

VIEW RESTORATION AND PRESERVATION AND MAINTENANCE ORDINANCE
(7-10-13 DRAFT)

I. OVERVIEW OF THE ORDINANCE

A. Objectives

1. It is the intent of the City that property owners embrace voluntary and cooperative measures set forth in this Ordinance, and work constructively and respectfully with other property owners to resolve issues relating to views and privacy.

2. The purpose of this Ordinance is to establish a process for property owners to restore a view, as defined in this Section, which has been significantly obstructed by vegetation, while striking an equitable balance between the reasonable use of one's property including the maintenance of privacy and the protection from loss of views. This Section applies to all properties within the City's jurisdiction, excluding publicly owned properties.

3. This section is not intended to encourage or result in the substantial denuding of any property of its vegetation by overzealous application of provisions of this Section. It is also not the intent or purpose of this Section for the City to supplant any City imposed restriction, private covenants, conditions and restrictions (CC&Rs), or other recorded restrictions which may place more restrictive controls on the growth or placement of vegetation.

4. Mediated agreements and findings made pursuant to this Ordinance shall be incorporated into the property lot files, and shall be included in the development standards applicable to the properties involved.

B. General Purpose and Principles

The rights and the restorative process are based upon the following general principles:

1. Both views and vegetation contribute to the aesthetic and economic value of properties within the City, and enhance the quality of life of its residents.
2. The City recognizes that owners and occupants of residential and commercial properties value their views. Views, whether of the Pacific Ocean, islands, the surrounding hillsides and canyons or other natural and manmade landmarks produce significant and tangible benefits for owners and occupants.
3. The City recognizes the desire of many residents, property owners and businesses to landscape their properties. The City realizes that this desire may sometimes conflict with the preservation of views.
4. Owners of real property should maintain their vegetation in a healthy condition for preservation of views. Before planting vegetation, owners should consider view impacts.
5. Proper and regular maintenance of vegetation to preserve views is a benefit to public health, safety and welfare. Unmaintained vegetation may constitute a public nuisance.
6. It is in the interest of the public health, safety and welfare to:
 - a. Recognize that every property owner in the City is entitled to a process by which they may seek to restore, preserve and maintain views impacted by vegetation. The City shall establish factors to be considered in determining appropriate actions and mitigations to restore, preserve and maintain views in accordance with this Ordinance;
 - b. When a view obstruction dispute arises, and in the interest of preserving good neighbor relations, the parties are encouraged to resolve the dispute through friendly communication, thoughtful negotiation, compromise and other reasonable means. Those disputes which are not resolved through such means shall follow the procedure established herein.

II. DEFINITIONS

“**Alter**” means to take action that changes the vegetation, including but not limited to pruning of the canopy area, cutting, girdling, interfering with the water supply, applying chemicals or re-grading around the feeder root zone of the tree or vegetation.

“**Applicant**” means any property owner, group of property owners or authorized agent who allege that vegetation located within the vicinity of their property as hereinafter set forth is causing significant obstruction of a view access.

“**Arborist, Certified**” means an individual certified as an arborist by the International Society of Arboriculture (ISA).

“**Authorized Agent**” means a person, as defined herein, who has been designated and approved in writing by the property owner of record to act on his/her behalf in matters pertaining to the processing of a view and/ claim as outlined in this chapter.

“**Canopy**” means the umbrella-like structure created by the over-head leaves and branches of a tree which create a sheltered area below.

“**City**” means the City of Laguna Beach and its employees and staff and those designated by the City Council to act on behalf of the City.

“**City Maintained Vegetation**” means vegetation designated for maintenance by the City. Such vegetation includes vegetation in City parks, on City properties, and City maintained street trees within public rights of way. This vegetation is exempt from the View Restoration and Preservation Ordinance.

“**City Property**” means any real property of which the City is the fee simple owner of record.

“**Heritage Tree**” means any tree or stand of vegetation that have been placed on the heritage tree list by the City Council, pursuant to Chapter 12.08 of this code.

“**Mediator**” means a neutral, objective third party professional negotiator/facilitator to help disputing parties reach a mutually satisfactory solution regarding a view equity and/ claim. The mediator shall be chosen from a list available from the City of qualified and professionally trained (arbitrators/mediators).

“**Obstruction**” means the blocking or diminishment of a view and/ access attributable to growth, improper maintenance or location of vegetation.

“**Person**” means any individual, individual, corporation, partnership, firm or other legal entity.

“**Privacy**” means reasonable protection from intrusive visual observation.

“**Privately Maintained Vegetation in Public Right of Way**” means private property owners adjacent to vegetation in the public right-of-way areas along developed roadways and undeveloped “paper streets” are responsible for vegetation maintenance unless specifically designated by the city for its own maintenance. Note: this vegetation is subject to the view restoration and preservation ordinance provided herein.

“**Restorative action**” means conduct undertaken to restore a significant view.

“**Shall**” and “**May**.” “Shall” is mandatory and “may” is permissive.

“**Significant Views**” may include but are not limited to bodies of water, beaches, coastline, skylines, islands, ridges, hillside terrain, canyons, geologic features and landmarks.

“**Street**” means the entire dimension of public ownership [right of way] along developed roadways, including vehicular paving, sidewalks and planted areas.

“*Vegetation*” means all types of trees, plants, vines, hedges and shrubs.

“*View*” means a scene from a residential or commercial property. A view may extend in any direction and shall be considered as a single view, even if broken into segments by vegetation, structures or other interference. A “view” shall not include vacant land that is developable. “

“*View dispute*” means a disagreement between parties regarding vegetation that may significantly obstruct an Applicant’s view.

“*View restoration claim*” means an application submitted to the City by an Applicant who alleges that a view has been significantly obstructed by vegetation.

“*View Preservation*” means maintenance of the significant view as it exists on the date of enactment of this ordinance, or as modified by mediated agreement or by findings of the VPRC.

“*View Preservation and Restoration Committee* ” [referred to as “VPRC ”] means the Committee appointed by the City to determine View Preservation and/or View Restoration and maintenance claims brought by an Applicant under this Chapter.

“*View Restoration Order*” means a permit issued by the City, requiring restorative actions.

III. RIGHTS ESTABLISHED

A. Subject to the limitations in and consistent with the process and procedures set forth in this Ordinance, Applicants shall have the right to restore significant views that have been unreasonably obstructed by vegetation on a lot located within **500 feet** of the Applicant’s property lines.

B. Applicants shall have the right to seek restoration, preservation and maintenance of significant views. In order to establish such rights pursuant to this Section, the Applicant must follow the process established in this Ordinance.

C. Requests for view preservation, restoration or maintenance actions with regard to any City maintained vegetation located on City property may only be initiated as set forth in the City Tree Ordinance, Section _____. Privately maintained vegetation located on City rights of way or easements are subject to this Ordinance.

IV. DETERMINATION OF SIGNIFICANT VIEW

A. The determination of significant view shall be made by balancing the nature of the views to be protected and the importance of the area of the structure or lot from where the views are taken. In the event the VPRC and the Applicant cannot agree on the significant views, the decision of the VPRC shall control.

B. The Applicant may appeal the VPRC's determination of the significant views. In such event, the decision on the significant views will be made by the City Council.

V. VIEW PRESERVATION AND RESTORATION AND MAINTENANCE

A. INTENT

1. No real property owner or other persons shall plant, maintain, or permit to grow any vegetation which unreasonably obstructs the significant views from the property of an Applicant.

2. Maintenance of vegetation for the preservation of views may benefit the general welfare of the entire City. Improper or inadequate maintenance, creating a significant obstruction of views can constitute a public nuisance.

B. VIEW RESTORATION PROCEDURE

1. Factors to be considered by the VPRC in making determination of restoration claim:

Once the significant views have been determined, the following unweighted guiding principles are to be considered (but are not exclusive) in determining whether unreasonable obstruction has occurred:

- a. What is the extent of the view obstruction from the viewing area or areas of the Applicant? This may include vegetation that is located on one or more properties.
 - b. What is the quality of the view being obstructed?
 - c. From what area of the property is the view taken?
 - d. When was the offending vegetation planted?
 - e. Did the view exist at the time of the Applicant's purchase of the property?
 - f. Can the Applicant produce evidence of a view prior to the alleged obstruction?
 - g. To what degree has the view become obstructed over time?
 - h. What is the desired outcome or expectation of the Applicant?
 - i. Is the proposed mitigation a practical, reasonable and realistic expectation?
2. Restorative Action – Factors to be considered by the VPRC in making determination of appropriate action required to restore view.

When it has been determined that significant obstruction has occurred, then the following unweighted factors shall be considered in determining the appropriate Restorative Action:

- a. The hazard posed by vegetation to persons or structures on the property of the Applicant including, but not limited to, diseased vegetation, vegetation that present a fire danger and vegetation that poses a risk of falling vegetation or limbs.
- b. The species of vegetation, its projected rate of growth and maintenance requirements.

- c. Aesthetic quality of the vegetation, including but not limited to species characteristics, size, growth, form and vigor.
- d. Location with respect to overall appearance, design, or use of the Vegetation Owner's property.
- e. Soil stability provided by the vegetation considering soil structure, degree of slope and the extent of the vegetation's root system.
- f. Visual privacy provided by the vegetation to the Vegetation Owner and neighbor.
- g. Energy conservation and/or climate control provided by the vegetation.
- h. Wildlife habitat provided by the vegetation.

3. Methods to Achieve Desired Restorative Action: The VPRC shall utilize the following Guidelines in determining the most appropriate way to achieve restoration of the view:

- a. Restorative Actions include but are not limited to the following:
 - Trimming, thinning, windowing;
 - Vegetation height reduction by crown reduction;
 - Vegetation removal with replacement plantings (Vegetation replacement plantings shall be with appropriate species and in compliance with applicable City ordinances);
 - Vegetation removal without replacement plantings.
- b. In cases where Restorative Action is to occur, such actions should be carried out by licensed professionals in accordance with the standards established by the International Society of Arboriculture for use in the State of California.
- c. In all cases, Restorative Action will include written conditions (including ongoing maintenance), and directions as to the timing of such actions shall be incorporated into the lot files of the affected properties, and shall govern the future development and landscaping of the affected properties.

C. VIEW RESTORATION APPLICATION PROCEDURE

1. Pre-View Restoration Application Procedure - Notification to Vegetation Owner and Mediation)

Prior to the application being formally submitted for consideration to the VPRC:

a. Mandatory Initial Communication by Applicant to Vegetation Owner.

The first step in the view restoration process is the Initial Communication by the Applicant to the Vegetation Owner. This communication shall be on a form provided by the city, and shall advise the vegetation owner of the applicant's intent to pursue a claim. The Initial Communication shall include photographs of the offending vegetation, and shall apprise the Vegetation Owner of the particular view or views the applicant wishes to restore.

The Applicant and the Vegetation Owner shall have 30 days from the date of mailing the Initial Communication to informally resolve the dispute. In the event the dispute is not resolved within 30 days of the date of mailing the Initial Communication, the applicant may notify the city and proceed with mediation as hereinafter set forth.

b. Mediation.

In the event the issues identified in the initial communication are not resolved, and the applicant wishes to pursue the issue further, the Applicant shall notify the City and the matter shall proceed to mediation. A mediation fee of \$1000 shall be paid by the Applicant. Upon payment of this application fee, City staff will verify that the Applicant is a proper applicant, and shall identify the lot or lots on which the offending vegetation is located, shall verify that the lot or lots with offending vegetation are within 500 feet of the property line of the applicant, and

shall identify the name of the property owner of the lot on which the vegetation is located. Staff shall prepare and send a letter, via first class mail, inviting all involved parties to participate in mediation to attempt to resolve the disputed issues. Mediation shall be conducted by a mediator selected by the City to conduct mediation of view restoration issues.

- 1) *The mediator shall be guided by the provisions of this Ordinance.*
The role of the mediator shall be advisory in nature and shall not be binding in establishing the restoration of views. Any agreement reached between the two parties as a result of the mediation process described herein shall be reduced to writing and signed by the mediator and all of the parties, and two copies shall be submitted to the Director of Community Development, and maintained in the lot files of the Applicant and the Vegetation Owner.
2. *Submittal of the View Restoration Application.* If after mediation the matter is not resolved, the applicant may then submit a formal view restoration application to the city. When the application is submitted, an application fee shall be paid to the City. The matter shall then be set for hearing, and written notice of the time and place for the hearing on the application shall be sent to the Applicant and the property owner(s) of the vegetation involved at least thirty calendar days prior to the meeting of the VPRC. VPRC members shall inspect the site prior to the public hearing. Only VPRC members who make a site inspection may participate in the public hearing.
3. *Prerequisite to Issuance of View Restoration Order and Required Findings.* In order for a View Restoration Order to be issued, the VPRC must make the following findings:
 - a. The Applicant has complied with the early neighbor consultation process and has shown proof of cooperation on his/her part to resolve conflicts;

- b. Vegetation unreasonably obstructs the Applicant's significant views;
- c. The obstructive vegetation is located on a lot, any part of which is 500 feet or less from the Applicant's property lines;
- d. The proposed Restorative Actions will not unreasonably impact the Vegetation Owner's property.

4. *Issuance of View Restoration Order.* Should the VPRC make findings requiring issuance of a View Restoration Order, the Director of Community Development shall send a notice to comply with the findings made by the VPRC. The Applicant shall be responsible for the expense of initial compliance with the View Restoration Order pursuant to this subsection only to the extent of the lowest bid amount provided by contractors licensed to do such work in the City and selected by the Applicant. That amount shall be deposited with the City Clerk prior to the work being performed. In the event that the Vegetation Owner prefers the specified remediation work to be performed by another qualified bidder, the Vegetation Owner may so specify and pay the difference in the two bids. In addition to the cost of work deposit, the Applicant shall also deposit a fixed amount of \$____.00 to cover the expenses of review of trimming and removal bids, monitoring the work performed, and documenting the removal work. The Vegetation Owner will have ninety calendar days to comply with the View Restoration Order. After the initial compliance with the View Restoration Order, the Vegetation owner, at their expense, shall be responsible for maintaining the vegetation in compliance with the View Restoration Order.

5. *Appeal of View Restoration Order*

- a. **Timing of Appeal; Materials to be Submitted with Appeal.**
The Applicant or the owner of the property where the vegetation is located, may appeal the decision of the VPRC to the City Council by filing with the City Clerk a written notice of appeal, including the grounds for the appeal, and any specific action being requested by the appellant, together with the appeal fee established by resolution of the City Council,

within fifteen calendar days after the VPRC adopts the resolution setting forth its decision. The decision of the VPRC is final if no appeal is filed within fifteen calendar days. If such an appeal is timely and properly filed, a copy of the findings of the VPRC and all materials on file with the director shall be transmitted to the City Council, which shall be part of the appeal hearing record, together with the notice of appeal and any other written materials submitted by interested parties. Additional written materials shall be submitted to the City Clerk at least seven calendar days prior to the date that the appeal will be heard by the City Council. The consideration by the City Council shall be conducted in the same manner as an appeal of a decision of the Design Review Board under section 25.05.070.

b. The Appeal Hearing

Upon receiving the notice of appeal, the City Clerk shall schedule the matter for review at a forthcoming meeting of the City Council. At the City Council meeting, oral testimony shall be limited to five minutes for each of the parties whose properties are affected by the decision and two minutes per person for other individuals. Oral testimony shall be limited to the issues raised in the written appeal. At the conclusion of the oral presentation, the City Council may do one of the following:

- 1) Affirm the decision of the VPRC and approve the application upon finding that all applicable findings have been correctly made and all provisions of this section are complied with;
- 2) Approve the application but impose additional or different conditions as the City Council deems necessary to fulfill the purposes of this section;
- 3) Disapprove the application upon finding that all applicable findings cannot be made or all provisions of this section have not been complied with; or

- 4) Refer the matter back to the VPRC to conduct further proceedings. The remanded proceedings may include the presentation of significant new evidence which was raised in conjunction with the appeal. The City Council shall state the ground(s) for the remand and shall give instructions to the VPRC concerning any error found by the City Council in the VPRC's prior determination.

6. *Compliance with the Order; Failure to Comply*

If, after ninety calendar days, the Vegetation Owner has not permitted access for initial compliance with the View Restoration Order, or in the event the Vegetation Owner fails to comply with maintenance requirements set for the in the View Restoration Order, the City will authorize a bonded tree service to bring the vegetation into compliance with the View Restoration Order at the Vegetation Owner's expense. In the event that the City is required to perform the ongoing maintenance work specified in the View Restoration Order, the Vegetation Owner will be billed for all City expenses incurred in complying with and enforcing the View Restoration Order (including reasonable attorney's fees). If the Vegetation Owner does not pay the City for the amount set forth on the invoice, the City may record a lien or assessment against the Vegetation Owner's property.