



Planning Commission Report

Meeting Date: June 14, 2012

Subject: Resolution recommending adoption of an ordinance of the City of Beverly Hills amending Beverly Hills Municipal Code section 10-3-2616 regarding development standards for walls, fences and hedges in the Trousdale Estates area of the City and amending Beverly Hills Municipal Code Section 10-8-106 regarding Trousdale View Restoration Permit Procedures

Recommendation: Conduct a public hearing, consider Code amendments and consider adopting a resolution recommending draft ordinance to the City Council

REPORT SUMMARY

This report provides information about a change proposed in each of the ordinances that comprise the City's Trousdale View Restoration program: 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 (Trousdale fence and hedge height ordinance); and, b) a Trousdale View Restoration Ordinance, adopted December 6, 2011, that provides a set of regulations and a discretionary review process to assist property owners in restoring and maintaining views in Trousdale. The change in the Trousdale fence and hedge height ordinance would revise the definition of "hedge" so that two trees growing together to form a barrier or to obscure view could be considered a hedge; this is a change from the current definition in which a minimum of three trees must be growing together to be considered a hedge. The change in the Trousdale View Restoration Ordinance would eliminate the 500-foot notice radius for a View Restoration Permit and require only that the View Restoration Permit applicant and foliage owners identified in the Permit application receive notice, as well as occupants of the foliage owners' properties. Review of the proposed change to the hedge definition was directed by the City Council; the change to the notice requirements was recommended by the Planning Commission during review of the Trousdale View Restoration Guidelines.

BACKGROUND

The Trousdale fence and hedge height ordinance was adopted prior to the Trousdale View Restoration Ordinance with the goal of enhancing administrative remedies to address view-related disputes in Trousdale by further regulating the height of fences and hedges. This was intended to address some of the more obvious cases of view disruption using the City's code enforcement process rather than the proposed (now adopted) View Restoration program which could result in a lengthier process and a public hearing. The Trousdale Fence and Hedge Ordinance was adopted in August, 2011 and the City

Attachment(s):

1. Planning Commission Resolution
2. Draft Ordinance

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Council conducted a three-month review of the ordinance at a Study Session on June 19, 2011. At that meeting, the Council expressed concern that the revised definition of "hedge" in the Trousdale fence and hedge height ordinance was not adequate to address the Council's goal of providing more immediate relief for residents with view disruption issues. The Mayor directed that the Trousdale Ad Hoc Committee should discuss this issue along with the issue of reducing the cost of the Trousdale View Restoration Ordinance for view owners. The issue of reducing costs had been raised by the Planning Commission and by the City Council at the public hearings on the ordinance but was referred to the Ad Hoc committee in the interest of adopting the ordinance more quickly to provide relief to Trousdale property owners.

The Ad Hoc Committee of then-Mayor Brucker and then-Vice Mayor Brien met on January 23, 2012 and recommended that the definition of hedge in the Trousdale fence and hedge height ordinance should be reviewed and potentially revised. A change to the definition of hedge requires a zoning text amendment and must therefore be reviewed first by the Planning Commission. The Ad Hoc Committee also made recommendations as to how the City could reduce the cost of the Trousdale View Restoration Ordinance for view owners, including clarifying City policy with regard to City enforcement of View Restoration Permits and interpretation of the indemnification language in the ordinance. Those recommendations are presented later in this report.

During the Planning Commission's review of Guidelines to the Trousdale View Restoration Ordinance in December 2011 and in the winter of 2012, staff suggested that the 500-foot notice radius for the View Restoration Permit was not necessary because of revisions that had been made to the ordinance prior to adoption by the City Council and the Planning Commission concurred. As a result, this proposed change to the View Restoration Permit procedures in the Zoning Code is included as part of the Planning Commission's review so it may be recommended to the City Council.

DISCUSSION

Amendment to Trousdale Fence and Hedge Height Ordinance

The Trousdale Fence and Hedge Height Ordinance amended the Trousdale Estates Walls, Fences and Hedges Code section (BHMC Section 10-3-2616) as follows:

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

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

The City Council expressed the concern that the new definition of hedge, and particularly the language, "three or more individual plants" does not adequately address the Council's goal of assisting Trousdale residents in restoring and maintaining views. At its December 19, 2011 Study Session, the City Council specifically discussed revising the definition so that a hedge would be "two or more individual plants" and this language is proposed in the attached ordinance. This is the only change proposed to this section of the Code; the balance of the definition of hedge would remain unchanged and would read as follows:

"Hedge, as used in this paragraph F, shall be defined as growth of vegetation, consisting of ~~three (3)~~*two (2)* or more individual plants, that is cultivated or maintained in such a manner as to produce a barrier to inhibit passage or to obscure view, which is more than twelve inches (12") in height. Where there are interruptions of growth by vertical space to the top of the vegetation material having a horizontal distance of more than twenty four inches (24") in every four horizontal feet (4'), such growth shall not be considered a hedge for purposes of this paragraph F."

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

By reducing the number of trees in the hedge definition, it is likely that additional trees would be captured by the definition. This would potentially allow more Trousdale residents with foliage growing on the slope between their property and a neighbor's property to take advantage of this Code section. It is noted that this code section requires hedges to be trimmed if in violation of the height standards in the Code section; there is no determination whether a view is disrupted. Staff believes the change will result in additional code enforcement cases that might have otherwise been referred to the View Restoration process. This would be consistent with the City Council's direction at the December 19, 2011 Study Session.

Amendment to Trousdale View Restoration Ordinance

The Trousdale View Restoration Ordinance was adopted as a part of a new Chapter of the Zoning Code addressing view restoration (BHMC Section 10-8-100). Section 10-8-106 established a View Restoration Permit including public hearing procedures. The reviewing authority for the Permit is the Planning Commission. Notice of any hearing shall be mailed at least thirty days prior to the hearing 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.

This notice requirement was contemplated by the Planning Commission when there was no limit on the number of view owners and foliage owners on a View Restoration Permit application. The expansive notice requirement was intended to allow one view owner to identify additional view owners who had issues with the same foliage owner(s) and thereby to allow consolidation of view restoration cases. It was determined through the Planning Commission's public review process that an application with multiple view owners would be unwieldy and difficult to process and adjudicate. As a result, the Planning Commission limited each View Restoration Permit Application to one view owner, although more than one foliage owner may be identified in the application. This is clarified in the Trousdale View

Restoration Guidelines adopted by the Planning Commission. Since the adopted ordinance limits each application to one view owner, staff proposes that the notice requirement should be revised so that notice of a View Restoration Permit hearing is sent only to the view owner applicant and to the foliage owners identified in the application, along with occupants on the foliage owner's property, in case the foliage owner is not the occupant. This is the only change proposed to this section of the Code and the proposed change would read as follows:

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 to all owners who are identified as foliage owners in the View Restoration Permit application, as well as and residential occupants of property within five hundred feet (500') of the view owner's and the foliage owner's' properties, as shown on the latest equalized assessment roll."

View Restoration Permit cases involve issues among individual neighbors and so it would not appear necessary to inform a wide radius of neighbors. It can also be expensive for an applicant to obtain the necessary radius map and address labels for a large mailing. This would also be inconsistent with the City Council's direction to minimize the application costs as much as possible.

Policy Issues for City Council Consideration

The following is a summary of the City Council's discussions regarding limiting costs for View Restoration Permit applicants. The City Council, at its December 19, 2011 Study Session, directed the City Council Ad Hoc Committee to review this issue which it did at a January 23, 2012 Ad Hoc meeting. The discussion included reducing the cost for view owners of enforcing View Restoration Permit decisions and reducing the potential costs inherent in the indemnification language in the Trousdale View Restoration Ordinance. The Ad Hoc Committee made recommendations that staff will present to the City Council for review and confirmation as part of its report to the City Council on the attached draft ordinance.

City Enforcement of View Restoration Permit Decisions

The Trousdale View Restoration ordinance states:

"[T]he City shall take such action, as appropriate, to ensure initial compliance with a view restoration permit. After an initial determination by the city that a Foliage Owner has complied with a View restoration Permit, any further dispute regarding the Foliage owner's compliance with the view restoration Permit shall be resolved by a civil action initiated by the View Owner."

This language addresses the concern, experienced by other cities with view preservation ordinances, that these cases require continuous enforcement due to the growth of foliage that is not maintained in accordance with City decisions. The Ad Hoc Committee recommended that should subsequent enforcement be required, the City would cover the cost of the City's initial enforcement action (Administrative Penalty Process) but if a case required prosecution, the View Owner would be responsible for the costs.

Indemnification Language

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's resolution recommending approval of the Trousdale View Restoration Ordinance recommended consideration of a cap on the maximum dollar amount a view owner would have to pay to satisfy the indemnification requirements. When adopting the ordinance, the City Council expressed similar concern about the potential cost to view owners of indemnifying the City and directed the Ad Hoc Committee to consider this issue. The Ad Hoc Committee recommended that the City should cover the cost of litigation of the ordinance itself (a facial challenge) but that a view owner should be responsible for the cost of defending a City decision regarding a specific view restoration case.

PUBLIC OUTREACH AND NOTIFICATION

A public notice for this meeting was published in the *Beverly Hills Courier* on June 1, 2012, in the *Beverly Hills Weekly* on June 4, 2012 and mailed to each property owner in Trousdale Estates on June 4, 2012. In addition to the required notice, staff has emailed meeting notices and staff reports to a list of interested parties. As of the time of this report no additional letters have been received by the Planning Division.

GENERAL PLAN CONFORMANCE

The proposed ordinance would make minor changes to an existing Zoning Code section regarding the definition of hedges and a minor change to the Trousdale View Restoration Ordinance that 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 Trousdale View Restoration Ordinance to balance the desire for views with the maintenance of trees and language in the ordinance 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

The amendments propose limited changes to the previously adopted Trousdale View Restoration Ordinance and the related Trousdale Wall, Fence and Hedge Ordinance for which a Negative Declaration was adopted after the project was assessed in accordance with the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the City and no significant environmental impacts were identified.

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 Prepared By:



Michele McGrath
Principal Planner

Attachment 1

Planning Commission Resolution

(To be provided prior to the meeting)

Attachment 2
Draft Ordinance

ORDINANCE OF THE CITY OF BEVERLY HILLS
AMENDING BEVERLY HILLS MUNICIPAL CODE SECTION
10-3-2616 REGARDING DEVELOPMENT STANDARDS FOR
WALLS, FENCES AND HEDGES IN THE TROUSDALE
ESTATES AREA OF THE CITY AND AMENDING BEVERLY
HILLS MUNICIPAL CODE SECTION 10-8-106 REGARDING
TROUSDALE VIEW RESTORATION PERMIT PROCEDURES

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 a broad Trousdale view restoration ordinance was prepared that included review of both Code sections proposed to be amended by this ordinance. The initial study concluded that the broad ordinance would not result in significant adverse environmental impacts; thus a negative declaration is the appropriate document to adopt in order to comply with the California Environmental Quality Act (CEQA). This ordinance, being narrower in scope, will have less potential for impacts than the broader ordinance, and will not result in potentially significant environmental impacts. A notice of intent to adopt a negative declaration was published on 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 this ordinance, the City Council finds that there is no evidence suggesting that this 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. The City Council hereby amends Section 2616F of Article 26 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code to read as follows:

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

Fences: New fences on a slope of a down-slope property shall not in any event extend above a point thirty-six inches (36") above the finished grade of the level pad on the upslope property in any area where the upslope property faces the Los Angeles Area Basin. The fence shall be open to public view, as defined in article 1 of this chapter. Notwithstanding Sections 10-3-2759 and 10-3-2603, any existing fence subject to this paragraph F that was constructed in accordance with applicable ordinances and regulations at the time of construction shall be deemed a nonconforming structure, and may be maintained in its existing configuration unless more than fifty percent (50%) of the area of the fence measured from the outer perimeter of the structure without deductions for open spaces in the fencing, is replaced or reconstructed in any five (5) year period. If more than fifty percent (50%) of the combined area of the fence is replaced or reconstructed, then the replacement structure shall be treated as new for the purposes of this paragraph and shall be constructed so that the entire structure conforms with the development standards of this paragraph.

Hedges: Hedges planted outside of the front yard setback on a slope between adjacent downslope and upslope properties where the upslope property faces the Los Angeles Area Basin shall not extend above the higher of:

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

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

Hedge, as used in this paragraph F, shall be defined as growth of vegetation, consisting of two (2) or more individual plants, that is cultivated or maintained in such a manner as to produce a barrier to inhibit passage or to obscure view, which is more than twelve inches (12") in height. Where there are interruptions of growth by vertical space to the top of the vegetation material having a horizontal

distance of more than twenty four inches (24") in every four horizontal feet (4'), such growth shall not be considered a hedge for purposes of this paragraph F."

Section 4. The City Council hereby amends Section 106E of Chapter 8 of Title 10 of the Beverly Hills Municipal Code to read as follows:

"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 to all owners who are identified as foliage owners in the View Restoration Permit application, as well as residential occupants of the foliage owners' properties, as shown on the latest equalized assessment roll."

Section 5. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, the remainder of this Ordinance shall remain in full force and effect.

Section 6. The City Council hereby adopts a Negative Declaration, approves this Ordinance, and authorizes the Mayor to execute the Ordinance on behalf of the City.

Section 7. Publication. The City Clerk shall cause this Ordinance to be published at least once in a newspaper of general circulation published and circulated in the City within fifteen (15) days after its passage in accordance with Section 36933 of the Government Code, shall certify to the adoption of this Ordinance, and shall cause this Ordinance and his certification, together with proof of publication, to be entered in the Book of Ordinances of the Council of this City.

Section 8. This Ordinance shall go into effect and be in full force and effect at 12:01 a.m. on the thirty-first (31st) day after its passage.

Adopted:
Effective:

WILLIAM W. BRIEN
Mayor of the City of Beverly Hills,
California

ATTEST:

BYRON POPE (SEAL)
City Clerk

APPROVED AS TO FORM:

LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

JEFFREY KOLIN
City Manager

SUSAN HEALY KEENE AICP
Director of Community Development