



Planning Commission Report

Meeting Date: September 8, 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.

REPORT SUMMARY

View restoration in Trousdale Estates is being addressed by the City in two ways: a) an ordinance regulating maximum hedge and fence heights on certain slopes in Trousdale that was adopted by the City Council on August 16, 2011; and, b) a set of regulations and a discretionary review process to assist property owners in restoring and maintaining views in Trousdale. This report addresses “b,” a proposed view restoration ordinance for Trousdale Estates.

On August 4, 2011, the Planning Commission considered a draft Trousdale view restoration ordinance that had been revised from the June 9, 2011 Planning Commission meeting. A redline of the draft ordinance is attached showing the latest revisions. The Planning Commission directed staff to make revisions to the ordinance related to the definitions of “protected view,” “safe harbor plane,” and “viewing area.” The Planning Commission also agreed to changes to one section of the required findings for a view restoration permit, and to language regarding the apportionment of maintenance costs under the Initial Neighbor Outreach process. The most significant change proposed by the Planning Commission was the addition of an option for view owners or foliage owners to obtain a non-binding City advisory opinion with regard to cases of alleged view obstruction. The City Advisory Opinion is intended to provide interested parties with an alternative, less costly avenue for City feedback on individual cases. The revisions to the ordinance are discussed further below.

At the August 4, 2011 meeting, the Planning Commission also discussed the following issues that did not result in changes to the draft ordinance: privacy and shade findings; indemnification language including a potential cap on a view owner’s costs and disclosure language in City applications; and, fees set so as to achieve full cost recovery for the City. The discussion did result in recommendations to the City Council included in the proposed Planning Commission resolution (Attachment 2). These issues are also further discussed below.

Attachment(s):

1. Redline of draft ordinance showing Planning Commission revisions from 8/4/11
2. Clean Copy of Ordinance with changes incorporated
3. Planning Commission Resolution
4. Initial Environmental Study and Negative Declaration

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DISCUSSION

Revisions to Draft Ordinance

(Deleted language in strike-out and new language in italics)

Definition of Protected View

"10-8-102 (J) PROTECTED VIEW: A protectable view that has been determined by the reviewing authority to merit restoration. *A protected view shall not include an area that may otherwise be developed in the future pursuant to applicable codes.*"

The proposed change addresses the concern about including a "borrowed view" as part of a "protected view." The term "borrowed view" is an art or landscape design term wherein a designer uses landscape features outside the garden or yard to create a wider panorama than the site itself could provide. This term has also been applied to situations where a view exists of or through a neighbor's property in a location where development could otherwise occur, such as a view of or through a vacant lot. So long as there is no development, a neighbor may have a borrowed view. That view may disappear when development occurs.

Definition of Safe Harbor Plane

"10-8-102 (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')~~ *sixteen feet (16')* as measured from grade at the edge of an adjacent downslope foliage owner's principal building area that is farthest from the edge of view owner's level pad located in a line of sight to a protectable view. (See illustration in section 10-8-103.) For purposes of this definition, downslope and upslope properties separated by a public street shall be deemed to be adjacent."

The intent of the safe harbor plane is to provide foliage owners with certainty as to foliage that may be planted or maintained without the concern that a view restoration action could be initiated by a neighbor. Since the August Planning Commission meeting, staff has received requests from a commissioner and a member of the public to review alternatives to the revised 16-foot height used to determine the safe harbor plane. Concern was expressed that the new 16-foot height was not thoroughly discussed and may include too large an area, wherein the foliage in that area would not be subject to a view restoration action. Alternatives suggested for Planning Commission discussion:

- 1) maintain the current height measurement in the safe harbor definition (height as measured from grade at the edge of the downslope principal building area) but consider using the original 14-foot height or a 15-foot height rather than 16 feet; and,
- 2) rather than using a consistent height as described above, instead base the safe harbor definition on the existing roof height of the primary residential structure on the downslope property, such as one or two feet above the existing roof height. This could be the roof height at the time an ordinance is adopted or the existing roof height at any time, with a height cap for legally non-conforming homes that may exceed 14 feet.

Staff supports the use of a consistent height as measured from grade as part of the safe harbor definition. Staff has concerns about basing the safe harbor plane definition on a height that uses existing or former roof height as a baseline for measurement for the following reasons:

- Consistency. Foliage would be limited by the height of existing homes so that residents with lower-profile homes would be penalized in terms of foliage height.
- Borrowed View. By requiring that foliage at sites where homes are ten or eleven feet high, must be trimmed below 14 feet in certain areas of the property, a nearby view owner may gain a view that is a borrowed view since the foliage owner may, in the future, build a structure in that location that is 14 feet high, including a wall or fence. Currently, a property owner may build a wall or fence in the principal building area. The principal building area in Trousdale is on the flat pad outside of the required setbacks. Since the setbacks on many Trousdale lots are located on slopes, the entire flat pad is often buildable. This means that foliage could potentially be limited to a height below 14 feet even though walls and fences could be 14 feet high pursuant to current Code.
- Using existing structure height as the baseline will result in difficulties in the future in determining an historic structure height.

Definition of Viewing Area

"10-8-102 (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~~, laundry rooms, 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 may designate a location as a Viewing Area if, in the opinion of the Reviewing Authority, an average resident would often observe a Protectable View from that area."

The Planning Commission had an extensive discussion of the definition of "viewing area" and a majority of the Commission agreed to maintain the definition as previously recommended except for one change: removing bathrooms from the list of rooms excluded from consideration as a viewing area and adding laundry rooms to the list of excluded rooms.

View Restoration Permit Findings

"10-8-106 (I) (3) iii View Diminished by Other Factors. The extent to which the view has been or is diminished by other 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, *legally existing structures*, permitted structures, *structures that may be permitted pursuant to applicable codes*, and foliage that is not on a private property within five hundred feet (500') of the View Owner's property."

The additional language clarifies that an existing illegal structure would not be considered as a factor diminishing a view; only legally existing structures would be considered since an illegal structure would likely have to be removed, thereby not contributing to diminution of a view. The new language further clarifies that the reviewing authority may consider that a structure could be built that could diminish a view (i.e. the potential view may be a borrowed view and that may be considered in the findings).

Apportionment of Costs: Initial Neighbor Outreach

"10-8-110 (A) (3) Maintenance Costs. The cost of subsequent maintenance of foliage on the foliage owner's property shall be ~~borne by the view owner unless otherwise~~ *allocated as* agreed upon by the parties."

The Planning Commission agreed that at this early negotiating stage, the parties should have maximum flexibility to resolve issues, notwithstanding the desire to create fiscal incentives for early resolution.

City Advisory Opinion

"10-8-102 (B) CITY ADVISORY OPINION: A non-binding opinion rendered by the Director of Community Development or his/her designee to a view or foliage owner who requests such an opinion and pays a fee as set by the City Council."

"10-8-104 (D) A City Advisory Opinion may be requested at any time prior to a view owner filing an application for a view restoration permit in accordance with the requirements of Section 10-8-106. If the City Advisory Opinion concludes that there is no substantial disruption of a protectable view, and a view owner wishes to pursue remedies available in Section 10-8-106, the view owner must wait twelve (12) months from receipt of the City Advisory Opinion to file a view restoration permit application. If the City Advisory Opinion concludes that there is a substantial disruption of a protectable view, the view owner may apply for a view restoration permit thirty (30) days after receipt of the City Advisory Opinion."

Because of the potential high cost of the proposed view restoration permit process (see "Indemnification" section below), Councilmembers and Planning Commissioners expressed a desire to provide tools or alternatives that could be less costly and time-consuming for the parties involved in a view dispute to resolve issues. As a result, the Planning Commission directed staff to include in the ordinance the ability for view owners and foliage owners to request a City Advisory Opinion.

The waiting period required after a City Advisory Opinion is rendered is intended to ensure that a subsequent decision of the Planning Commission could not be seen to conflict with an earlier City opinion regarding a view obstruction claim. The waiting period results in changed conditions at the sites involved (growth of foliage, trimming of foliage) so that if and when the Planning Commission considers a view restoration permit application, it would be an entirely new situation without reference to a previous City Advisory Opinion. The Commission had discussed an 18-month waiting period but preferred a 12-month waiting period and a 12-month waiting period is included in the ordinance. A concern was expressed at the August 4 Planning Commission meeting that foliage owners could request a City opinion simply to stall view owners' ability to file for a view restoration permit for 12 months. As a result of this concern, staff is proposing that the waiting period should be based on the outcome of the Advisory Opinion.

If staff renders a City Advisory Opinion that there appears to be no substantial disruption, then staff believes the view owner will not be severely harmed by a 12-month wait to file for a view restoration permit. If, on the other hand, staff finds a substantial disruption, it would be more urgent for a view owner to file for a view restoration permit; therefore, staff proposes a shorter waiting period of 30 days in this situation. This would address the issue of a foliage owner intentionally holding up a view owner.

Staff believes it is more likely that if staff finds there is a substantial disruption of a view, the Planning Commission would also find some level of substantial disruption when it reviews the application. This should address the concern about potentially conflicting City opinions/decisions. The 30-day waiting period to pursue a View Restoration Permit application is intended to encourage parties to come to a resolution, with the benefit of information in a City Advisory Opinion, prior to filing for a View Restoration Permit.

Privacy and Shade

At the July 7, 2011 City Council meeting, the City Council, in response to a number of public speakers, directed the Planning Commission to further consider protection of privacy and shade. The Planning Commission determined that privacy was already appropriately addressed in the ordinance through language in three sections of the ordinance: Section 10-8-101, "Purpose and Intent," Section 10-8-106 (I), "Findings," and Section 10-8-106 (J) 3 "Restorative Action." While acknowledging that trees and foliage can be a valuable source of shade, the Planning Commission discussed the practical difficulties in assessing shade since it changes throughout the day and year and the fact that there are many other ways to achieve desired shade such as umbrellas, awnings, roof eaves, blinds and drapes. As a result, a majority of the Planning Commission agreed that no changes were needed in the "findings" section of the ordinance to address shade provided by foliage and the language regarding shade already included in Section 10-8-101(3), "Restorative Action," is adequate.

Indemnification

the indemnification language in the ordinance (Section 10-8-106 (L), requires a view owner to be responsible for any and all costs incurred by the City in enforcing any View Restoration Permit, except for those costs of enforcement as the City may recover from a foliage owner. The Planning Commission agreed at the August 4, 2011 meeting that it would prefer not to include this language; however, the Commission stated that it believes the language is necessary for the proposed ordinance to be cost-neutral to the City as directed by the City Council. As discussed previously in this report, the Commission has added a City Advisory Opinion to the ordinance as a tool to assist property owners who may not wish to pursue a View Restoration Permit through the Planning Commission because of potential enforcement costs.

The Planning Commission directed staff to include a recommendation to the City Council that supports consideration of a cap on the maximum dollar amount a view owner would have to pay to satisfy the indemnification requirements. This recommendation is included in the proposed resolution.

The Planning Commission further directed staff to ensure that any future application for a view restoration permit, as prepared by the City, include on the first page a clear disclosure about the indemnification language and the potential for the view owner to be responsible for future enforcement costs.

City Fees

Pursuant to the direction that the ordinance should be cost-neutral to the City, the Planning Commission directed staff to include in the resolution a recommendation to the City Council that all City fees associated with the proposed ordinance should achieve full cost recovery for the City.

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, for the May 26, 2011 public hearing. The hearing was continued to June 9, 2011, June 23, 2011, August 4, 2011 and to September 8, 2011. In addition to the required notice, staff has emailed meeting notices and staff reports to a list of interested parties for each continued hearing date. As of the time of this report no additional letters have been received by the Planning Division.

GENERAL PLAN CONFORMANCE

The proposed View Restoration Ordinance would regulate the restoration and maintenance of views that have been impaired by foliage in Trousdale Estates. The City's General Plan includes the following policies that relate to this proposed ordinance: LU 2.3 Hillside Development; OS 1 Natural and Open Space Protection: OS 1.1 Resource Preservation; OS 6 Visual Resource Preservation: OS 6.1 Protection of Scenic Views and OS 6.4 Minimize Removal of Existing Resources. The proposed ordinance stresses the importance of balancing the desire for views with the maintenance of trees and includes the following statement, "[r]emoval of a healthy tree not on a list of nuisance trees maintained by the City is to be avoided unless the reviewing authority determines such removal is necessary to restore a protected view in accordance with the findings." Based on the goal of the ordinance to balance the desire for views with the maintenance of trees and language that specifically limits the removal of healthy trees, it is anticipated that a relatively small number of trees would require removal as a result of the ordinance; therefore, the ordinance would be consistent with the goals and policies of the General Plan.

ENVIRONMENTAL ASSESSMENT

An Initial Environmental Study was prepared for the proposed ordinance because the ordinance could result in the removal of some healthy, mature trees. This ordinance 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 has been prepared, subject to review by the Planning Commission. A Notice of Intent to Adopt a Negative Declaration was issued on January 3, 2011, and a period for public comment on the environmental documentation ran from January 6, 2011 through January 27, 2011.

NEXT STEPS

It is recommended that the Planning Commission close the public hearing and adopt the resolution recommending the draft ordinance to the City Council.

Report Reviewed By:

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

ATTACHMENT 1

Redline of draft ordinance showing Planning Commission
revisions from 8/4/11

[Draft] ORDINANCE NO. 11-O- _____

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) CITY ADVISORY OPINION: A non-binding opinion rendered by the Director of Community Development or his/her designee, to a view or foliage owner who requests such an opinion and pays a fee as set by the City Council.

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(B)(C) 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)(D) 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)(E) 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)~~**(F) FORESTER:** An individual licensed in California as a Registered Professional Forester (RPF).

~~(F)~~**(G) HEDGE:** The term “Hedge” shall have the same meaning as set forth in BHMC 10-3-100.

~~(G)~~**(H) LANDSCAPE ARCHITECT:** A landscape architect registered by the State of California.

~~(H)~~**(I) 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)~~**(J) 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 viewing area.

~~(J)~~**(K) PROTECTED VIEW:** A protectable view that has been determined by the reviewing authority to merit restoration. A protected view shall not include an area that may otherwise be developed in the future pursuant to applicable codes and regulations.

~~(K)~~**(L) RESTORATIVE ACTION:** Any specific steps taken affecting foliage that would result in the restoration or preservation of a protected view.

~~(L)~~**(M) 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’)~~ sixteen feet (16’) as measured from grade at the edge of an adjacent downslope foliage owner’s principal building area that is farthest from the edge of view owner’s level pad located in a line of sight to a protectable view. (See illustration in section 10-8-103.) For purposes of this definition, downslope and upslope properties separated by a public street shall be deemed to be adjacent.

~~(M)~~**(N) TREE:** A woody perennial plant, consisting usually of a single elongated main stem or trunk and many branches.

~~(N)~~**(O) 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)(P) 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)(Q) 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.

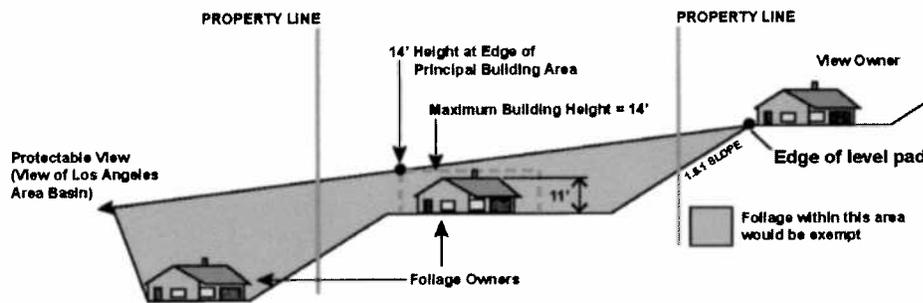
(Q)(R) VIEW RESTORATION PROPERTY SURVEY: A survey completed by a certified professional, such as an ALTA (American Land Title Association) survey, of view owner's site and foliage owner's site that may include calculation of the safe harbor plane as defined in this Article and any other information or calculations as may be of assistance to a reviewing authority pursuant to this section.

(R)(S) 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~~ laundry rooms, 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 may designate a location as a Viewing Area if, in the opinion of the Reviewing Authority, an average resident would often observe a Protectable View from that area.

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.

Comment [A1]: All of Section 10-3-2616, not just subsection "F", regulates hedge height in Trousdale, therefore, subsections other than "F" may apply to some foliage complaints.

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, and an offer to pay that amount.

(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 (business days) 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, as a prerequisite, 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 (business days) 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.

(D) City Advisory Opinion. A City Advisory Opinion may be requested at any time prior to a view owner filing an application for a view restoration permit in accordance with the requirements of Section 10-8-106. If the City Advisory Opinion concludes that there is no substantial disruption of a protectable view, and a view owner wishes to pursue remedies available in Section 10-8-106, the view owner must wait twelve (12) months from receipt of the City Advisory Opinion to file a view restoration permit application. If the City Advisory Opinion concludes that there is a substantial disruption of a protectable view, the view owner may apply for a view restoration permit thirty (30) days after receipt of the City Advisory Opinion.

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~~ parties to the agreement, the parties may pursue civil litigation; however, if 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:

(1) 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:

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

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

(c) 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 other 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.

(2) With respect to any tree protected pursuant to Section 10-3-2902, removal of the tree will not:

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

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

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

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

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

(c) 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 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 borne by the view owner unless otherwise 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. To limit any fiscal impact of the Trousdale Estates View Restoration Program, the City shall conduct no more than ten (10) View Restoration Permit hearings per calendar year. The City may establish a means of accepting applications for View Restoration Permit hearings that ensures all property owners equal opportunity to receive a hearing.

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:

BYRON POPE (SEAL)
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 2

Clean Copy of Ordinance with changes incorporated

ATTACHMENT 2

Planning Commission Resolution and Clean Copy of
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, June 9, 2011, August 4, 2011, and September 8, 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 January 3, 2011, and the proposed negative declaration and initial study were made available for a 20-day public review period from January 6, 2011 through January 27, 2011. 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 Planning Commission does hereby recommend that the City Council consider the following when reviewing the proposed Ordinance: consideration of a cap on the maximum dollar amount a view owner would have to pay to the City to satisfy the indemnification requirements in the Ordinance; and, a recommendation that all City fees associated with the proposed Ordinance should be set at a rate to achieve full cost recovery for the City.

Section 5. 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:

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

Attest:

Secretary

Approved as to form:

Approved as to content:

David M. Snow
Assistant City Attorney

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

EXHIBIT A

[Draft] ORDINANCE NO. 11-O- _____

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) CITY ADVISORY OPINION: A non-binding opinion rendered by the Director of Community Development or his/her designee, to a view or foliage owner who requests such an opinion and pays a fee as set by the City Council.

(C) 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.

(D) 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.

(E) 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.

(F) FORESTER: An individual licensed in California as a Registered Professional Forester (RPF).

(G) HEDGE: The term “Hedge” shall have the same meaning as set forth in BHMC 10-3-100.

(H) LANDSCAPE ARCHITECT: A landscape architect registered by the State of California.

(I) 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.

(J) 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 viewing area.

(K) PROTECTED VIEW: A protectable view that has been determined by the reviewing authority to merit restoration. A protected view shall not include an area that may otherwise be developed in the future pursuant to applicable codes and regulations.

(L) RESTORATIVE ACTION: Any specific steps taken affecting foliage that would result in the restoration or preservation of a protected view.

(M) SAFE HARBOR PLANE: The plane defined by points at the edge of view owner’s level pad to points at a maximum height of sixteen feet (16’) as measured from grade at the edge of an adjacent downslope foliage owner’s principal building area that is farthest from the edge of view owner’s level pad located in a line of sight to a protectable view. (See illustration in section 10-8-103.) For purposes of this definition, downslope and upslope properties separated by a public street shall be deemed to be adjacent.

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

(O) 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.

(P) 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.

(Q) 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.

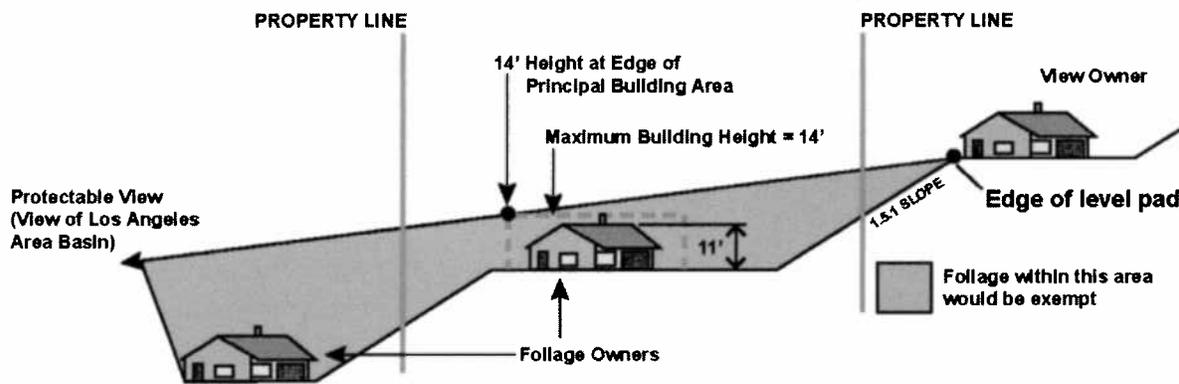
(R) VIEW RESTORATION PROPERTY SURVEY: A survey completed by a certified professional, such as an ALTA (American Land Title Association) survey, of view owner's site and foliage owner's site that may include calculation of the safe harbor plane as defined in this Article and any other information or calculations as may be of assistance to a reviewing authority pursuant to this section.

(S) 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, laundry rooms, 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 may designate a location as a Viewing Area if, in the opinion of the Reviewing Authority, an average resident would often observe a Protectable View from that area.

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, 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, and an offer to pay that amount.

(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 (business days) 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, as a prerequisite, 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 (business days) 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.

(D) City Advisory Opinion. A City Advisory Opinion may be requested at any time prior to a view owner filing an application for a view restoration permit in accordance with the requirements of Section 10-8-106. If the City Advisory Opinion concludes that there is no substantial disruption of a protectable view, and a view owner wishes to pursue remedies available in Section 10-8-106, the view owner must wait twelve (12) months from receipt of the City Advisory Opinion to file a view restoration permit application. If the City Advisory Opinion concludes that there is a substantial disruption of a protectable view, the view owner may apply for a view restoration permit thirty (30) days after receipt of the City Advisory Opinion.

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 parties to the agreement, the parties may pursue civil litigation; however, if 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:

(1) 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:

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

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

(c) 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 other 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.

(2) With respect to any tree protected pursuant to Section 10-3-2902, removal of the tree will not:

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

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

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

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

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

(c) 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 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. To limit any fiscal impact of the Trousdale Estates View Restoration Program, the City shall conduct no more than ten (10) View Restoration Permit hearings per calendar year. The City may establish a means of accepting applications for View Restoration Permit hearings that ensures all property owners equal opportunity to receive a hearing.

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