

Honorable Mayor and Members
of the City Council
City Hall
Torrance, California

Members of the Council:

SUBJECT: Community Development—Consider options for addressing potential view impairment from trees and vegetation in the Hillside Overlay District.

RECOMMENDATION

Recommendation of the Community Development Director that City Council consider options for addressing potential view impairment from trees and vegetation in the Hillside Overlay District and provide direction to staff on how to proceed.

EXECUTIVE SUMMARY

Staff was requested to present an analysis and recommendations regarding view impairment due to vegetation in the Riviera portion of the Hillside Overlay District. There are at least three options to be considered: maintain the status quo, private view easements, or a view ordinance. These options will be discussed in greater detail in the second section of the item.

The first section of the item is a broad overview of ordinances researched by staff including the following jurisdictions: Rancho Palos Verdes, Rolling Hills Estates, Tiburon, Malibu, and Laguna Beach, among others. These ordinances typically dealt with loss of view due to trees or vegetation on private property. Three main areas were noted: Scope of Ordinance, including definitions of terms; Process for View Restoration; and Potential Cost of Implementation.

The second section is an analysis of the various ordinances and their applicability to the City, a discussion of areas that will need to be defined as well as potential recommendations.

The final section will include a discussion of potential outreach methods to gauge public concerns regarding the issues inherent in the consideration or adoption of any kind of regulation of trees and vegetation.

BACKGROUND AND ANALYSIS

Overview of ordinances dealing with view impairment due to vegetation

Scope of Ordinance

Ordinances addressing view obstruction from trees or vegetation have two major areas that need to be defined. The first is the actual view that is protected and the second is the period of time when the protection begins. Other areas also require definition, such as the responsibilities of the parties involved, including the “view seekers”, “vegetation owners” and the City.

Description and definition of the protected view in most ordinances includes two major components: what is included in the definition of a protected view and the area from which that view is seen. Some view definitions include enumeration of specific views available in the area, such as ocean, islands, mountains, or other natural areas as well as man-made points of interest such as city lights or bridges. Some jurisdictions specifically protect long distance views as opposed to short distance views, and some specify a maximum distance from the view seekers property that can be considered as obstructing a view. This can range from a distance of 500 feet to a distance of 1,000 feet in various jurisdictions.

View ordinances generally restrict the view protection to one or at most two major viewing areas, such as living, family or dining rooms, areas with picture windows or glass doors or common exterior areas such as patios, balconies or gazebos designed to take advantage of an available view. In addition, they take into consideration how the view is commonly visible, whether standing or sitting. In some cases, ordinances protect what they call the best or most important view.

The period of protection generally includes views available at the time the current property owner took possession of the property or some period of time prior to the adoption of a view protection ordinance. This period typically ranges from 10 to 15 years. In the case of Rancho Palos Verdes, there are two kinds of view preservation; view preservation as described above and view restoration, which attempts to restore the view that existed at the time the property was subdivided into a separate lot and developed.

View Preservation Process

Most jurisdictions with view preservation ordinances have a similar set of procedures for the process. The main difference lies in the amount of staff involvement in that process, and that varies from a virtual “hands off” on the part of some jurisdictions to extensive staff involvement throughout the process in others. In addition, those jurisdictions with moderate to no staff involvement tend to keep the process separate and apart from the decision making bodies, with any involvement strictly at a staff level.

Generally, the process begins with some form of contact between the “view seeker” and the “vegetation owner”. The contact must be documented and must reference the ordinance and the remedy being sought. In some cases, cities assist in this. In others, the city provides the information to the view seeker, such as property owner information, and the view seeker proceeds on their own.

After initial contact, if no resolution is reached or if the vegetation owner does not respond, the next step is mediation. Again, the view seeker must contact the vegetation owner and attempt to set up mediation sessions. Some cities assist in setting up the mediation sessions and provide a meeting place, while others place the onus on the view seeker to arrange mediation. Most cities require the view seeker to pay for the mediation, although some require that the costs be shared and one city pays for the mediation process.

Should mediation fail, the next step is binding arbitration, which follows in much the same vein as mediation. After arbitration, or if the vegetation owner declines to participate in the process, some ordinances move directly to civil litigation by the view seeker against the vegetation owner, with the process having established a trail that can be used in the litigation. Other jurisdictions allow for the view seeker to request an advisory opinion from Planning staff regarding the view obstruction claim, which can then be admissible in civil litigation. Still others allow the matter to be heard by Planning Commission or a View Preservation Board and then appealed to City Council, with the City taking action to trim the offending foliage should the vegetation owner not comply with the decision.

Costs of Implementing a View Obstruction Ordinance

The fees charged by cities with view preservation ordinances range from no fee to \$800 to \$5,500 for a view restoration permit in Rancho Palos Verdes. Rancho Palos Verdes reported taking in \$72,000 last year, but have \$300,000 budgeted for the program. Laguna recently adopted an ordinance and their annual cost was projected to be over \$300,000. Both these jurisdictions have programs with heavy City involvement, including paying for mediation, staff involvement through all phases of the process, Commission and Council hearings and enforcement of the permit should the vegetation owner not comply. Rolling Hills Estates has a more moderate involvement and charges \$800 for their view preservation permit. Their staff assists in notification by certified mail for all phases of the process. Should the process move to mediation, an additional minimum deposit of \$1,000 is charged to cover costs of review by the City’s certified arborist as well as other costs of the mediation process.

All jurisdictions agree that initially after passage of a view preservation ordinance, there is heavy demand for the program, but after the first few years, demand slows down. Generally, after the program has been in existence for several years, the largest demand is for maintenance of views that have already been established through the process.

Considerations for Torrance

There are a number of possibilities in looking at the issue of view impairment due to vegetation in the City. The first possibility is keeping the status quo and encouraging neighbors to work together to resolve their issues. In the case of “spite trees” that block views there is already existing legislation that protects homeowners and allows legal action should the parties not be able to arrive at a resolution. The existing Hillside Overlay District purposely excluded vegetation from the ordinance and focused specifically on structures requiring a Building Permit.

A second option could be view easements between neighbors. This would allow a view seeker to compensate a homeowner for the right to a view corridor and would run with the property. Such an arrangement would be between private parties and would include little if any City involvement. It may be possible for the City to create a “boilerplate” easement form that could be used by residents to lessen the potential legal drafting costs to reach such a private agreement and the City could assist in providing guidance on the recordation process with the Los Angeles County Recorder’s office. Should the City Attorney determine that such a “boilerplate” could be created, this information can be provided on the City website and made available for download and modification per the specific circumstances that might be involved.

The third option would be to consider an ordinance regulating view impairment by vegetation in the Hillside Overlay District. This would be a major undertaking. In order to consider such an ordinance, the first step would need to include public outreach to all the effected Homeowners Associations, as well as outreach for those in the overlay zone who are not in an HOA. In addition, there would need to be meetings in neutral settings that would allow those not comfortable with such an ordinance a place to air their concerns. A random sample phone survey would also be an excellent method of assessing community tolerance for such an ordinance and the parameters that would be deemed appropriate for such an undertaking.

It would be important to consider all aspects of a vegetation ordinance, including the contents of the ordinance and the potential effects it will have on the community as well as the operating costs due to the increased dedication of staff time. In the case of an ordinance regulating the height of trees and vegetation on private property in order to protect or preserve views of value to homeowners, it must also be remembered that the vegetation often has real value as well. It may protect privacy, provide natural insulation thus lessening costs for heating and cooling and add esthetic value to the owner’s property. In many cases, trees and vegetation that block the view of homeowners may at the same time be highly prized and provide great value to the appearance of the street or neighborhood in which they grow. One example is in the Seaside Ranchos neighborhood, portions of which are located within the Hillside overlay District. Removal of private trees in this area would detract from the unique character of the neighborhood. It will be important to take these competing interests into account when formulating an ordinance to ensure that the ambience of one neighborhood or residence is not destroyed or damaged in order to enhance another.

Several of the ordinances have criteria for assessing the competing interests in retaining view and the benefits provided by vegetation. This will be an important component in ensuring what Rolling Hills calls “view equity”.

Definitions

While there will be a number of definitions required for an ordinance, the first and most critical priority will be to define exactly what is being protected. Much of the difficulty in enforcing ordinances dealing with subjective issues such as views arise from the lack of a codified definition of exactly what a view is and from where a protected view may be seen. Many of the ordinances cite various specific “views” available in their jurisdiction. The Malibu ordinance seems to have a thorough approach to defining the various considerations in a view including not only a definition of the view itself, but a more precise definition of the main viewing area from which the view is seen as well as a definition for a “primary view corridor”.

In Torrance, the practice in interpreting the Hillside Overlay District ordinance has been to look at four different classes of views: water, white water, city lights and pastoral, which would include mountains and other natural features. Codifying a definition of the classes of eligible views would be the first step in establishing a tree ordinance. Neither the Torrance Municipal Code (TMC) nor practice has established a specific definition of the “main viewing area”, but this would seem to be the logical next step. Malibu defines a main viewing area as the primary living area of a structure located on the first habitable floor of the structure. The definition specifically excludes bedrooms, offices, bathrooms and other ancillary spaces while allowing living rooms, family rooms, dining room, kitchen or combination thereof as well as outdoor deck or patio areas. Once a main viewing area is established, the Malibu ordinance goes on to define a “primary view corridor”, which is a 180 degree view assessed from a single fixed location in the main viewing area. Rolling Hills Estates adds to their view definition that it does not mean “an unobstructed panorama” of the features, as well as a limit for the view obstruction of no more than 500 feet from the main viewing area. In addition, most ordinances define the view as that which was existing at the time the current owner purchased the property or a date based on the adoption of an ordinance, whichever came later.

Process

As previously discussed, the procedures in the initial stages in the view restoration process are very similar across jurisdictions. Initial contact, mediation followed by arbitration, all carefully documented in a manner prescribed in the ordinance are required of the view seeker by the vast majority of such ordinances.. There are varying degrees of staff involvement even in these stages, but for the overall process, the Rolling Hills Estates ordinance seems to be most workable in limiting the demand for increased overhead , as the actions must be taken by the view seeker: they contact the vegetation owner, arrange mediation and arbitration and they take their case to court should the process not culminate in a satisfactory result. Neither the Planning Commission nor the City Council become involved. Given the amount of time required for controversial Hillside cases, which can range from three months to as long as a

year, with numerous site visits, discussions, meetings and written material for presentation to Planning Commission or Council, using a model that brings tree issues to Commission or Council for adjudication would require additional staffing and is not recommended.

Appropriate Restoration Actions

Any ordinance will need to address both considerations of methods for removal of vegetation and how to assess what vegetation should be removed. The Rolling Hills Estates ordinance has sections addressing criteria for unreasonable obstruction, for determining appropriate preservation action and a hierarchy of preservation actions that keeps in mind both the view being preserved and the health of the vegetation being removed. Various methods of pruning and other types of vegetation removal are defined in the ordinance and then rated in terms of most to least appropriate. In some cases, cities have arborists on staff, while others may contract with arborists who can make assessments of the existing vegetation and the best solution for opening a view corridor while maintaining the health and benefits of the vegetation in question.

Responsibility

The majority of ordinances regulating view impairment by vegetation place the initial financial responsibility for the process on the party seeking the view. This would include mediation, arbitration and cost of vegetation removal. As the City contracts with a mediation service, it is possible that the mediation portion of the process could be handled by the contracted service. The cost to the City is minimal and would be a way to defray some of the expense to the view seeker. Cost of maintenance generally falls on the vegetation owner. Should the process move to Court for adjudication, the costs would be apportioned by the judge.

Staff involvement

Implementation of an ordinance dealing with view impairment by vegetation will be a major task for staff, the level of staff involvement included in the ordinance notwithstanding. If an ordinance is adopted, staff will need to prepare informational materials as well as any procedural forms that may be required both in hard copy and for the City website. Initially we would anticipate heavy public inquiry as to the process and procedures which would require staff to be available to answer questions and provide guidance. In addition, should an ordinance be adopted, the question would arise as to how current applications for development in the Hillside Overlay District should be handled with regards to vegetation. The City does not currently require any landscaping plans for single-family remodels or new construction. If a vegetation ordinance is pursued, it might be prudent to do so if property owners run the risk of having to remove vegetation that impairs neighboring views. This would also require additional staff time and greater expertise in regards to landscaping and additional costs to remodelers in preparing formal landscape plans for the approval process.

In terms of the actual ordinance, if that is the path the council chooses, a model similar to Rolling Hills which limits staff and City involvement to a minimum would be preferable. Should the City become involved in holding hearings and actually enforcing

such an ordinance, the anticipated demands on staff time would be far greater than could be met at current staffing levels and allocated budgets.

Community Outreach Prior to Crafting an Ordinance

Outreach to all areas included in the Hillside Overlay District will be crucial prior to making a decision as to whether the City will maintain status quo, encourage view easements or attempt to craft an ordinance to ensure that all points of view are heard and understood. Staff would recommend meetings with all the active Homeowner Associations (HOA) in the Hillside Overlay District, as well as at least one general meeting to ensure that those homeowners in the Hillside Overlay District not in an HOA have an opportunity to be heard. Based on feedback heard at community meetings held in 1996 regarding trees in the hillside area, while there are strong opinions in favor of preserving views, there are equally strong opinions in favor of preserving trees and vegetation in neighborhoods, thus we would anticipate a wide range of opinions on how to approach this issue.

Staff had investigated the cost of doing a statistically valid survey regarding a vegetation ordinance and found that a 10 minute survey of a random sample of 500 homeowners would cost just under \$30,000. Such a survey could provide valuable information in terms of the tolerance residents may have for vegetation removal, the proposed process and other key components of such an ordinance that may not come out in public forums and would provide a firm basis for whatever actions are taken as a result.

If, ultimately, the City wishes to examine the feasibility of a vegetation ordinance finding a test case to assess the real impacts of the process in terms of time and cost both at a staff level and for the residents involved would be a possible first step.

Recommendation

The following are possible next steps for Council to consider:

- Begin the outreach process by scheduling meetings with HOAs as well as setting up at least one general meeting to be held in a central location and explore the possibility of a phone survey. Feedback from the public meetings and survey, if done, will then be used to draft recommendations for further action and brought back to the Planning Commission and the Council to determine definitions and standards for protected views, extent of City involvement, budgetary considerations and appropriate fees; or,

- Incorporate vegetation matters into the existing Mediation Services offered by the City and proceed with drafting a view easement language and develop instructions on the recordation process with the Los Angeles County Recorder's office; or

- Receive and File the information.

The Community Development Director recommends that as a first step Council direct staff to begin the outreach process by scheduling meetings with HOAs as well as at least one general meeting, explore the possibility of a phone survey and bring findings and results back to the Council to determine further action. Due to the proximity of the holidays, staff would begin preparation and scheduling now with the meetings to begin in January. Depending on the availability of the various HOAs, a return to Council would be anticipated for March or April of 2015.

Respectfully Submitted,

JEFFERY W GIBSON
COMMUNITY DEVELOPMENT DIRECTOR

By 
Linda Cessna
Community Development Deputy Director

CONCUR:


Jeffrey W. Gibson
Community Development Director

NOTED:

 
LeRoy J. Jackson
City Manager