

## **Attachment 3**

Planning Commission Resolution



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, June 9, 2011, and August 4, 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, on June 23, 2011, the Planning Commission adopted Resolution No. 1614, recommending that the City Council adopt an ordinance enacting additional fence and hedge height standards for Trousdale Estates; 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 avoid substantial disruption of a protected view." 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:

Approved as to content:

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David M. Snow  
Assistant City Attorney

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

**Attachment 4**

City Council Agenda Report

August 2, 2011





## AGENDA REPORT

**Meeting Date:** August 2, 2011

**Item Number:**

**To:** Honorable Mayor & City Council

**From:** Susan Healy Keene, AICP, Director of Community Development

**Subject:** ORDINANCE OF THE CITY OF BEVERLY HILLS  
AMENDING BEVERLY HILLS MUNICIPAL CODE  
SECTION 10-3-2616 REGARDING DEVELOPMENT  
STANDARDS FOR WALLS, FENCES AND HEDGES IN  
THE TROUSDALE ESTATES AREA OF THE CITY.

**Attachments:**

1. Ordinance
2. Planning Commission Resolution No. 1614
3. Environmental Initial Study and Negative Declaration
4. City Council Study Session Staff Report, dated July 7, 2011

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### **RECOMMENDATION**

It is recommended that the City Council adopt an ordinance amending the Municipal Code to establish additional maximum height regulations for fences and hedges on certain slopes between properties in Trousdale Estates.

### **INTRODUCTION**

On June 23, 2011, the Planning Commission adopted a resolution forwarding to the City Council an ordinance that focuses solely on enhancing administrative remedies to address view-related disputes in Trousdale by further regulating the height of fences and hedges. The proposed fence and hedge height ordinance was presented to the City Council at its July 7, 2011 Study Session. The City Council directed staff to provide additional information about the potential cost of implementing the ordinance, including alternatives to recover costs, and to schedule a public hearing for consideration of the ordinance. Evaluation of much broader view restoration review regulations that would address foliage not addressed by the fence and hedge height ordinance will be resumed by the Planning Commission at its August 4, 2011 meeting.

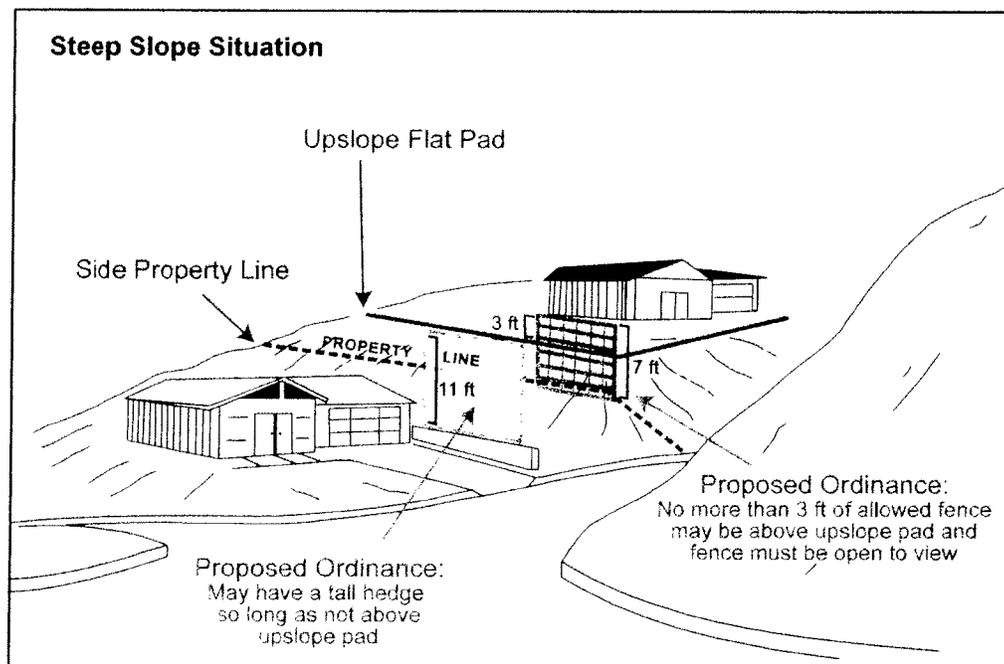
## ORDINANCE PROVISIONS

The recommended zone text amendment, (Attachment 1), substantively amends the existing Trousdale Estates Walls, Fences and Hedges code section (BHMC Section 10-3-2616) as follows:

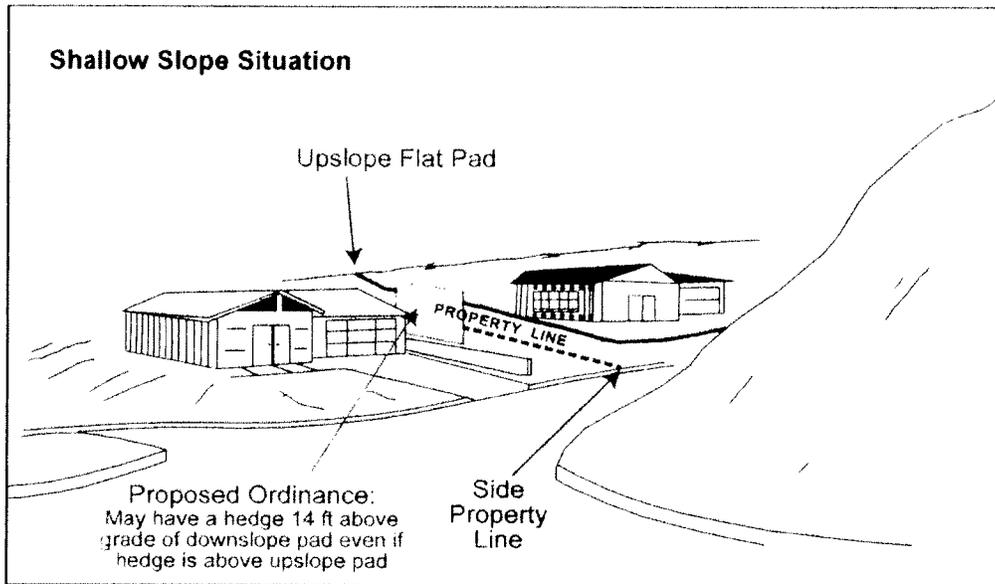
- 1) Limits the height of fences located on the slope of a down-slope property to no more than 36-inches above the immediately adjacent, up-slope property's level pad;
- 2) Limits, in areas outside of the front yard setback, the height of hedges on the slope between adjacent properties to the higher of:
  - a) Finished grade of the level pad on the immediately adjacent up-slope property, or
  - b) 14 feet as measured from the down-slope property's level pad;
- 3) Modifies the hedge definition such that three (3) or more individual plants (including trees) that are cultivated or maintained in a manner to produce a barrier to inhibit passage or obscure view, shall constitute a hedge. The current Code definition of hedge does not include the 'three or more plants' language and does not include trees with canopies eight feet above grade. The proposed hedge definition includes other objective criteria (see Attachment 1).

Walls may not be built on slopes in Trousdale and so are unaffected by the proposed ordinance.

The following diagram illustrates bullet points 1 and 2a above:



The following diagram illustrates bullet point 2b above:



With regard to enforcement, it is important to clarify that the City cannot limit who may make a complaint to the City regarding a zoning code violation. Staff and the Planning Commission previously sought to limit complaints to the immediately adjacent neighbor. Therefore, it is possible that even though a person does not own property in Trousdale adjacent to a slope facing the Los Angeles Area Basin, on which exists a hedge alleged to be above the maximum height, that person may make a complaint to the City to have the alleged hedge height violation addressed. This situation is true with regard to enforcement of any of the City's zoning codes and it is still expected that the majority of complaints regarding violations of the proposed new code amendment would be made by adjacent upslope property owners.

### **GENERAL PLAN CONSISTENCY**

The Planning Commission found that the proposed zone text amendment is intended to "maintain and enhance the character, ... and aesthetic qualities of the City's distinctive residential neighborhoods..." as stated in the Land Use Element of the City's adopted General Plan Land under goal LU 2.1 "City Places: Neighborhood, Districts, and Corridors." Trousdale Estates was developed to take advantage of views of the Los Angeles Area Basin and such views are one of the most distinctive qualities of this neighborhood. The proposed amendment would assist some residents in restoring and maintaining this special quality of the area by addressing view obstruction through regulation of foliage height; therefore, the proposed ordinance would be consistent with the goals and policies of the General Plan.

## **ENVIRONMENTAL DETERMINATION**

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 (Attachment 3). The Planning Commission on June 23, 2011 adopted a resolution recommending that 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.

## **FISCAL IMPACT**

### **Implementation Costs**

Staff's report for the July 7, 2011 Study Session (Attachment 4) included estimated costs to implement the proposed ordinance; approximately \$130,968.00 annually based on the estimated number of complaints to the City's Code Enforcement Division resulting from the ordinance. The average cost to enforce a hedge height complaint in Trowsdale, pursuant to the proposed ordinance, would be approximately \$2,032.00. Staff's estimates are supported by documentation of an increase in calls to the City in 2011 for enforcement of wall, fence and hedge complaints in Trowsdale. The number of wall, fence and hedge complaints in Trowsdale has increased 69% in 2011 as compared to the average number of complaints from 2008 – 2010. As a comparison, the number of complaints for a related but different code enforcement category, excessive vegetation, has remained consistent from 2008 through 2011. Staff believes the increase in wall, fence and hedge complaints is because of resident awareness as a result of the ongoing Trowsdale view restoration discussions. The fact that the increase in wall, fence and hedge complaints is citywide (67% increase), and not only in Trowsdale, supports staff's assertion that adoption of the proposed ordinance will result in many additional code enforcement calls not strictly related to Trowsdale fence and hedge heights.

### **Cost Recovery**

The City Council directed staff to review options for recovery of costs associated with implementation of the proposed ordinance. Staff looked at options such as charging a fee to a hedge complainant to cover or partially cover the City's enforcement cost or charging a fee to all property owners to create a Trowsdale hedge height program.

**Charging a Fee:** The proposed ordinance is similar to many other provisions of the municipal code where development standards are adopted; the City cannot charge those who make complaints about City development standards, whether in Trowsdale or any other part of the City.

**Hedge Height Program:** In general, fees may be charged for recovering the cost of providing a service. The typical example is a fee charged for processing a conditional use permit application. There are constitutional limitations on the levying of fees such as Proposition 218, which deals with property-related fees, and Proposition 26, which prohibits a local government from enacting new fees without voter approval unless that fee falls under one of the exceptions under Proposition 26. A hedge height program would be infeasible under these constraints.

**PUBLIC NOTICE**

A public hearing notice was mailed on July 22, 2011 to all property owners in Trousdale Estates. Notice was published in the *Beverly Hills Courier* and the *Beverly Hills Weekly*, two newspapers of local circulation. Additionally, staff has communicated with interested parties.

**RECOMMENDED ACTION**

It is recommended that the City Council continue the ordinance amending the Municipal Code to establish additional maximum height regulations for fences and hedges on certain slopes between properties in Trousdale Estates and set the ordinance for second reading and adoption at a future meeting.

Susan Healy Keene, AICP  
Director of Community Development

  
Approved By \_\_\_\_\_



**ATTACHMENT 1**  
**Ordinance**

ORDINANCE NO. 11-O- \_\_\_\_\_

ORDINANCE OF THE CITY OF BEVERLY HILLS  
AMENDING BEVERLY HILLS MUNICIPAL CODE SECTION  
10-3-2616 REGARDING DEVELOPMENT STANDARDS FOR  
WALLS, FENCES AND HEDGES IN THE TROUSDALE  
ESTATES AREA OF THE CITY

THE CITY COUNCIL OF THE CITY OF BEVERLY HILLS HEREBY

ORDAINS AS FOLLOWS:

Section 1. The City Council considered this Ordinance at a duly noticed public hearing on August 2, 2011 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 a broader view restoration ordinance, of which this ordinance was a part, was prepared. The initial study concluded that the broader 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). This ordinance, being narrower in scope, will have less potential for impacts than the broader ordinance, and will not result in potentially significant environmental impacts. 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 this ordinance may result in significant adverse impacts on the environment. 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. The City Council hereby amends Section 2616 of Article 26 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code to read as follows:

**"10-3-2616: WALLS, FENCES AND HEDGES:**

In addition to any requirements imposed pursuant to title 9 of this code, a building permit shall be required for any wall or fence greater than six feet (6') in height and shall also be required for any wall or fence, regardless of its height, that is located in a front yard.

A. Thickness: No wall or fence shall exceed two feet (2') in thickness. Cavities or spaces within a wall or fence shall not be used for the support, storage, shelter, or enclosure of persons, animals, or personal property.

B. Supporting Elements: No column, pillar, post, or other supporting element of a wall or fence shall be more than twenty four inches (24") in width.

C. Front Yards: The maximum allowable height of a wall, fence, or hedge located within the first twenty percent (20%) of the front yard, measured from the front lot line shall be three feet (3').

The maximum allowable height of a wall, fence, or hedge located within the front yard at a distance from the front lot line of more than twenty percent (20%) of the front setback shall be six feet (6'); provided, however, any portion of such wall, fence, or hedge that exceeds three feet (3') in height shall be open to public view.

D. Side Yards: The maximum allowable height for that portion of a wall, fence, or hedge located in both a side yard and a front yard shall be six feet (6'); provided, however, that any portion of such wall, fence, or hedge that exceeds three feet (3') in height shall be open to public view.

The maximum allowable height for that portion of a wall, fence, or hedge located in a side yard, but not in a front yard, shall be seven feet (7'), except that the maximum allowable height shall be eight feet (8') for such a wall, fence, or hedge located within five feet (5') of a rear lot line and parallel to such rear lot line.

Notwithstanding the provisions of this paragraph D, in no event shall a hedge exceed the maximum height permitted pursuant to paragraph F below.

E. Rear Yards: The maximum allowable height for a fence, wall or hedge located in a rear yard shall be eight feet (8').

Notwithstanding the provisions of this paragraph E, in no event shall a hedge exceed the maximum height permitted pursuant to paragraph F below.

F. Height Limit for Fences and Hedges meeting certain criteria.

Fences: New fences on a slope of a down-slope property shall not in any event extend above a point thirty-six inches (36") above the finished grade of the level pad on the adjacent upslope property in any area where the fence is located in a line of sight from the upslope property to the Los Angeles Area Basin. The fence shall be open to public view, as defined in article 1 of this chapter.

Notwithstanding Sections 10-3-2759 and 10-3-2603, 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 the fence without deductions for open spaces in the fencing, is replaced or reconstructed in any five (5) year period. If more than fifty percent (50%) of the 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 outside of the front yard setback on a slope between adjacent downslope and upslope properties where the hedge is located in a line of sight from the upslope property to the Los Angeles Area Basin shall not extend above the higher of:

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

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

Hedge, as used in this paragraph F, shall be defined as growth of vegetation, consisting of three (3) or more individual plants, that is cultivated or maintained in such a manner as to produce a barrier to inhibit passage or to obscure view and 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.

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

Section 4. 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 5. The City Council hereby adopts a Negative Declaration, approves this Ordinance, and authorizes the Mayor to execute the Ordinance on behalf of the City.

Section 6. A report regarding the implementation of this Ordinance shall be provided to the Planning Commission and City Council after twelve months from the effective date of the Ordinance.

Section 7. 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 8. 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:



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LAURENCE S. WIENER  
City Attorney

APPROVED AS TO CONTENT:

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JEFFREY KOLIN  
City Manager



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SUSAN HEALY KEENE AICP  
Director of Community Development

## **Attachment 5**

Planning Commission Staff Report for June 9, 2011



## City of Beverly Hills

### Planning Division

455 N. Rexford Drive Beverly Hills, CA 90210  
TEL. (310) 485-1141 FAX. (310) 858-5966

# Planning Commission Report

**Meeting Date:** June 9, 2011

**Subject:** 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.

**Recommendation:** Conduct continued public hearing, consider revised draft ordinance and consider adopting a resolution recommending revised draft ordinance to the City Council.

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## REPORT SUMMARY

Pursuant to a request from a City Council/Planning Commission Ad Hoc Committee on Trousdale view restoration, the Planning Commission, at a May 26, 2011 public hearing, reconsidered the draft Trousdale View Restoration ordinance that it previously recommended to the City Council, with the benefit of comments from the Ad Hoc Committee and additional public hearing comments. At the May 26 meeting, the Chair requested that the Planning Commission members of the Ad Hoc Committee (Vice Chair Corman and Commissioner Cole) meet with staff to review proposed revisions prior to presenting a final draft ordinance to the Planning Commission. The Planning Commission Ad Hoc Committee met on May 31, 2011 to review a draft ordinance. A final draft ordinance is attached for the Commission's review including: Attachment 1, the previous Trousdale View Restoration Ordinance recommended by the Planning Commission to the City Council showing the proposed changes; and, Attachment 2, a clean copy of the same document with the changes incorporated. Also attached is a revised Planning Commission resolution recommending the revised draft ordinance to the City Council. It is noted that the Ad Hoc Committee did not review the final draft of the ordinance prior to distribution to the Planning Commission for this meeting. This report reviews revisions to the ordinance discussed at the May 26, 2011 Planning Commission meeting and at the Planning Commission Ad Hoc meeting on May 31, 2011.

## BACKGROUND

- April 7, 2009 – In response to a request from Trousdale Estates residents, the City Council directed the Planning Commission and staff to consider regulations to protect views in the City's hillside areas that have been impaired by foliage.
- May 28, 2009 - The Planning Commission began a discussion of view preservation in the hillside areas including a bus tour at its June 25, 2009 meeting.

### Attachment(s):

1. Planning Commission Previously Recommended Ordinance showing redlined changes
2. Clean Copy of Ordinance with changes incorporated
3. Planning Commission Resolution Recommending Ordinance

### Report Author and Contact Information:

Michele McGrath  
Senior Planner  
(310) 285-1135  
mmcgrath@beverlyhills.org

- February 11, 2010 - The Planning Commission took public testimony and discussed how different hillside areas of the City may require unique view preservation standards. As a result, the Commission decided to focus the view restoration discussion on Trousdale Estates as a pilot area to develop view restoration standards. A subcommittee of Commissioners Cole and Corman was appointed to meet with staff and develop an ordinance framework.
- Feb. to June 2010 – The Subcommittee had seven meetings including a tour to test potential ordinance provisions.
- June 24, 2010 – Planning Commission Public Hearing to consider a draft ordinance framework. Considerable public testimony was heard and direction was provided by the Planning Commission to revise the draft ordinance language.
- Sept. 7, 2010 – Planning Commission Subcommittee meeting to discuss revisions.
- Oct., Nov. – Planning Commission hearings to consider final draft ordinance.
- December 16, 2010 – Planning Commission adopts resolution recommending draft ordinance to City Council.
- January 25, 2011 – City Council Study Session on draft ordinance; Mayor directs that a City Council/Planning Commission Ad Hoc Committee review the ordinance.
- April 20, 2011 – City Council/Planning Commission Ad Hoc Committee meeting with public input.
- May 26, 2011 – Planning Commission Public Hearing to review draft ordinance with the benefit of Ad Hoc Committee comments and additional public comments.
- May 31, 2011 – Planning Commission Ad Hoc meeting to review proposed revisions to ordinance.
- June 9, 2011 – Planning Commission Public Hearing to review revisions to draft ordinance.

## **DISCUSSION**

### **Revisions to Draft Ordinance**

Substantive changes to the draft ordinance are discussed below. Page numbers reflect pages in the redlined version of the ordinance (Attachment 1).

#### Definition of Viewing Area (Page 4)

The Planning Commission requested that the breadth of views that the Planning Commission may consider for protection should be narrowed to address concerns about the ability of the Planning Commission and staff to define and adequately address the most important views when reviewing view restoration cases. Language has been added to the definition of “Viewing Area” so a viewing area or areas shall exclude “hallways, bathrooms, closets and garages.”

#### Mediation Procedure (Page 6)

No substantive change has been proposed to the mediation procedure; however, the requirement that a view owner shall contact a mediator has been deleted since that is a specific action that would be

better included in the View Restoration Guidelines that the Planning Commission will be considering in the near future. At this point, it is not clear who should contact the mediator; it may be that the City should contact the mediator, depending on the mediation procedures ultimately recommended by staff and the Planning Commission.

Binding Arbitration (Page 5)

The revised ordinance now clarifies under “Procedures” that interested parties may agree to binding arbitration at any time to resolve their disputes in which case compliance with the proposed view restoration procedures would not be required.

Removal of Non-Binding Arbitration Procedure (Page 7, and other sections)

In the draft ordinance previously recommended by the Planning Commission, the view restoration review process included a requirement that the view owner offer to the foliage owner, and complete, a non-binding arbitration step after the mediation step and prior to applying for a Planning Commission hearing. Based on concerns about the cost and efficacy of the non-binding arbitration step, that step has been removed from the proposed view restoration review process. The City Council/Planning Commission Ad Hoc Committee discussed inserting a City advisory opinion in the process as an early step; however, concerns about the potential problems of an early City advisory opinion competing with a later, more carefully considered Planning Commission decision, outweighed any perceived benefits of a City advisory opinion in the opinion of the Planning Commission Ad Hoc Committee. The Ad Hoc Committee expressed concern that the view restoration review process now proposed includes only two steps prior to Planning Commission review: initial neighbor outreach and mediation; however, there do not appear to be any steps that could be added to the City’s proposed process that would benefit the process.

Required Findings (Pages 10-11)

The required findings that the Planning Commission would make to issue a View Restoration Permit have not been substantially changed but have been restructured to clarify the Planning Commission’s key decision points in determining whether a View Restoration Permit should be granted:

- Does view owner have a protectable view whether from one or more viewing areas?  
(See I “Required Findings,” 1, which would be considered by the Planning Commission in conjunction with the definitions of “Protectable View and “Viewing Areas” in the “Definitions” section of the ordinance, pages 2-4).
- If it is determined that view owner has a protectable view, what are the criteria to determine that the protectable view has been substantially disrupted?  
(See I “Required Findings,” 1 iii a-c on page 10).
- If a view owner has a protectable view that has been determined to be substantially disrupted, is restorative action required?

This is addressed in the ordinance under I “Required Findings” 2, which allows the Planning Commission to permit obstruction of a view in the following specific circumstances:

- foliage is important to integrity of an existing landscape plan;

- alteration of foliage will unreasonably impact privacy and security; or,
- alteration of foliage will have a substantial adverse impact on stability of a hillside, drainage or erosion control.

References to alteration of foliage impacting energy usage or biological resources (wildlife) were removed from this section as unnecessary because such issues are addressed elsewhere in the ordinance (e.g. the Planning Commission may require replacement trees if there is an impact on health, safety or welfare); or, in the case of impact on wildlife, the State Department of Fish and Game has not identified wildlife issues in the Trousdale Estates Area as discussed in the environmental documents prepared regarding this ordinance.

#### Decisions Intended to Run with the Land (Pages 12-13)

This section was in the previous version of the ordinance and has not changed.

#### Initial City Enforcement: Subsequent Enforcement by View Owner and Attorney's Fees (Pages 12-13)

This section is a new section that addresses the City's concerns about the costs into perpetuity of enforcing View Restoration Permit decisions. Through the proposed ordinance the City would be providing to residents of Trousdale Estates:

- view restoration regulations developed after a long, thoughtful process;
- a view restoration review process that includes the opportunity for a Planning Commission decision, unlike most other cities with view restoration ordinances; and,
- City enforcement of the initial restorative action required to restore a view.

This new section places responsibility on the interested parties to maintain the view once it has been restored. In addition, to assist the parties in subsequent enforcement action, the ordinance now states, "...the prevailing party in any such civil action between view owner and foliage owner shall be entitled to recover its attorney's fees incurred in the litigation."

#### Apportionment of Costs (Pages 13-14)

The ordinance previously recommended by the Planning Commission proposed that all application fees (procedural costs) 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 as the process progressed, based on the level of foliage owner participation in the process and the level of restorative action required. This cost shifting was intended to encourage early resolution of view obstruction disputes. The City Council/Planning Commission Ad Hoc Committee expressed concern about the cost of the view restoration review process to view owners as well as the length of the process. In response to this concern, the non-binding arbitration step has been removed from the process, greatly reducing cost and time for the parties involved. Removing a step in the process, however, removes opportunities to more gradually shift costs in the process. As a result, the revised ordinance front loads costs to the view owner and then shifts some or all restorative action costs to the foliage owner at the Planning Commission step. The goal is to encourage foliage owner participation by the mediation level, thereby increasing the chances for resolution prior to the Planning Commission step, saving all parties time and money.

In the revised ordinance, all procedural costs for the initial neighbor outreach, mediation and Planning Commission hearing steps are still proposed to be paid by the view owner as there is no other effective way to ensure that the review process is cost-neutral to the City and it is the view owner who receives the most benefit from the process. Restorative Action costs would be paid by the view owner at the initial neighbor outreach and mediation steps to encourage foliage owner participation. If a case ends up before the Planning Commission, the foliage owner would pay fifty percent (50%) of restorative action cost if the foliage owner participated in mediation, and one hundred percent (100%) of the restorative action cost if the foliage owner did not participate in mediation.

The revised ordinance is now silent with regard to payment of ongoing maintenance costs at the initial neighbor outreach and mediation steps. Since these steps involve private discussions and agreements, the Planning Commission Ad Hoc Committee felt that determination of payment of maintenance costs should be left to the parties involved. The ordinance does specify that it is the foliage owner's responsibility to maintain foliage consistent with a View Restoration Permit issued by the City.

Code Enforcement Solution: New code limits on fence and hedge height in certain areas (Page 15)

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 Planning Commission Ad Hoc Committee supported the language presented at the May 26, 2011 Planning Commission meeting, with the removal of the word "walls," as walls may not be constructed on slopes in Trousdale, and the addition of language that captures tree hedges, as well as traditional hedges, in the designated area within five feet of an upslope pad that faces the Los Angeles Area Basin. No expansion of the area subject to the proposed additional hedge height restrictions is proposed at this time.

Consistency with City's Existing Tree Preservation Ordinance (Pages 15-16)

Sections 5 and 6 of the ordinance propose minor changes to the City's existing tree preservation ordinance so it is consistent with the proposed Trousdale view restoration ordinance. Definitions for "Arborist" and "Tree" are proposed to be slightly revised to be consistent with proposed definitions for the same terms in the Trousdale view restoration ordinance. In addition, the criteria for Building and Safety Division approval for removal of a protected tree were revised so that such trees could be removed in Trousdale if they block a view of the Los Angeles Area Basin from another property. The criteria currently only allow Building and Safety Division approval for removal of protected trees on the same property as the viewing area from which a view is obstructed. This will allow parties engaging in initial neighbor outreach or mediation to apply to the Building and Safety Division for removal of protected trees blocking a view on another property rather than applying to the Planning Commission for a permit to remove a protected tree. Protected trees that are proposed to be removed as part of a view restoration case being heard by the Planning Commission would be considered by the Planning Commission and no additional permit from the Building and Safety Division would be required.

### **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. Several letters were received prior to the May 26, 2011 Planning Commission meeting and entered into the record. As of the time of this report no additional letters have been received by the Planning Division.

### **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:

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



## **Attachment 6**

### Cost Tables



**View Restoration Review Process**

May 26, 2011

**D. Planning Commission Recommended\***

Process Steps	Cost to Applicant		City Costs		Issues/Notes
	Time	Fees	Fees*	Legal	
<ul style="list-style-type: none"> <li>• <b>Initial Neighbor Outreach</b></li> <li>• <b>Mediation</b></li> <li>• <b>Arbitration</b></li> </ul>	1.5-2 mos. 2-3 mos. 5-6 mos.	\$150 \$1,500 \$15,000	1	Ordinance Facial Challenge \$200,000 - \$300,000	Planning Commission and City Council directed that the review process should be cost-neutral to the City. To achieve this goal, substantial fees would be charged for the public hearing process.  A new process so it is unclear how many cases will require PC review; affects PC and staff workload (opportunity cost because staff will not be available to work on other priorities)
<ul style="list-style-type: none"> <li>• <b>PC Hearing</b></li> </ul>	2-5 mos.	\$15,000	\$15,000	Challenge of PC/CC decision in a case	An appeal adds time and cost to the process; affects CC caseload and parties may litigate anyway, unlike in binding arbitration which is a final decision. City does not recoup full cost of appeal
<ul style="list-style-type: none"> <li>• <b>Appeal to City Council</b></li> </ul>	2.5-4.5 mos.  TOTAL 13-20.5 mos.	\$5,000  TOTAL \$36,650**	\$15,000 \$15,000		The City has more legal exposure when it is part of the decision-making process because the City can be sued in each case.  The non-binding arbitration step (as opposed to binding arbitration which is a final action) creates a barrier for parties to gain access to Planning Commission (PC) review. Intended to encourage early resolution by creating a disincentive to continue with the process AND limit the number of cases heard by the Planning Commission.
					The cost of restorative actions switch from View Owner to Foliage Owner during the review process depending on level of Foliage Owner participation and whether reviewing authorities find restorative action is needed.

\*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.

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

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> <hr/> <p><b>1. Referral to City Code Enforcement (CE):</b></p> <p>CE verifies (inspect) violation of decision/CE staff prepares report</p> <p>City Prosecutor (CP) Demand Letter w/ date for compliance</p> <p>CE compliance inspection</p>	<p>\$290 - \$725</p> <hr/> <p>TOTAL</p> <p>\$290 - \$725</p>	<p>\$1,016 - \$1,524</p>	<p><b>Initial Enforcement of PC/CC Decision (View Restoration)</b></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 cannot gain restitution of most prosecution costs.</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>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>Each step in the abatement process (Step #2) may be appealed to the City Council.</p>
<p><b>2. Noncompliance/Partial Compliance = City Prosecutor Process:</b></p> <p>CE prepares Prosecution Report; submit to CP who files complaint in Superior Court; CP determines civil or criminal action; Court CE verifies violation; CP prepares abatement notice</p> <p>Owner Appeals Abatement to City Council</p> <p>Failure to Comply = City Abatement Action</p>	<p>Prep report; appear at depositions or in court; abatement to include BHPD =</p> <hr/> <p>TOTAL</p> <p>\$3,500 - \$8,000</p>	<p>\$508 - \$1,016</p> <hr/> <p>TOTAL</p> <p>1,500 - \$2,600</p>	<p>Prep report; appear at depositions or in court; abatement to include BHPD =</p> <hr/> <p>TOTAL \$</p> <p>\$3,500 - \$8,000</p>

<p><b>3. Restitution of City Cost</b></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>TOTAL \$5,000</p>	<p>TOTAL \$5,000</p>	<p><b><u>Enforcement After Initial Restorative Action</u></b> <b>(Maintenance of Views)</b></p> <p><u>Enforcement Options</u> 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"> <li>• No City enforcement of initial PC/CC decision; View Owner seeks compliance through courts (Private Right of Action)</li> <li>• City enforces initial restorative action but not subsequent restorative actions (Private right of Action)</li> <li>• 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)</li> </ul> <p><u>Contract Code Enforcement</u> 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.