

Section 7. 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 8. 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 9. Trial Period. A report regarding the implementation of this ordinance shall be provided to the Planning Commission and City Council within 24 months of the effective date of the ordinance.

Section 10. 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 11. 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~~

BARRY BRUCKER

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

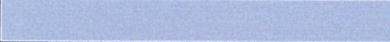
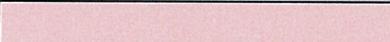
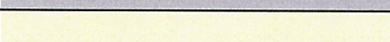
City Manager

\_\_\_\_\_  
SUSAN HEALY KEENE AICP

Director of Community Development

Document comparison by Workshare Professional on Thursday, June 02, 2011  
11:54:47 AM

Input:	
Document 1 ID	interwovenSite://RWGDMS2/RWGIMAN1/1321584/1
Description	#1321584v1<RWGIMAN1> - Final Redlined PC Redommeded Trousdale View Restoration Ordinance
Document 2 ID	interwovenSite://RWGDMS2/RWGIMAN1/1321584/6
Description	#1321584v6<RWGIMAN1> - Revised Trousdale View Ordinance for June 9, 2011 PC
Rendering set	standard

Legend:	
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Deleted cell	
Moved cell	
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Padding cell	

Statistics:	
	Count
Insertions	201
Deletions	143
Moved from	9
Moved to	9
Style change	0
Format changed	0
Total changes	362

## **Attachment 2**

### **Draft Trousdale View Restoration Ordinance**

**Clean copy incorporating changes from the ordinance previously  
recommended to the City Council**

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 may result in significant adverse impacts on the environment, and hereby adopts the 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. The custodian of records is the Director of Community Development.

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:** The term “Hedge” shall have the same meaning as set forth 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. 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.

**(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 edge 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:

- (1) Species of each tree, based on scientific name, and the common 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.

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 include one or more owners of the same property.

**(P) VIEW RESTORATION GUIDELINES:**

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

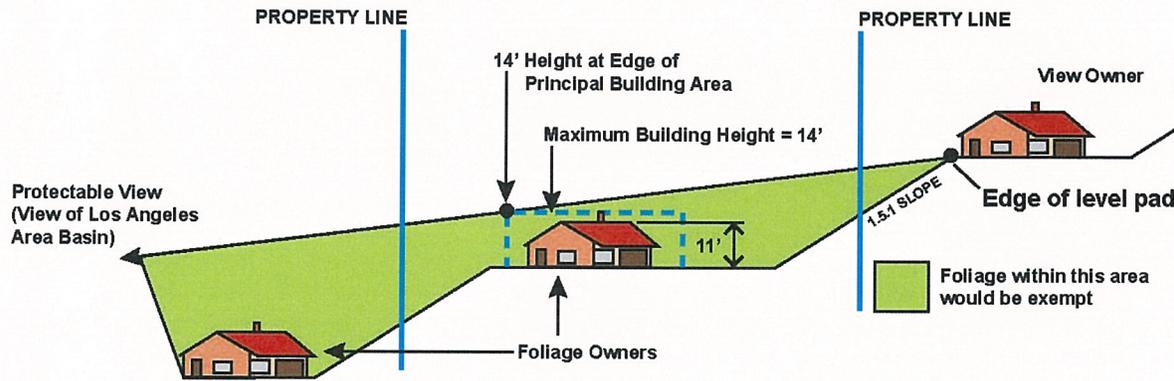
**(Q) VIEW RESTORATION PROPERTY SURVEY:** A survey completed by a certified professional, such as an ALTA (American Land Title Association) survey, of view owner's site and foliage owner's site that may include calculation of the safe harbor plane as defined in this Article and any other information 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 shall be a room of the primary residential structure (excluding hallways, bathrooms, closets and garages), or a patio, deck or landscaped area adjacent to the primary residential structure that does not extend beyond the level pad. There may be one or more viewing areas on a property. The Reviewing Authority shall establish the Viewing Area or Areas as part of its finding that the View Owner has a Protectable View. The Reviewing Authority shall designate a location as a Viewing Area if, in the opinion of the Planning Commission, an average resident would spend material time at that location while at home on their property in order to observe the Protectable View.

**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.** Except for violations of Section 10-3.2616 (F), complaints received by the City regarding foliage blocking views in Trousdale Estates shall be addressed through the View Restoration Permit pre-application 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 this Article. More than one view owner may pursue remedies simultaneously with one or more foliage owners as determined by the parties involved.

**(A) Parties' Option to Enter Binding Arbitration; Effect of Arbitration Decision.** Nothing in this ordinance is intended to preclude interested parties from agreeing to resolve the dispute or disputes through binding arbitration, in which case compliance with the procedures set forth in this Section shall not be required. View Owners who are subject to a binding arbitration decision shall be precluded from applying for a View Restoration Permit as to any Foliage Owner who is a party to the binding arbitration decision.

**(B) Initial Neighbor Outreach.**

(1) If a view owner wishes to pursue remedies available in the Article, the view owner shall notify each foliage owner in writing of concerns regarding disruption of the view owner's protectable view by foliage on foliage owner's property (the "Initial Neighbor Outreach"). This Initial Neighbor Outreach shall be on a form provided by the City in the View Restoration Guidelines on file in the City, shall be signed by the view owner, and shall include a signed statement from view owner that view owner or the view owner's representative shall offer

to meet with each foliage owner. The Initial Neighbor Outreach notification shall clearly identify the remedy sought by view owner and include a good faith estimate of the cost of the remedy.

(2) Agreement to participate in the 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 the view owner, 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 the foliage owner. Failure to respond shall be considered rejection by the foliage owner. The Initial Neighbor Outreach should be followed by discussions between view owner and each foliage owner to attempt to reach a mutually agreeable solution.

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

(4) If, pursuant to an agreement between the view owner and a foliage owner, the 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 this Code, a tree removal permit must first be obtained in accordance with the requirements of Section 10-3-2900.

**(C) Mediation.**

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

(3) The 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 the view owner and a foliage owner are unable to resolve the matter, or if a foliage owner fails to respond to the mediation notice or to participate in the mediation process as prescribed in the View Restoration Guidelines, then the view owner may proceed to file for a View Restoration Permit.

(6) If, pursuant to an agreement between the view owner and a foliage owner, the 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 this Code, a tree removal permit must first be obtained in accordance with the requirements of Section 10-3-2900.

**10-8-105 CONTINUATION OF PROCESS AFTER AGREEMENT.** If the view owner and a foliage owner enter into a private agreement as a result of Initial Neighbor Outreach or mediation before the filing of a View Restoration Permit application, and that agreement is not adhered to by the foliage owner and the view owner wishes to pursue remedies available in this Article, then the view owner may continue with the pre-application 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 the view owner wishes to pursue remedies available in this Article and more than two (2) years have passed since the date of the private agreement, then the view owner shall begin view restoration procedures with the 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 set forth 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 protected tree or trees as defined in Section 10-3-2900 of the Beverly Hills Municipal Code, then the reviewing authority may order the removal of the tree or trees pursuant to Section 10-3-2902 as part of the restorative action required by a 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 attempted or completed the following procedures as required in this section:

Initial Neighbor Outreach; and,  
Mediation.

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

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

(4) Tree survey.

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

**(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 the applicants' 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 view owner's and foliage owner's properties, 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 the foliage owner's 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 the 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 restore a Protected View; protect the foliage owner's reasonable enjoyment of its property; protect the public health, safety and welfare; or any combination thereof.

**(H) Appeals; Effective Date:**

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.

Any decision of the Planning Commission 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) Required Findings:**

The reviewing authority may issue a View Restoration Permit to remove or alter foliage on any lot that is all or partly within five hundred feet (500') of a View Owner's property if it makes all of the following findings:

(1) The View Owner has a Protectable View. The Reviewing Authority shall determine the Viewing Area or Areas in order to make this finding.

(2) The View Owner has substantially complied with the Initial Neighbor Outreach and mediation procedures of this Article.

(3) The 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) 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.

(ii) 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 Protectable 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.

(iii) View Diminished by Other Factors. The extent to which the view has been or is diminished by factors such that removal of the foliage at issue will not substantially restore the Protectable View. Other factors that may be considered include, but are not limited to, permitted structures, and foliage that is not on a private property within five hundred feet (500’) of the View Owner’s property.

(4) The reviewing authority may require the removal of a protected tree pursuant to Section 10-3-2902 if the reviewing authority finds that removal of the tree will not:

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

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

The Reviewing Authority may allow foliage to substantially disrupt a Protectable View if the Reviewing Authority makes one or more of the following findings:

(5) The foliage is important to the integrity of an existing landscape plan.

(6) Alteration of the foliage will unreasonably impact the privacy and security of the Foliage Owner.

(7) Alteration of the foliage will have a substantial adverse impact on stability of a hillside, drainage, or erosion control.

**(J) 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 the view owner and the foliage 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 avoid substantial disruption of a protected view.

(3) Requiring replacement foliage, with foliage owner's concurrence, when the reviewing authority finds that removal without replacement will cause a substantial 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.

**(K) 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) The view owner, using the mailing address set forth in the application;

(ii) Each foliage owner that is named on the application, as listed on a current Tax Assessor's roll and to the occupant of the Foliage Owner's property if the Foliage Owner's address is different than the property on which the foliage is located.

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

**(L) Indemnification:**

View owner shall defend, indemnify and hold harmless the City, its agents, officers, attorneys and employees from any claim, action or proceeding (collectively "Action") against the city or its agents, officers, attorneys or employees to attack, set aside, void or annul the Entitlements that may be granted by the City through issuance of a View Restoration Permit, and for any and all costs incurred in enforcing any View Restoration Permit, except for those costs of enforcement as the City may recover from a foliage owner. Indemnitor shall reimburse the city for any court costs and attorney's fees that the City may be required by a court to pay as a result of such Action. City may, at its sole and absolute discretion (1) participate in the defense of such Action undertaken by View Owner, or (2) retain separate counsel whose attorneys' fees and costs shall be paid by View Owner. Such participation in the defense of such Action or the retention of separate counsel by the City shall not relieve View Owner's obligations under this provision. The City shall promptly notify the View Owner of any such Action.

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 INITIAL CITY ENFORCEMENT; SUBSEQUENT ENFORCEMENT BY VIEW OWNER AND ATTORNEY'S FEES**

If a Foliage Owner fails to comply with the provisions of a View Restoration Permit, the City may, at its discretion, enforce its decision to gain initial compliance with the View Restoration Permit provisions.

Thereafter, any further disputes between a View Owner and a Foliage Owner regarding compliance with a View Restoration Permit may be resolved through filing a civil action in a court of competent jurisdiction. The prevailing party in any such civil action between a View Owner and a Foliage Owner shall be entitled to recover its attorney's fees incurred in the litigation.

**10-8-109 LANDSCAPE STANDARDS:**

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

**10-8-110 APPORTIONMENT OF COSTS:**

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

(2) Restorative Action. The cost of restorative action agreed upon by the view owner and the foliage owner shall be borne by the view owner unless otherwise agreed to by the foliage owner.

(3) Maintenance Costs. The cost of subsequent maintenance of foliage on the foliage owner's property shall be allocated as agreed upon by the parties.

**(B) Mediation**

(1) Procedural Costs. Any costs associated with obtaining information, mailing the required notice, or preparing an agreement shall be borne by the view

owner. The view owner shall pay the cost of a view restoration property survey or tree survey if such a survey is completed.

(2) Restorative Action. The cost of restorative action agreed upon by the view owner and the foliage owner shall be borne by the view owner unless otherwise agreed to by the parties.

(3) Maintenance Costs. The cost of subsequent maintenance of foliage on the foliage owner's property shall be allocated as agreed upon by the parties.

**(C) 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) The foliage owner shall pay one hundred percent (100%) of the cost of restorative action if the foliage owner did not participate in mediation and the reviewing authority finds restorative action is required. .

(b) The view owner and foliage owner shall each pay fifty percent (50%) of the cost of restorative action if the foliage owner participated in mediation and the reviewing authority finds restorative action is required.

(3) Maintenance After Initial Restorative Action. The foliage owner shall pay for subsequent maintenance of the foliage consistent with the View Restoration Permit.

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

(3) Maintenance After Initial Restorative Action. The foliage owner shall pay for subsequent maintenance of the foliage consistent with the View Restoration Permit.

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 Fences and Hedges meeting certain criteria.

Fences: New fences 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 a point thirty-six inches (36") above the finished grade of the level pad on the upslope property in any area where the upslope property faces the Los Angeles Area Basin. Notwithstanding Section 10-3-2759, any existing fence subject to this paragraph F that was constructed in accordance with applicable ordinances and regulations at the time of construction shall be deemed a nonconforming structure, and may be maintained in its existing configuration unless more than fifty percent (50%) of the area of the fence measured from the outer perimeter of structure without deductions for open spaces in fencing, is replaced or reconstructed in any five (5) year period. If more than fifty percent (50%) of the combined area of the fence is replaced or reconstructed, then the replacement structure shall be treated as new for the purposes of this paragraph and shall be constructed so that the entire structure conforms with the development standards of this paragraph.

Hedges: 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 finished grade of the level pad on the upslope property in any area where the upslope property faces the Los Angeles Area Basin.

Hedge, as used in this paragraph F, shall be defined as growth of vegetation, cultivated in such a manner as to produce a barrier to inhibit passage or to obscure view, which is more than twelve inches (12") in height. Where there are interruptions of growth by vertical space to the top of the vegetation material having a horizontal distance of more than twenty four inches (24") in every four horizontal feet (4'), such growth shall not be considered a hedge for purposes of this paragraph F.

Section 5. The City Council hereby amends the definitions of the terms “Arborist” and “Tree” set forth in Section 10-3-2900 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code to read as follows, with all other definitions listed in Section 10-3-2900 remaining without amendment:

“ARBORISTS: 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).”

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

Section 6. The City Council hereby adds a new paragraph D. to Section 10-3-2904 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code to read as follows, with all other portions of Section 10-3-2904 remaining without amendment:

"D. The removal of a protected tree pursuant to a View Restoration Permit issued by the City in accordance with the provisions of Section 10-8-106 of the City's Municipal Code."

Section 7. 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 8. 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 9. Trial Period. A report regarding the implementation of this ordinance shall be provided to the Planning Commission and City Council within 24 months of the effective date of the ordinance.

Section 10. 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 11. 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:

\_\_\_\_\_  
BARRY BRUCKER  
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



## **Attachment 3**

### **Planning Commission Resolution**

**Recommending Draft Trousdale View Restoration Ordinance**

RESOLUTION NO.

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, December 16, 2010, May 26, 2011 and June 9, 2011, at which times it received oral and documentary evidence relative to the proposed Amendment; and,

WHEREAS, on December 16, 2010, the Planning Commission adopted Resolution No. 1599, recommending that the City Council adopt an ordinance enacting a View Restoration Program for the Trousdale Area of the City; and,

WHEREAS, the City Council appointed an ad hoc committee to further consider the issues related to a View Restoration Ordinance, which further consideration included further review by the Planning Commission; and,

WHEREAS, the Planning Commission considered and hereby recommends to the City Council adoption of an ordinance substantially as set forth in Exhibit A, attached hereto and incorporated herein by reference, which recommendation supersedes the prior recommendation embodied in Resolution No. 1599; 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, hedges, 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: 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 a relatively small number of trees would require removal as a result of the Ordinance. The City's General Plan includes the following policy that also relates to this proposed Ordinance: "LU 2.1 City Places: Neighborhood, Districts, and Corridors. Maintain and enhance the character, distribution, built form, scale, and aesthetic qualities of the city's distinctive residential neighborhoods, business districts, corridors, and open spaces." Trousdale

Estates was developed to take advantage of views of the Los Angeles Area Basin and such views are one of the most distinctive qualities of this neighborhood. The proposed amendment would assist some residents in restoring and maintaining this special quality of the area. It is anticipated the ordinance would help maintain and enhance the distinctive character of the Trousdale estates residential neighborhood; 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:

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Daniel Yukelson  
Chair of the Planning Commission of the  
City of Beverly Hills, California

Attest:

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Secretary

[Signatures continue on following page.]

Approved as to form:

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David M. Snow  
Assistant City Attorney

Approved as to content:

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