arbitration can be binding or non-binding: if parties agree to binding arbitration, an enforceable arbitration award is issued and the parties are bound by the decision made by the arbitrator, generally precluding the opportunity for a jury trial; for non-binding arbitration the arbitrator makes a determination of the rights of the parties to the dispute but this determination is not binding upon them and no enforceable arbitration award is issued. The "award" in non-binding arbitration is, in effect, an advisory opinion of the arbitrator's view of the respective merits of the parties' cases. Subsequent to a non-binding arbitration, the parties remain free to pursue their claims through other avenues including binding arbitration or the courts. In the process recommended by the Beverly Hills Planning Commission, the step proposed after non-binding arbitration is a public hearing before the Planning Commission.

The costs are the same for binding and non-binding arbitration. Like mediation, arbitration fees usually include a non-refundable case management fee and professional fees for the arbitrator. For reference purposes, staff obtained information regarding fees charged by JAMS, one of the largest private alternative dispute resolution providers. The case management fee for JAMS to manage and administer a case is \$400 per party, per day for one to three days of arbitration service (a day is defined as 10 hours of professional time). This includes access to a panel of arbitrators and experts, administration through duration of the case, document handling and use of conference facilities including after-hours and on-site business support. Professional fees for the arbitrator vary as arbitrators are independent contractors and set their own rates. Professional fees include time spent for arbitration sessions and pre- and post-session reading and research time. Rates are generally based on the arbitrator's experience and the low end would be approximately \$450 to \$500 per hour. The full cost of arbitration could be \$5,000 to \$50,000, depending on the length of time and the cost of the arbitrator's professional fees.

Example:

Using the \$500 hourly figure for the arbitrator's time, and assuming two parties and three sessions of arbitration, one of which is a site visit to both properties (three days of case management), also assuming the sessions run approximately three hours each, and adding in the arbitrator's preparation time and written report, (21 hours of an arbitrator's time), the cost of arbitration would be approximately \$12,900. For typical cases, arbitration session fees are generally divided equally among parties but an arbitration service can work with alternative cost allocation if, for instance, a city ordinance required it.

There may be additional costs if the arbitrator needs professional reports, such as a View Restoration Property Survey and/or a Tree Survey to prepare a written decision, although such surveys are not currently required at the arbitration step by the Planning Commission-recommended ordinance (see "Planning Commission Hearing" below for the cost of such reports).

While most of the cities that include an arbitration step in their view restoration processes require the parties involved to select an arbitrator mutually agreeable to both parties, the City of Sausalito has a City-appointed Trees and Views Committee that serves as a board of arbitration at a noticed public meeting. This process very much resembles a hybrid of a typical binding arbitration process and a Planning Commission public hearing process. The written decision of the Trees and Views Committee, which includes required restorative actions, is final and binding.

City Advisory Opinion

For comparison purposes the amount of \$3,000 is used to represent the cost of the City Advisory Opinion process; a description of the process and more detailed costs follow.

Should Beverly Hills wish to adopt an ordinance that includes a City role in the review process, but not necessarily Planning Commission review, an alternative is a City Advisory Opinion process. The cities of Sausalito and Rolling Hills Estates include a City Advisory Opinion in their ordinances and Malibu is considering it as a step in the ordinance it is developing. Like non-binding arbitration, it provides an opportunity, particularly for a View Owner, to receive an advisory opinion that could assist with settlement negotiations in situations where Foliage Owners have not participated in a process and do not agree to arbitration. The cost of this process would vary depending on the reviewing authority rendering the opinion. A City committee opinion with a public hearing such as is rendered in the City of Sausalito could cost almost as much as a Planning Commission public hearing process (\$15,000). An alternative that would not use City staff would be an administrative hearing process, with a hearing officer, from which an opinion would be rendered. An administrative hearing process is used by many cities for many types of cases including rent stabilization cases. Rent Stabilization cases would appear to have some similarity to view restoration cases in that they involve disputes between landlords and tenants, sometimes involving difficult findings of fact that require site visits. The administrative hearing process itself has some similarity to the non-binding arbitration process but the hearing officer may be less experienced in legal matters than a professional arbitrator. This does help to make the process potentially less costly. Staff estimates a view restoration advisory opinion process before a hearing officer could cost approximately \$1,500 to \$5,000, a little more than the cost of mediation.

Since a City Advisory Opinion process had not been discussed previously, staff notes that such an opinion may also be useful in court proceedings, particularly if a view restoration ordinance includes language expressly supporting the consideration of such opinions in subsequent civil actions. In

Sausalito, the View Owner or Foliage Owner may elect an Advisory Decision that is rendered by the City's Trees and Views Committee. The Committee submits a written Advisory Decision to the parties including findings with respect to the standards, recommended restorative actions, and recommended allocation of cost for same. To make the Advisory Opinion useful in subsequent litigation, the Sausalito Code states that in the event litigation is required to enforce the decision of the Trees and Views Committee, "...there shall be a rebuttable presumption in favor of the Trees and Views Committee's decision."

The Rolling Hills Estates view preservation/restoration ordinance also includes a City Advisory Opinion that can be requested from the planning director if the initial discussion and mediation processes are unsuccessful and the Foliage Owner declines to participate in arbitration. Similar to the Sausalito ordinance, the Rolling Hills Estates ordinance includes language to give the City Advisory Opinion some weight in subsequent legal actions, "[I]t is the intention of this section that the advisory opinion be admissible as evidence in any civil action brought pursuant to this chapter."

Planning Commission Hearing

For comparison purposes the amount of \$15,000 is used to represent the cost of the Planning Commission public hearing; a description of the process and more detailed costs follow.

This step would be in the model of public hearings held for other applications made pursuant to the City's Zoning Code. The City Council would set a fee for a view restoration public hearing process based on the actual cost to the City of processing such a case. These costs include: working with the applicant to prepare a complete application; reviewing the application materials, including expert reports and conferring with other experts if necessary; site visits to the properties involved; preparing and sending out public notices; responding to questions from the public; preparing a staff report and presentation; conducting a public hearing; and, possibly additional public hearings with the additional work that would involve. At the conclusion of the public hearing process staff would prepare a resolution for the case. The City's costs include a pro rata share of the time for other staff to set up the meetings and meeting space, record the meetings and prepare minutes, arrange for site visits for Commissioners, etc. Staff estimates that the City base application fee would be \$10,000 to \$16,000. In addition to the base application fee, additional fees include public notice costs and a document fee (10% of the application cost) and technology fee (5.5% of the application cost).

The Planning Commission-recommended ordinance requires a View Restoration Property Survey and a Tree Survey. The View Restoration Property Survey would require a professional surveyor at a total cost of \$800 to \$1600 to prepare the survey. The Tree Survey could be similarly priced but varies widely depending on the number of trees surveyed. The Planning Commission may also request additional professional reports, such as a soils report, depending on the specific case. The total cost to submit a Planning Commission View Restoration application to the City would be approximately \$12,000 to \$20,000.

In addition to costs to View Owners and Foliage Owners, there is opportunity cost to the City if staff spends many hours working on view restoration cases. Cases that result in applications to the Planning Commission will require at least 40 hours of staff time per application and more hours for more complicated projects. It is expected that as many as fifty (50) view restoration cases may take advantage of the new process within the first year of adoption, although the proposed ordinance has been crafted to encourage cases to be resolved prior to reaching the Planning Commission. While the

City Council can impose fees to cover the cost of processing applications, the staff time required would then not be available for other priorities.

Appeal to City Council

For comparison purposes the amount of \$5,000 is used to represent the cost of the City Council Appeal; a description of the process and more detailed costs follow.

Planning Commission decisions may be appealed to the City Council. The appeal fee, paid by the appellant, is \$4,928.70. This fee is intended to capture part of the City's cost in processing an appeal but does not reflect the total cost so as not to be cost prohibitive. Staff would need to spend almost the same amount of time preparing for the City Council public hearing on the appeal as spent preparing for a Planning Commission public hearing, without the City recouping the costs. It is noted that subsequent to a Planning Commission hearing process and appeal, one or more parties to a view restoration dispute may still elect to file a lawsuit.

Civil Action (Private Right of Action)

For comparison purposes the range of \$50,000 - \$100,000 is used to represent the cost of litigation; a description of the process follows.

By adopting view restoration regulations, the City creates rights that allow private parties to bring lawsuits pursuant to those rights created. With view restoration regulations in place, a View Owner would have the option to file a civil court case at any time unless the View Owner already agreed to binding arbitration; however, courts may require View Owners to exhaust their administrative remedies before filing a lawsuit. This means that if a city has established a view restoration review process, the View Owner would likely have to complete that review process, prior to filing a lawsuit. If the City adopts a view restoration process that does not include City enforcement of decisions made pursuant to the regulations, parties who are unsatisfied with a decision made through the process (other than binding arbitration) or who are unable to obtain compliance with a decision or agreement resulting from the process, may pursue a "private right of action" through the courts wherein private parties take responsibility for enforcement of regulations. It is difficult to estimate the cost of a lawsuit. Depending on the time involved and the cost of the attorneys, experts or other professionals involved, a lawsuit could cost \$10,000 to \$150,000 or more.

Enforcement

If the City of Beverly Hills chooses to have a role in a view restoration decision-making process, the City would need to decide if the City should have a role in enforcement of those decisions. The only city in California that staff has found that does not use the private right of action model is the City of Rancho Palos Verdes. View restoration was adopted in Rancho Palos Verdes pursuant to a citywide vote. 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 enforcing decisions for property owners who have already been through the view restoration process has greatly expanded as more cases have been reviewed over time.

If the Beverly Hills City Council chooses to have a City role in enforcement of view restoration decisions, and also directs that such enforcement should not result in additional cost to the City (cost-neutral), the parties to the dispute would have to deposit funds with the City prior to any enforcement activities to cover the cost of enforcement. This responsibility would almost certainly fall on the View Owner as the party most likely to seek enforcement and to ensure the City does not incur costs. If the Foliage Owner is supposed to pay some or all restorative action costs pursuant to the regulations and a Planning Commission or City Council decision, the View Owner would be reimbursed as payment is obtained from the Foliage Owner. It is difficult to estimate the amount of enforcement deposit but a typical initial deposit amount would be \$10,000. It is noted that enforcement action can quickly escalate and rise to as much as \$100,000 if City legal action is involved. Estimated enforcement/prosecution costs would be requested from the View Owner in advance of City expenditure.

Enforcement Staffing

If the City has a role in enforcement of view restoration decisions, staff would recommend that the City hire an on-call code enforcement consultant, paid through fees deposited by the View Owner, to handle enforcement. This would address concerns about City Code Enforcement staff availability for other priorities.

Allocation of Costs

There are three types of cost associated with a view restoration process: review costs, restorative action costs and legal costs. Review costs include the fees for processing a claim including mediation or arbitration fees, City application fees, the cost of agreement preparation and the cost of professional reports that may need to be prepared. Restorative action is the cost of addressing the obstruction of a view including trimming foliage, removing foliage and potentially replacing trees. Legal fees would be the cost of engaging legal representation. This last cost would be incurred at the discretion of the parties involved and the cost is assumed to be borne by the party engaging legal representation. Legal fees could be allocated differently through an arbitrator or a judge and such fees are not included as part of the discussion below.

Some cities, such as Rancho Palos Verdes, require the View Owner to bear all costs (review and restorative action) of the process as it is perceived that the View Owner receives the benefit of a restored or preserved view. Other cities split some costs, with costs at higher steps in the process determined by the reviewing authority (mediator or arbitrator).

Pursuant to Planning Commission direction, staff developed a cost allocation formula that transfers some restorative action costs to the Foliage Owner depending on the parties' level of active participation in a review process and whether there is a decision or judgment requiring restorative action on the Foliage Owner's property. It is noted this formula may not apply if the City adopts the "Regulations Only" model.

The formula recommended by the Planning Commission allocates all review costs to the View Owner unless the parties agree to a different arrangement. This reflects the fact that most of the benefits of the process accrue to the View Owner as well as the difficulty in obtaining fees and other review costs from some Foliage Owners.

Cost Allocation Formula adopted by the Planning Commission:

Mediation

Foliage Owner pays 10% of restorative action if Foliage Owner participates.

Arbitration

Foliage Owner pays 20% of restorative action if Foliage Owner participates; 50% if no participation.

Planning Commission Hearing

Foliage Owner pays 100% of restorative action if no participation or Foliage Owner did not agree with the arbitrator and the Planning Commission requires restorative action in the same amount or more than recommended by the arbitrator; Foliage Owner pays 50% of restorative action if Foliage Owner participated but did not agree with the arbitrator and the Planning Commission requires restorative action in an amount less than recommended by the arbitrator. View Owner pays 100% of restorative action if Foliage Owner agreed in writing with the arbitrator and View Owner proceeds to the Planning Commission seeking more restorative action than recommended by the arbitrator.

Appeal to City Council

Restorative action cost apportioned in the same way as for a Planning Commission decision.

Maintenance

Foliage Owner responsible for maintenance after initial restorative action.

Costs to City

There is no way the City can implement view restoration regulations without incurring cost, no matter the review or enforcement processes selected. The City has already incurred, and continues to incur costs to develop the regulations and view restoration guidelines. Staff would be available to provide information and guidance to City residents, property owners and potential property owners. Any new legislation, and particularly legislation regulating relations among neighbors, has the potential to involve the City in legal issues and litigation, with very high legal costs and the expenditure of many staff hours to gather documents in response to legal document requests and appearances at depositions. While the City would require parties to indemnify the City where legally appropriate, and some costs may be recaptured through fees and deposits, it is the experience of this and other cities that Beverly Hills would still incur unreimbursed costs related to such an ordinance.

View Restoration Review Process Alternatives

A. Regulations Only	B. Binding Arbitration	C. City Advisory Opinion	D. Planning Commission Review
Tiburon & majority of other cities w/ordinances	Rolling Hills Estates Malibu, Sausalito	Beverly Hills*	
City Adopts Regulations	City Adopts Regulations	City Adopts Regulations	City Adopts Regulations
Initial Neighbor Outreach	Initial Neighbor Outreach	Initial Neighbor Outreach	
Mediation	Mediation	Mediation	
Binding Arbitration	Binding Arbitration	Non-Binding Arbitration	
	City Advisory Opinion	Planning Commission Hearing	
		City Council Appeal	
Private Court Action	Private Court Action	Private Court Action	City Enforcement parties pay cost
No City Enforcement	No City Enforcement	No City Enforcement	Civil Action Action against City decision; could also include View Owner or Foliage Owner
Little City Involvement Less Legal Exposure for City	Maximum City Involvement Most Legal Exposure for City		

*Rancho Palos Verdes has a Planning Commission Hearing option as part of its process but does not include a Non-Binding Arbitration step.

View Restoration Process/Cost Tables:

C. City Advisory Opinion Model

D. Planning Commission Recommended Model

View Restoration Review Process*

C. City Advisory Opinion

Review Options	Cost		Features	Issues
	Time	Money		
Initial Neighbor Outreach	1.5-2 mos.	\$150	Same as "B. Binding Arbitration" with addition of an opportunity for a City opinion should binding arbitration fail or a Foliage Owner declines to participate. This opinion may be helpful in negotiating with Foliage Owner or can be used by the View Owner in Court Opportunity for City to provide assistance with little additional legal exposure since the opinion is not binding.	Who renders City opinion? Staff (workload issue) Hearing Officer Is a non-binding opinion worth the time and money?
Mediation	2-3 mos.	\$1,500		
Binding Arbitration	5-6 mos.	\$15,000		
City Advisory Opinion	2-3 mos.	\$3,000		
	<u>TOTAL</u> 10.5-14 mos.	<u>\$19,650</u>		
Civil Action (Court)	4-12 mos.	\$50,000		
<u>Enforcement</u> Private Right of Action	<u>TOTAL</u> 14.5-26 mos.			

* Each of the four processes could result in a potentially expensive court action if needed to compel enforcement of a private agreement, arbitration award, Planning Commission/City Council decision or a judgment. It is possible that legal fees could be reimbursed from one party to another, depending on the terms of the agreement, award, decision or judgment.

**This figure does not include the cost for legal fees.

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View Restoration Review Process

D. Planning Commission Recommended*

Process Steps	Cost to Applicant**			City Costs		Issues/Notes
	Time	Fees	Staff	Legal		
<ul style="list-style-type: none"> • City Adopts Regulations 	2 years	NA	\$100,000+	Ordinance Challenge = \$250,000 - \$400,000		Generally no reimbursement to City for costs
<ul style="list-style-type: none"> • Initial Neighbor Outreach • Mediation • Arbitration 	1.5-2 mos. 2-3 mos. 5-6 mos.	\$1,500*** \$15,000				<p>Planning Commission and City Council directed that the review process should be cost-neutral to the City. The City fees reflect the City's cost to administer this process.</p> <p>A new process so it is unclear how many cases will require PC review; Staff expects 50-60 view claims in the first 18 months with at least 10-15 that could require a PC hearing. Affects PC and staff workload (opportunity cost because PC and staff will not be available to work on other City priorities)</p>
<ul style="list-style-type: none"> • PC Hearing • Appeal to City Council 	2-5 mos. 2.5-4.5 mos. TOTAL 13-20.5 mos.	\$15,000 \$5,000 TOTAL \$36,650	\$15,000 \$15,000 TOTAL \$30,000	Challenge of PC/CC decision in a case = \$100,000 - \$150,000		<p>Due to the nature of these cases and experience of other cities, staff expects many appeals; potentially 5+ in first 18 months. An appeal affects CC caseload and parties may litigate anyway. City does not recoup full cost of appeal.</p> <p>The City has more legal exposure when it is part of the decision-making process; City can be sued in each case.</p> <p>The non-binding arbitration step (as opposed to binding arbitration) was intended to provide additional information to the parties as a precursor to PC review and to encourage early resolution by creating a disincentive to continue with the process.</p> <p>Should PC move forward with this recommendation, PC may wish to consider a cap on the number of cases heard annually. This would address workload issues and may be an additional incentive to parties to resolve issues earlier.</p>

Notes

*Includes slight revision, pursuant to Ad Hoc Committee suggestion, to make it clear that parties may agree to enter a binding arbitration process at any point in this process. City incurs almost no cost if binding arbitration is chosen by the parties and the process is faster than City review.

**In the event This figure does not include the cost for personal legal fees. The draft Ordinance includes an indemnification section (proposed Code Section 10-8-106 M) that protects the City's interests. The draft ordinance also includes a section whereby view restoration procedural and restorative action costs can be transferred from View Owner to Foliage Owner based on the level of cooperation of Foliage Owner in the process (Apportionment of costs, proposed Code Section 10-8-109). Including both of these sections in the ordinance allows the City to maintain its option of requiring a View Owner to indemnify the City by paying costs up front, with reimbursement of costs to View Owner when the City receives reimbursement from Foliage Owner, depending on direction from the City Council.

***Potential City cost if City Council supports paying for a few hours of professional mediation pursuant to the City's existing mediation service.

NOTE: All dollar figures on this table are estimates. Each case will be different and costs can vary depending on the specifics of a case.

May 26, 2011

View Restoration Decision Enforcement Process

(process for enforcement of PC/CC decision when non-compliance)

D. Planning Commission Recommended

Enforcement Steps	City Prosecutor	City Staff Costs	Comments
<p>No City enforcement of private agreements (mediation, arbitration)</p>			
<p>1. Referral to City Code Enforcement (CE):</p>			<p>Initial Enforcement of PC/CC Decision (View Restoration)</p>
<p>CE verifies (inspect) violation of decision/CE staff prepares report</p>		<p>\$1,016 – \$1,524</p>	<p>City has a civil enforcement process (Administrative Penalty Process – Step #1) for which the City can gain some restitution of the City's costs. PC and Ad Hoc agreed that view restoration cases, having already gone through a lengthy review process, should bypass most of this process and go straight to the City Prosecutor (Step #2).</p>
<p>City Prosecutor (CP) Demand Letter w/ date for compliance</p>	<p>\$290 - \$725</p>	<p>\$508 - \$1,016</p>	<p>City cannot gain restitution of most prosecution costs.</p>
<p>CE compliance inspection</p>	<p>TOTAL \$290 - \$725</p>	<p>TOTAL 1,500 - \$2,600</p>	<p>Planning Commission and City Council directed that the review process should be cost-neutral to the City. To achieve this goal, City must receive a substantial deposit from View Owner to be reimbursed if City gains restitution from Foliage Owner. If no deposit, City would pay all enforcement costs with minimal restitution except for abatement costs for which the City may place a lien on a property and be reimbursed when the property is sold, which may be years later.</p>
<p>2. Noncompliance/Partial Compliance = City Prosecutor Process:</p>			<p>Potential appeals to the City Council will add to the City Council agendas and add time and cost to the process for the View Owner; No fees or reimbursement of costs.</p>
<p>CE prepares Prosecution Report; submit to CP who files complaint in Superior Court; CP determines civil or criminal action; Court</p>		<p>Prep report; appear at depositions or in court; abatement to include BHPD =</p>	<p>Each step in the abatement process (Step #2) may be appealed to the City Council.</p>
<p>CE verifies violation; CP prepares abatement notice</p>		<p>TOTAL \$ \$3,500 - \$8,000</p>	
<p>Owner Appeals Abatement to City Council</p>	<p>TOTAL \$11,600 - \$17,400</p>		
<p>Failure to Comply = City Abatement Action</p>			

<p>3. Restitution of City Cost</p> <p>CP Notice of Assessments to Owner to pay abatement costs</p> <p>City Files Assessments</p> <p>No payment = City imposes lien</p> <p>Owner appeals lien to City Council</p> <p>Appeal unsuccessful = City records lien</p> <p>Sale/Foreclosure: lien paid after sale</p>	<p style="text-align: right;">TOTAL \$5,000</p>	<p style="text-align: center;"><u>Enforcement After Initial Restorative Action</u> (Maintenance of Views)</p> <p><u>Enforcement Options</u></p> <p>Unique issue because problem can grow back; City may have ongoing enforcement action into perpetuity unless following are considered:</p> <ul style="list-style-type: none"> • No City enforcement of initial PC/CC decision; View Owner seeks compliance through courts (Private Right of Action) • City enforces initial restorative action but not subsequent restorative actions (Private right of Action) • City provides enforcement of initial and subsequent restorative actions but imposes a cap on the number of times restorative action may be sought (e.g. bi-annually) <p><u>Contract Code Enforcement</u></p> <p>City may contract with an outside company to provide View Restoration enforcement. This may not save cost in enforcement (contractor's hourly cost may be lower than City's but City staff must administer contract and monitor work); however, it will save City staff hours that can be spent on other priorities and potentially save staff time that might be spent in drawn into legal actions (research, depositions, court appearances)</p>
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NOTE: All dollar figures on this table are estimates. Each case will be different and costs can vary depending on the specifics of a case.