

**CITY OF DANA POINT
PLANNING COMMISSION
WORKSHOP REPORT**

DATE: NOVEMBER 18, 2019

TO: DANA POINT PLANNING COMMISSION

FROM: COMMUNITY DEVELOPMENT DEPARTMENT
KELLY REENDERS, INTERIM DIRECTOR
SEAN NICHOLAS, SENIOR PLANNER

SUBJECT: PLANNING COMMISSION WORKSHOP ON LOCAL COASTAL PLAN
AMENDMENT LCPA19-0002/ZONING TEXT AMENDMENT ZTA19-0002,
2019 DANA POINT ZONING CODE UPDATES

RECOMMENDATION: That the Planning Commission receive a workshop presentation and provide feedback to staff.

APPLICANT: City of Dana Point

BACKGROUND:

To ensure Zoning Ordinance requirements are accurate, relevant, and consistent with State law, Zoning Ordinance updates should be conducted on a regular basis to modify various requirements within the Code. The 2017 and 2018 Zoning Ordinance updates addressed multiple issues from various portions of the Code. The 2019 Zoning Ordinance update is focused on parking concepts and landscape requirements.

At the July 8, 2019 Planning Commission meeting, staff introduced concepts associated with the "Joint Use of Parking Facilities" provision of the Dana Point Zoning Ordinance (DPZO), and concepts regarding new landscape regulations. As a follow up to that meeting, this workshop includes additional information requested by the Planning Commission and seeks input from Commissioners and the public.

DISCUSSION:

Joint Use of Parking Facilities

Pursuant to the Citywide Parking Implementation Plan, staff is bringing forward a concept for an amendment to DPZO Section 9.35.060(c)(3), Joint Use of Parking Facility. In particular, the limitation associated with 300 feet preventing greater utilization of joint use parking facilities. In the Citywide Parking Implementation Plan, it was determined that the joint use of parking facilities was an underutilized provision in the code, and could help reach the goal of the park once concept in the various commercial districts in Dana Point.

At the July 8th Planning Commission meeting, staff presented items related to the concept of walkability, and how the walkability of Dana Point may support expanding opportunities

for joint use parking. With improvements occurring in Town Center, Doheny Village, and the Harbor, utilization of joint use parking facilities will allow for a more efficient use of the existing parking stock.

At the July workshop, staff presented a number of academic findings related to walkability, and what is considered a “reasonable” walking distance. Planning Commission discussed a number of scenarios ranging from no change, to ½ mile radius as potential options. As a result of the Planning Commission’s discussion and public comments, staff has determined that ¼ mile is the distance most supported to expand the opportunity of joint use of parking facilities.

Staff is seeking Planning Commission’s confirmation of staff’s conclusion based on the previous workshop, and feedback on the following draft DPZC language to increase utilization of joint use of parking facilities:

9.35.060 Parking Requirements

(c)(3) Joint Use of Parking Facilities. Multiple uses on multiple building sites may establish joint use parking facilities within one or more parking areas located within such multiple building sites, provided the following requirements are met:

(A) A detailed joint use parking plan shall be approved by a **Minor** Site Development Permit issued by the Director of Community Development pursuant to Chapter 9.71. The plan shall show and explain all parking facilities, uses and structures that will use the parking and the pedestrian access from the parking facilities to the uses and structures.

(B) The boundary of the parking facilities shall be within ~~three hundred (300) feet~~ ¼ mile of the uses they serve and connected to the site by an attractive and adequate pedestrian path or sidewalk to the satisfaction of the Director of Community Development.

(C) Adequate assurance, to the satisfaction of the Director of Community Development, shall be provided to guarantee that required parking will continue to be maintained in compliance with applicable provisions of this Chapter. This assurance shall be recorded in the office of the Orange County Recorder on all properties utilizing the joint use parking facilities.

Landscape Requirements

Staff was tasked by the City Council to evaluate additional landscape requirements which would limit landscaping that potentially impacted views. At the July 8th public workshop, staff presented options associated with proactive and reactive landscape regulations and enforcement. In addition, general information was presented regarding the procedures of adjacent communities related to landscaping and potential view impacts. At the request of the Planning Commission, the City of Laguna Beach View Preservation and Restoration

requirements are provided as Attachment 1.

Of the options discussed at the public workshop, Planning Commission was generally in favor of a more proactive approach. In particular, proactive concepts associated with a City-wide plant pallet or other means of evaluating mature landscape heights during applicable administrative or discretionary reviews. A component of the Laguna Beach process includes an exception for projects which have approved landscape plans that indicate mature tree/landscape heights that will not exceed the height of primary structures in the applicable zoning district. In discussions with Laguna Beach Planning Staff, they indicated that the proactive approach has reduced the conflicts between landscaping and views. Attachment 2 is draft of language on how proactive landscape regulations could be incorporated into DPZO.

Staff is seeking discussion from the Planning Commission on the following:

- 1) When compliance with new landscape regulations is required:
 - a. New Construction on a vacant lot
 - b. When 50% or more of the existing interior and exterior walls are demolished
 - c. New landscape permit
 - d. Other triggers?

- 2) Exceptions to compliance with landscape regulations:
 - a. When privacy would be negatively impacted
 - b. Mature trees/hedges
 - c. No potential impact to views
 - d. Other exceptions?

WORKSHOP FORMAT:

The Code update workshop will be an informal meeting open to the public in the Council Chambers. Staff will lead a roundtable discussion, introduce the discussion items and receive Planning Commission comments. Public comment will be taken during the workshop. After public comments, the Planning Commission will provide additional feedback and comments to staff.



Sean Nicholas, AICP
Senior Planner



Kelly Reenders
Interim Director of Community Development

ORDINANCE NO. 1618

**AN ORDINANCE OF THE CITY COUNCIL OF LAGUNA BEACH,
CALIFORNIA AMENDING CHAPTER 12.16 OF THE LAGUNA BEACH
MUNICIPAL CODE RELATING TO THE PRESERVATION OF VIEWS AND
RESTORATION OF VIEWS SIGNIFICANTLY IMPAIRED BY
VEGETATION**

The City Council of the City of Laguna Beach does ORDAIN as follows:

SECTION 1.

Laguna Beach Municipal Code Chapter 12.16 (titled "View Preservation") is hereby retitled and amended to read in its entirety as follows:

Chapter 12.16 View Preservation and Restoration

12.16.010	Intent and Purpose
12.16.020	Definitions
12.16.030	Criteria for Determining Significant View Impairment
12.16.040	View Preservation
12.16.050	View Restoration
12.16.060	Cost Apportionment
12.16.070	City Immunity; No Mandatory Duty
12.16.080	Exemptions
12.16.090	Legal Access Requirement
12.16.100	View Decisions Binding on Future Owners – Disclosure Obligations
12.16.110	Violations – Penalties
12.16.112	Fees

12.16.010 Intent and Purpose.

(a) The City Council declares that the peace, health, safety and welfare of the community will be served by the adoption of this Chapter. The City Council recognizes that residents, property owners and businesses cherish their outward views, and that they also cherish the benefits of plentiful sunlight reaching their buildings and yards. The City Council further recognizes that both outward views and plentiful sunlight reaching property contribute greatly to the quality of life in Laguna Beach, and promote the general welfare of the entire community. The City Council also recognizes the desire of many of its residents, property owners and businesses for beautiful and plentiful landscaping, including trees. The City Council realizes that this desire may sometimes conflict with the preservation of views and sunlight, and that disputes related to view or sunlight obstruction are inevitable. Owners and residents should maintain trees on their property in a healthy condition for both safety reasons and for preservation of outward views and sunlight.

(b) It is a purpose of this Chapter to establish a right for property owners to determine and to preserve those selected viewing locations or areas from significant or egregious view impairment by the growth of trees or other vegetation.

(c) It is a further purpose of this Chapter to establish a right for property owners to restore pre-existing views that have been significantly or egregiously impaired by trees or other vegetation.

(d) The determination of a significant or egregious view impairment is intended to attain an equitable balance between the right to reasonable use and enjoyment of one's property (landscape vegetation), including the maintenance of privacy, and the right to protection against unreasonable loss of views. Equitable balance involves evaluation of the significant views in relation to the benefits of the existing vegetation when compared to any considered trimming or any suitable replacement vegetation. (e) In order to establish rights pursuant to this Chapter, persons must follow the processes set forth in this Chapter.

(f) This Chapter is not intended to encourage or result in the clear-cutting or substantial denuding of any property of its trees or other vegetation by overzealous application of provisions of this Chapter. It is not the intent or purpose of this Chapter for the City to supersede, limit, supplant or otherwise affect any obligations imposed by private covenants, conditions and restrictions, any deed restrictions, any easements or other similar enforceable private agreements that place more restrictive controls on the growth or placement of trees or other vegetation. It is also not the intent or purpose of this Chapter to rescind, modify or otherwise alter any prior City-issued tree or vegetation height entitlement, including without limitation a landscape plan in which vegetation height limits were approved through the design review process specified in Section 25.05.040, or a completed hedge claim pursuant to Chapter 12.14, or a completed view claim pursuant to Chapter 12.16 that was processed prior to December 17, 2014 (the effective date of this Ordinance).

(g) This Chapter applies to all properties within the boundaries of the City and the City's permitting jurisdiction, excluding property owned by other governmental entities not subject to the City's regulatory jurisdiction.

12.16.020 Definitions.

The following definitions shall apply for purposes of this Chapter.

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

"Authorized agent" means a person who has been designated and approved in writing by the property owner of record to act on his, her or its behalf in matters pertaining to view preservation or view restoration pursuant to this Chapter.

"Burden of proof" means the obligation of a claimant to produce substantial evidence supporting a description of the nature and extent of the alleged view impairment of pre-

existing views. Substantial evidence means enough relevant information and reasonable inferences from such information that a fair argument can be made on the basis of the entire record to support a conclusion, even though other conclusions might also be reached. Substantial evidence may include, but is not limited to, documented and date stamped photographic prints, slides, negatives or movies. In addition, written testimony from persons with actual knowledge about pre-existing views may be provided regarding the extent to which pre-existing views have been significantly impaired by vegetation. Argument, speculation, unsubstantiated opinion or narrative, or evidence that is erroneous or inaccurate shall not constitute substantial evidence.

“Certified arborist” means a person with an education and experience in arboriculture or horticulture and is a Registered Consulting Arborist (RCA) of the American Society of Consulting Arborists (ASCA) and/or International Society of Arboriculture (ISA) Certified Arborist. The certified arborist shall be chosen by staff from a list of qualified and professionally trained persons with whom the City has a contract to provide arborist services.

“Canopy” means the umbrella-like structure created by the overhead leaves and branches of a tree or shrub.

“City” means the City of Laguna Beach and its City Council, employees and staff and those designated by the City Council or City staff 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 rights of way. City-maintained vegetation is exempt from the provisions of this Chapter.

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

“Claimant” means any residential property owner or authorized agent who alleges that applicable vegetation located within the 500-feet of their property is causing a significant view impairment.

“Clear cutting” means the removal of all the trees on a parcel at one time.

“Complete removal” means the removal and disposal of vegetation by sawing or grinding the limbs, leaves, trunk and stump to the existing grade as determined by the view restoration committee on a case-by-case basis. Complete removal shall not include or require the removal and disposal of a plant’s root system.

“Denuding” means the removal of all the trees from an area or all the leaves from a tree.

“Egregious view impairment” means clear and convincing evidence of a significant view impairment where the view has been diminished over time by the growth of vegetation and/or poor maintenance practices and/or lack of consistent maintenance of vegetation and/or placement of vegetation in a view corridor and/or vegetation out of character with the landscaping in the neighborhood and, that upon evidence of proof of prior notification by a claimant, that a significant view impairment exists and there is an objectively unreasonable failure by the vegetation owner to cooperate to resolve the view impairment.

“Hedge” means generally dense vegetation so aligned as to form a physical barrier or fence.

“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. Any designated Heritage Tree is exempt from the provisions of this Chapter.

“Mediator” means a neutral, objective third party professional negotiator or facilitator to help disputing parties reach a mutually satisfactory solution regarding a view claim. The mediator shall be chosen by staff from a list of qualified and professionally trained mediators with whom the City has a contract to provide mediation services.

“Panoramic view” means an unobstructed and wide view of an extensive area in all directions related to the view in question.

“Partial removal” means the removal of vegetation utilizing one of the methods set forth in Section 12.16.050(c)(3)(E)(i) through (v).

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

“Pre-existing views” means one or more visual scenes from selected viewing locations or areas that are not significantly impaired by vegetation and that existed on or after either the date of acquisition of the claimant’s property or November 4, 2003 (the effective date of Ordinance No. 1430 relating to view preservation), whichever is earlier. It shall be the claimant’s responsibility to sustain the burden of proof for establishing and substantiating pre-existing views. In the event that staff and/or the view restoration committee find, based upon a preponderance of the evidence, that the pre-existing view was obtained in an illegal manner and/or the documented pre-existing view supplied by the claimant was enhanced or altered in any manner, the burden of proof shall not be sustained.

“Principal residence” and “principal residential structure” means the primary residential structure located on a lot. A principal residence and principal residential structure shall include guest houses, granny flats and secondary residential units provided that proof of the pre-existing view and a certificate of occupancy is submitted with the application. Proof of the pre-existing view from guest houses, granny flats and secondary residential units shall not pre-date the date of the certificate of occupancy of the structure/unit. Vacant lots or parcels shall not be considered principal residences or principal residential structures.

“Privacy” means reasonable protection from intrusive visual observation.

“Privately maintained vegetation in right of way” means private property owners adjacent to vegetation in the public or private right-of-way areas along developed or undeveloped “paper street” roadways, which are responsible for vegetation maintenance not specifically designated by the City for City maintenance. Privately maintained vegetation in right of way is subject to the provisions of this Chapter.

“Record of views” means the photographic documentation of the selected views from a particular site, established pursuant to this Chapter and kept on file by the City.

“Restoration action” means steps undertaken to eliminate a significant or egregious impairment of views, and may include, but is not limited to, partial removal, complete removal or alteration and maintenance of vegetation at a designated maximum height by trimming, thinning or reducing the height or width of vegetation on a vegetation owner’s property or privately maintained vegetation in right of way.

“Selected viewing locations or areas” means one or more locations or areas chosen by the property owner(s) from an owner’s principal residential structure which are used to observe one or more views. Hallways, closets, mechanical rooms, bathrooms and garages shall not be considered or used as selected viewing locations or areas.

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

“Significant view impairment” means the obstruction or diminishment of a view to such a substantial extent that the desirable features of the view are blocked from viewing, and such obstruction is attributable to vegetation growth, lack of appropriate vegetation maintenance and/or inappropriate vegetation location. Section 12.16.030 establishes criteria for determining significant view impairment.

“Street” means the entire dimension of ownership (right of way) along developed roadways, including vehicular paving, sidewalks and planted or natural areas.

“Vegetation” means woody type plants or grasses taller than six (6) feet in height with the potential to obstruct views. “Vegetation” includes without limitation trees, shrubs, grasses, hedges and bushes. However, “vegetation” shall not include any type of vegetation affected by a prior City tree or vegetation height entitlement, such as a landscape plan in which vegetation height limits were approved through the Design Review process specified in Section 25.05.040 or finalized hedge or view claim. In addition, “vegetation” shall not include Heritage Trees or City-maintained vegetation.

“Vegetation owner” means a person owning property, including underlying fee-ownership of privately maintained vegetation in right of way, containing vegetation that a claimant alleges is causing a significant view impairment.

“View” means a sight of a visual scene from a fixed vantage point or location from a property owner’s principal residential structure. The term “view” does not mean an unobstructed panorama of the features in a visual scene.

“View dispute” means a disagreement between neighbors regarding vegetation that may be significantly impairing views.

“View preservation” means the establishment and maintenance of views as they exist when a record of views has been established pursuant to the provisions of Section 12.16.040.

“View preservation claim or view restoration claim” means an application submitted to the City by a claimant who alleges that a view has been significantly impaired by vegetation.

“View restoration” means the re-establishment of pre-existing views as they existed on or after either the claimant’s property acquisition date or November 4, 2003 (the effective date of Ordinance No. 1430 relating to view preservation), whichever is earlier, pursuant to the provisions of Chapter 12.16.

“View restoration committee” means the five-member committee appointed by the City Council to determine view restoration claims brought by a claimant under the provisions of this Chapter.

“View restoration order” means a directive issued by the City, requiring restorative action to be performed regarding vegetation located on a vegetation owner's property in order to restore a claimant's view.

“Visual scene” means the arrangement of features that form the scenic environment and may include, but is not limited to, bodies of water, beaches, white water, coastlines, skylines, islands, ridges, hillside terrains, canyons, geologic features or landmarks.

12.16.030 Criteria for Determining Significant View Impairment.

The determination of a significant or egregious view impairment shall be made by evaluating and balancing the types and benefits of the view to be protected and the nature and significance of the vegetation benefits. The following criteria shall be considered in determining whether a significant view impairment has occurred:

- (a) The quality and veracity of the evidence provided in support of establishing the extent of the view.
- (b) The nature and extent to which the vegetation obstructs a view.
- (c) The location of the obstruction within a view frame. Vegetation located within the center of a view is more likely to be found to create significant impairment than vegetation located on the outer edge of a view.
- (d) Some view frames contain a combination of different view components, such as a view of the ocean and downtown area (multi-component view); while some view frames consist entirely of one component, such as only a view of the ocean (single-component view). Vegetation that entirely obscures one of the components of a multi-component view is more likely to be found to create a significant view impairment than vegetation that impairs a portion of view of a single-component view.
- (e) The nature and quality of the view being obstructed, including obstruction of landmarks, vistas or other unique features.
- (f) The nature and extent to which the view has been diminished over time by factors other than vegetation growth, such as new neighboring structural additions or residences.

- (g) The nature and extent to which the view contributes to the enjoyment of the claimant's property.
- (h) The selected viewing areas or locations may make a vantage point difference in determining the significance of the view impairment.
- (i) The nature and extent of the vegetation obstructing a view and whether that vegetation has been properly maintained or has transitioned into a state of overgrowth.
- (j) The nature and significance of the vegetation benefits, including without limitation privacy, shade, erosion control, enhancement of outdoor spaces and community aesthetics.
- (k) The nature and extent to which the vegetation blocking a view is out of character with landscaping practices in the neighborhood.

12.16.040 View Preservation.

- (a) Establishment of a Protected or Preserved View.

A property owner may establish a protected or preserved view by filing for a record of views with the City. Once a record of views is established by the City pursuant to subsection 12.16.040(B), the protected or preserved views shall not become subject to significant view impairment. The record of views does not establish maximum height limits on vegetation in the visual scene; rather it shall serve as a benchmark for determining significant view impairment in the future. Established record of views may not be changed unilaterally by the property owner; provided, however, that upon application by the property owner to do so, the City may change an established record of views in the event there is a subsequent remodel or physical change to the selected viewing locations or areas.

- (b) Record of Views.

Upon the filing for a record of views, City staff shall conduct a site visit and photographically document the significantly unimpaired view of the property owner from the property owner's selected viewing locations or areas. A record of views shall be prepared, maintained in the applicable property address files, and noted in any Real Property Report required by Chapter 14.76. Staff shall send written notice to affected vegetation property owners within 500 feet informing them of the record of views and their associated maintenance responsibilities.

- (c) Record of Views Enforcement Procedure.

If a significant view impairment of an established record of views occurs, the property owner shall notify the City. If a significant view impairment is confirmed, City staff shall inform the affected vegetation owner(s) of a potential view restoration order and allow the vegetation owner 30 days to perform the necessary restoration action.

If the vegetation owner(s) does not perform the necessary restoration action, then the City may issue a view restoration order and require the restoration action to be completed within 90 days. If compliance is not obtained within 90 days, then the noncomplying vegetation may be declared to be a public nuisance, and the procedures of Chapter 7.24 shall be followed, including the issuance of a formal Notice and Order to Abate.

Any determination of a significant view impairment decision made by City staff may be appealed to the City Council. Appeals shall be addressed to the City Council on a form prescribed by the City and shall state all grounds for the appeal. Any appeal must be filed with the City Clerk within fourteen (14) calendar days of the notice to the vegetation owner regarding the required restoration action. Appeals shall be accompanied by the filing fee as adopted by resolution of the City Council. The City Manager shall set the date for an appeal public hearing before the City Council and shall not be limited by the time period specified in Section 25.05.070(B)(6). Notice shall be provided to the claimant and the record owners and occupants of all properties on which the vegetation at issue in the significant view impairment decision fourteen (14) calendar days prior to the date of the City Council hearing of the appeal. If an appeal to the City Council is filed and is heard and decided by the City Council, then the nuisance abatement appeal provisions (Sections 7.24.090 through 7.24.110) shall not be applicable.

12.16.050 View Restoration.

(a) Re-establishment of Pre-existing Views.

A property owner or his/her authorized agent may make an application to re-establish pre-existing views. Once pre-existing views are re-established, the applicable vegetation owners shall maintain the vegetation to preserve the pre-existing views.

(b) View Restoration Claim Limitations.

Subject to the other provisions of this chapter, a real property owner in the City may initiate a view restoration claim process to re-establish pre-existing views as outlined below. However, a claim to remedy obstruction of views from neighboring properties may only be made regarding vegetation that: 1) is six (6) feet or higher; 2) is located on real property that is within five hundred (500) feet of the claimant's real property boundary; 3) is not a claim pertaining to the same vegetation that has been acted upon by the City against that real property by the same complainant(s) or subsequent owner(s) of the complainant's property unless there are materially different circumstances; and 4) is not one of the types of vegetation exempt from the provisions of this Chapter pursuant to Section 12.16.080.

(c) Process to Re-establish Pre-existing Views.

(1) Initial Communication.

A claimant shall first attempt to make a cooperative attempt to informally contact and have a discussion with the vegetation owner to resolve the claimant's view dispute issue. If this initial discussion does not occur or is not successful in resolving the view dispute issue, then the claimant shall prepare and apply for a Notice of Intent to File a View Restoration Claim. The application shall recite the claimant's intent to pursue a view restoration claim with regard to the affected vegetation owner(s) in accordance with this Chapter. The application shall include photographs of the obstructing vegetation and shall apprise the affected vegetation owner(s) of the particular view or views the claimant wishes to restore. The application shall include a signed statement from the claimant agreeing to meet with a mediator, City staff and each vegetation owner that is to be named in the pending view restoration claim to attempt to resolve the view dispute issue between the parties.

(2) Mediation.

(A) Upon the filing of the application for a Notice of Intent to File a View Restoration Claim set forth in subsection (B)(1), staff will review the application for completeness and verify the lot or lots on which the allegedly obstructing vegetation is located is within 500 feet of the property boundary line of the claimant. When the application is deemed complete, the City shall send by registered or certified mail with return receipt requested the Notice of Intent to File a View Restoration Claim to the affected vegetation owner(s). The City's transmittal of the Notice of Intent to File a View Restoration Claim shall request that the vegetation owner(s) attend a pre-application mediation meeting to discuss the City's view restoration process with City staff and the claimant. The transmittal shall contain multiple possible meeting times from which the vegetation owner(s) may select. The transmittal shall request that the vegetation owner(s) respond back to the City in writing within 14 calendar days of the mailing of the transmittal with a selected date. The transmittal shall explain the consequences of a failure to respond or to not attend a pre-application mediation meeting.

(B) If the vegetation owner(s) responds, the City shall arrange a meeting between the claimant and the vegetation owner(s), City staff and a City mediator. Written notice of the meeting shall be provided by the City to all parties at least seven (7) calendar days prior to the meeting date. The mediator shall be guided by the provisions of this Chapter. The mediator shall strive to enable the parties to resolve the view dispute by written agreement in order to eliminate the need for an application for a view restoration claim, but the mediator shall not have the power to issue binding orders for restoration action. The mediator and City staff shall make a site visit prior to the meeting to view the claimant's obstructed view from the selected view locations or areas and the vegetation at issue. If desired by all parties, additional mediation meetings may be held.

(C) Any agreement reached between the parties as a result of the pre-application mediation meeting shall be reduced to writing and signed by the claimant and the vegetation owner(s). Mediation agreements shall be private agreements, which may have private enforcement provisions, and shall not be made part of the City-maintained property address files.

(D) Failure of the vegetation owner(s) to respond to the City's transmittal or failure to attend an agreed-upon mediation pre-application meeting shall be deemed to be a refusal of the mediation process. If there is a refusal of the mediation process by the vegetation owner(s) or the mediation was unsuccessful in resolving the view dispute, the claimant may then file an application for a view restoration claim. If there is a refusal of the mediation process by the claimant, the claimant may not file and the City shall not process an application for a view restoration claim.

(3) View Restoration Claim.

If the provisions of subsections (C)(1) and (C)(2) are exhausted and do not produce a satisfactory result to the claimant, the claimant may submit an application for view restoration claim to the City requesting restoration of pre-existing views.

(A) Application and Notice.

Upon the filing of an application for a view restoration claim, staff will review the application for completeness and the application shall include the information determined to be required by the Community Development Director. This information shall include evidence of the pre-existing views, and it shall be the claimant's responsibility to sustain the burden of proof for establishing and substantiating the pre-existing views. In the event that staff, by a preponderance of the evidence supplied by either party to the claim, conclude and agree that the pre-existing view was obtained in an illegal manner or conclude that the photographic evidence submitted with the claim had been altered in any manner, staff may find that the burden of proof has not been met and deny the claim. When the application is deemed complete, the City shall mail a public notice to the claimant and the record owners and occupants of all properties on which the vegetation at issue in the view restoration claim is located not less than 14 calendar days before the public hearing.

(B) Public Hearing.

The view restoration claim shall be heard by the view restoration committee at a noticed public hearing.

(C) Site Visit and View Restoration Hearing.

Prior to the view restoration claim hearing, each member of the view restoration committee shall make a site visit to view the claimant's obstructed view from the selected view locations or areas and the vegetation at issue. While not required for the view restoration committee to make a site visit to the vegetation owner's property, it is encouraged. At the view restoration committee hearing, the committee shall allow the presentation of both verbal and written evidence and arguments from all parties. The view restoration committee shall then consider and determine whether or not there is significant view impairment of pre-existing views in accordance with the criteria specified in Section 12.16.030. If the view restoration committee determines there is not significant view impairment of pre-existing views, then the view restoration claim shall be deemed denied, and a written notice of that decision shall be prepared and sent to the claimant. If the view restoration committee determines the existence of a significant view impairment, then the committee shall issue a view restoration order for restoration action.

(D) Findings Required for a View Restoration Order.

The view restoration committee shall issue a view restoration order to require restoration action regarding vegetation that obstructs pre-existing views, if the committee makes all of the following findings:

(i) The claimant has provided evidence of a cooperative attempt at initial communication and mediation.

(ii) The vegetation at issue is not exempt from the provisions of this Chapter pursuant to Section 12.16.080.

(iii) There is substantial evidence to support the decision that there is a pre-existing view with significant view impairment according to the criteria specified in Section 12.16.030. In the event that the view restoration committee, by a preponderance of the evidence supplied by either party to the claim, conclude and agree that the pre-existing view was obtained in an illegal manner or conclude and agree that the photographic evidence submitted with the claim had been altered in any manner, the committee may find that the burden of proof has not been met and deny the claim.

(iv) Alteration, partial removal or complete removal of the vegetation will not cause an unreasonable infringement of the privacy or other vegetation benefits of the occupants of the property upon which the vegetation is located, including without limitation privacy, shade, erosion control, enhancement of outdoor spaces and community aesthetics.

(v) Alteration, partial removal or complete removal of the vegetation will not have a substantial adverse impact on a hillside, drainage or erosion control.

(vi) If the recommended restoration action includes complete removal, all other restoration actions set forth in Section 12.16.050(c)(3)(E)(i-v) are ineffective in eliminating the significant view impairment.

(vii) If the recommended restoration action for complete removal is based on egregious view impairment for which the consent of the vegetation owner is not required, the committee shall find by clear and convincing evidence that the view has been diminished over time by the growth of vegetation and/or by poor maintenance practices and/or by the lack of consistent maintenance of vegetation and/or by the placement of vegetation in a view corridor and/or by vegetation out of character with the landscaping in the neighborhood and, that upon evidence of proof of prior notification by the claimant to the vegetation owner and that a significant view impairment exists, there is an objectively unreasonable failure by the vegetation owner to cooperate to resolve the view impairment with at least five written notifications from the claimant to the vegetation owner over at least a three-year period prior to filing a view claim. It shall be the burden of the claimant to submit substantial evidence showing that written notification to the vegetation owner occurred minimally over a three-year period.

(viii) The recommended restoration action is the minimum action required to eliminate the significant view impairment.

(E) Restoration Action Limitations.

If the view restoration committee is able to make all of the mandatory findings set forth in subsection (c)(3)(D), then the committee shall determine the restoration action that must be taken to restore the pre-existing views. Such actions may include partial removal or complete removal of the vegetation that is significantly impairing the view from the selected viewing locations or areas. Partial removal shall mean the use of one or more of the following methods of reducing vegetation to restore a pre-existing view:

(i) "Culling" shall mean the removal of dead, decayed or weak limbs or vegetation.

(ii) "Lacing" shall mean a comprehensive method of pruning that systematically removes excess vegetation, but maintains its shape.

(iii) "Trimming" shall mean the removal of limbs or vegetation. Trimming includes, but is not limited to, crown reducing and crown raising.

(iv) "Crown reducing" means a comprehensive method of pruning that reduces the height and/or spread of vegetation. Crown reduction entails the reduction of the top, sides or individual limbs by means of removal of the leaders or the longest portion of limbs to a lateral branch large enough to assume the terminal.

(v) "Crown raising" means a comprehensive method of pruning that removes limbs and vegetation from the lower part in order to raise the canopy over a view.

If any tree or shrub that is ordered to be culled, laced or trimmed dies within two (2) years of the initial work being performed and there was no negligence in appropriate vegetation maintenance, the claimant or any subsequent owner of the claimant's property shall be responsible for providing a replacement tree or shrub to the vegetation owner. This time period may be extended by the view restoration committee, if evidence is provided by a certified arborist that a longer monitoring period is necessary for a specific type of tree or shrub. However, if the City arborist determines that culling, lacing or trimming the vegetation will in all probability cause the vegetation to die, and the vegetation owner chooses not to accept Complete removal and replacement as an option, either in writing or in public testimony at the public hearing, then the claimant shall not be responsible for providing a replacement vegetation to the vegetation owner. If the work is performed by the vegetation owner, the vegetation owner shall forfeit the right to replacement vegetation, if the trimmed vegetation dies. If the vegetation dies, it may be subject to the nuisance abatement provisions of Chapter 7.24.

Except as set forth in the following paragraph, complete removal of any vegetation shall only be ordered if the owner of the property on which the vegetation is located consents to such removal of the vegetation, and the view restoration committee finds:

(i) That upon the advice of the City's arborist, culling, lacing or trimming the vegetation to an unobstructing view height (six feet or higher as determined by the view restoration committee) is likely to kill the vegetation or threaten the health, safety and welfare; or

(ii) That upon the advice of the City's arborist, culling, lacing or trimming the vegetation to an unobstructing view height (six feet or higher as determined by the view restoration committee) will destroy the aesthetic value of the vegetation that is to be trimmed, laced or reduce in height.

Complete removal of any vegetation may be ordered with or without the consent of the owner of the property on which the vegetation is located should the view restoration committee find on the basis of clear and convincing evidence that the view impairment is objectively egregious.

(F) Replacement Vegetation.

The view restoration committee may also order the claimant to replace vegetation that has been removed, if the owner of the property where the vegetation is located consents to the replacement of the vegetation and the view restoration committee finds that complete removal without replacement vegetation will cause significant adverse impact on:

- (i) The public health, safety and welfare;
- (ii) The privacy of the owner of the property on which the vegetation is located;
- (iii) Shade provided to the dwelling or the property on which the vegetation is located;
- (iv) The energy-efficiency of the dwelling on the property on which the vegetation is located;
- (v) The health or viability of the remaining landscaping on the property on which the vegetation is located;
- (vi) The integrity of the landscaping of the property on which the vegetation is located; or

(vii) The function of the landscaping as screening of an unfinished wall or structural elements of a deck or other similar structure on an adjacent property.

The view restoration committee shall ensure that replacement vegetation is reasonably comparable to the vegetation removed in terms of function and/or aesthetics while understanding the replacement vegetation will not be the same height, size and breadth as the pre-existing mature vegetation. Replacement trees or shrubs should be of a 15-gallon size and shall not be larger than a 24-inch box size, unless warranted by the need to reasonably protect privacy or exceptional circumstances, and the tree or shrub that is being replaced is substantially larger than a 24-inch box size. The view restoration committee shall not be obligated to order replacement of every tree or shrub ordered to be removed with a new tree or shrub. The selection of the type of replacement vegetation may be made by the vegetation owner, subject to the approval of the view restoration committee.

In the event that at any time during the view restoration process, the view restoration committee or staff requires an arborist opinion in consideration of a view claim and/or adoption of a view restoration order, a deposit trust account shall be established by the claimant and held by the City in a deposit trust account to cover the cost of arborist services.

In the event that the view restoration committee orders replacement vegetation for a property with a landscape plan approved through the design review process, the view restoration committee shall condition maximum height limits for the replacement vegetation in the view restoration order and the modifications to the approved landscape plan shall not require re-submittal to and approval by the design review board.

(G) Conditions.

In approving a view restoration order for restoration action, the view restoration committee may impose such restrictions or conditions as deemed necessary or proper to restore a pre-existing view, to protect the vegetation owner's privacy and/or to protect the public health, safety or welfare.

Unless complete removal is ordered, the view restoration committee shall require that a long-term vegetation maintenance schedule be incorporated into the conditions of approval of an approved view restoration order. The purpose of the maintenance schedule is to mandate the minimum frequency of future trimming (i.e., semi-annual, annual or biennial) based on the growth rate of the subject vegetation so as to not to significantly impair the pre-existing view in the future. Alternatively, the view restoration committee may specify the amount of allowable growth as measured with respect to a fixed point of reference that will not significantly impair the pre-existing view and require that when this point is reached, the vegetation owner shall be required to trim the vegetation back to the height established by the committee. Periodic inspections by the City may occur to ascertain long-term compliance with the view restoration order conditions of approval for restoration action.

Claimant shall select an ISA certified tree trimmer or accredited arborist to perform the restoration action and subsequent maintenance unless the vegetation owner prefers to select the ISA certified tree trimmer or accredited arborist. If the vegetation owner selects the arborist, the vegetation owner shall pay the Claimant the difference between the fee charged by the Claimant's arborist and the vegetation owner's arborist unless a different allocation of cost is required by this Chapter or by mutual agreement of the parties. The view restoration committee shall also require that the claimant submit one (1) to three (3) itemized

estimates to the City for carrying out work required by an approved view restoration order. The work estimate shall include tree or shrub trimming/removal and replacement costs. Said estimate shall be submitted within 30 days after the adoption of the view restoration order and shall include the cost to have an ISA certified tree trimmer or accredited arborist on site to perform or supervise the work being done. Said estimates are to be supplied by licensed landscape or licensed tree contractors, acceptable to the City, which provide insurance in an amount and form acceptable to the City, and shall include all costs of cleanup and removal of debris. Said insurance shall identify the vegetation owner and the City (and its officers, agents and employees) as additionally named insured. The claimant shall pay to the City an amount equal to the lowest of the estimates, and such funds shall be maintained by the City, in a City deposit trust account until completion of the work as verified by city staff.

(H) Compliance Time Limit.

The City shall require that the vegetation owner trim or remove vegetation within 90 days from a date specified in the view restoration order. The view restoration order shall be sent to the vegetation owner by the City once a deposit trust account has been established by the claimant for the cost of the trimming/removal and vegetation replacement. Once the vegetation trimming/removal and any required replacement work is performed to the satisfaction of City staff site inspection, so that compliance with the view restoration order has been achieved, including any conditions of approval, then the City shall pay the vegetation owner the cost of said work.

If evidence is provided to the City or the view restoration committee that it is less harmful to trim certain vegetation during the vegetation's dormant period, then the City or the view restoration committee may require that the subject vegetation be trimmed within 90 days from a specified future date.

If evidence is provided to the City or the view restoration committee that the vegetation, subject to trimming or removal, contains nests (or eggs) of birds that are designated under the Migratory Bird Treaty Act and California Department of Fish and Game Code, the City staff or the view restoration committee may require that the subject vegetation be trimmed within 90 days following a determination by a qualified biologist or ornithologist that the nest is inactive.

(I) Enforcement.

If the restoration action required by a view restoration order is not satisfactorily completed, as verified by City staff, within the specified time period, then the City may utilize its code enforcement and/or nuisance abatement process to authorize a bonded tree service to perform the work at the subject property at the vegetation owner's expense, and the claimant's deposit shall be refunded. In the event that the City is required to perform the work, the vegetation owner will be billed for all City expenses incurred in enforcing the view restoration order. If the vegetation owner fails to pay the invoice, a lien or assessment may be recorded against the vegetation owner's property pursuant to Section 7.24.130.

(4) Effective Date.

Any decision of the view restoration committee made pursuant to this section takes effect fourteen (14) calendar days following the adoption of a resolution unless an appeal is filed pursuant to subsection (B)(5).

(5) Appeal.

Any decision of the view restoration committee may be appealed by the claimant or the vegetation owner to the City Council. Appeals shall be addressed to the City Council on a form prescribed by the City and shall state all grounds for the appeal. Any appeal must be filed with the City Clerk within fourteen (14) calendar days of the view restoration committee's decision regarding a view restoration claim. Appeals shall be accompanied by the filing fee as adopted by resolution of the City Council, and shall be processed and noticed in the same manner as the original view restoration claim. The City Manager shall set the date for an appeal public hearing before the City Council and shall not be limited by the time period specified in Section 25.05.070(B)(6).

12.16.060 Cost Apportionment.

(a) The cost of the mediator shall be borne by the claimant, unless the parties involved expressly agree otherwise in writing.

(b) The claimant shall generally be responsible for paying the cost of any required initial restoration action, unless the parties involved expressly agree otherwise in writing; provided, however, the view restoration committee is authorized to apportion such cost between the claimant and the vegetation owner in the interest of fairness and equity, taking into account the totality of the circumstances, including without limitation the nature and extent of the initial restoration action, the conduct of the parties, and the economic resources of the parties.

(c) The vegetation owner shall be responsible for paying the cost of any required subsequent maintenance on the subject vegetation, unless the parties involved expressly agree otherwise in writing.

12.16.070 City Immunity; No Mandatory Duty.

(a) The City shall not be liable for any damages, injuries, costs or expenses that are the result of any action, determination or decision of a City body, employee or official or any agreements or determinations resulting from mediation or litigation concerning a view preservation claim or a view restoration claim or a claimant's or vegetation owner's assertions pursuant to this Chapter.

(b) This Chapter is not intended to and shall not be construed as creating a mandatory duty of the City to enforce or seek any legal redress, civil, criminal or otherwise, with regard to any action, determination or decision pursuant to this Chapter concerning a view preservation claim or a view restoration claim.

12.16.080 Exemptions.

The following types of vegetation are exempt from the provision of this Chapter.

(a) Vegetation that does not significantly impair a view.

(b) Vegetation that is less than six (6) feet in height or situated more than 500 feet from the boundary of a claimant's property.

(c) City-maintained vegetation that is designated for maintenance by the City. Such vegetation includes vegetation in City parks, on City properties and designated City maintained street trees within rights of way.

- (d) Heritage trees that are on the official Heritage Tree list established by the City Council pursuant to Chapter 12.08.
- (e) Vegetation that was approved through the design review process and in which vegetation height limits were established pursuant to Section 25.05.040.
- (f) Vegetation that was approved by a hedge claim processed pursuant to Chapter 12.14.
- (g) Vegetation that was approved by a view claim processed pursuant to Chapter 12.16 prior to December 17, 2014 (the effective date of this Ordinance).
- (h) Vegetation subject to a private agreement as part of a settlement agreement in resolution of a legal action commenced in a court of competent jurisdiction.

12.60.090 Legal Access Requirement.

If at any point in the implementation or enforcement of the provisions of this Chapter, the vegetation property owner either verbally or in writing prohibits or restricts property access, the City Attorney is authorized to seek the necessary appropriate inspection or abatement warrant, injunction or other judicially granted authority that is necessary to enter onto private property for inspection or abatement.

12.16.100 View Decisions Binding on Future Owners – Disclosure Obligations.

Decisions made by City staff and the view restoration committee regarding view restoration and view preservation run with the land and shall be binding on the claimant and the vegetation owner and their heirs, successors and assigns. Such decisions, to the extent permitted, shall be recorded in the official records of the County of Orange. In addition, such decisions shall be set forth in any Real Property Report required by Chapter 14.76 and should be disclosed by each owner to prospective purchasers of their properties.

12.16.110 Violations - Penalties.

- (a) Failure to comply with the terms and conditions of a view restoration order or view preservation requirements shall constitute a violation punishable in accordance with Chapter 1.15, and is subject to the administrative penalty provisions of that Chapter. Each day that a violation continues shall constitute a separate offense.
- (b) To the extent any vegetation violates the terms and conditions of a view restoration order or view preservation requirements, the violation shall constitute a public nuisance and shall be subject to the provisions of Chapter 7.24.
- (c) Nothing in this Chapter shall be construed as preventing an interested party from commencing a civil action against a vegetation owner to enforce the terms of a view restoration order or view preservation requirements.

12.16.112 Fees.

Before accepting for filing any request or application submitted relative to Chapter 12.16 of this code, the Department of Community Development shall charge and collect a filing fee for each such request or application as determined by resolution of the City Council.

SECTION 2. This Ordinance is intended to be of Citywide effect and application.

All ordinances and provisions of the Laguna Beach Municipal Code and Sections thereof inconsistent herewith shall be hereby repealed to the extent of such inconsistency and no further.

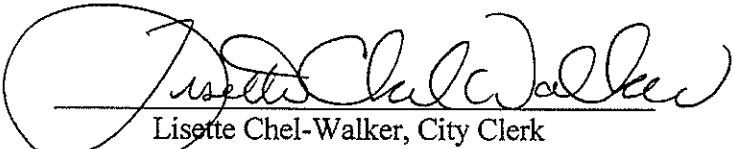
SECTION 3. The City Clerk of the City of Laguna Beach shall certify to the passage and adoption of this Ordinance, and shall cause the same to be published in the same manner required by law in the City of Laguna Beach. This Ordinance shall become effective thirty (30) days after the final approval by the City Council.

ADOPTED this 13th day of September, 2016.



Steve Dicterow, Mayor

ATTEST:



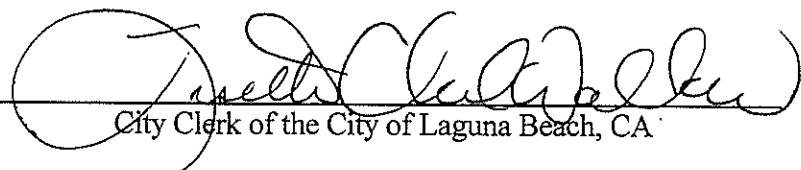
Lisette Chel-Walker, City Clerk

I, Lisette Chel-Walker, City Clerk of the City of Laguna Beach, do hereby certify that the foregoing Ordinance was introduced at a regular meeting of the City Council on August 30, 2016, and was finally adopted at a regular meeting of the City Council of said City held on September 13, 2016 by the following vote:

AYES: COUNCILMEMBER(S): Boyd, Whalen, Zur Schmiede, Dicterow

NOES: COUNCILMEMBER(S): Iseman

ABSENT: COUNCILMEMBER(S): None



City Clerk of the City of Laguna Beach, CA

Los Angeles Times

MEDIA GROUP

Order ID: 4474081

Printed: 9/20/2016 4:17:20 PM

Page 1 of 1

* Agency Commission not included

GROSS PRICE * : \$74.22

PACKAGE NAME: Legal-DP-Notices

Product(s): Daily Pilot, dailypilot.com, CAPublicNotice.com_DP

AdSize(s): 2 Column,

Run Date(s): Friday, September 23, 2016

Color Spec. B/W

Preview

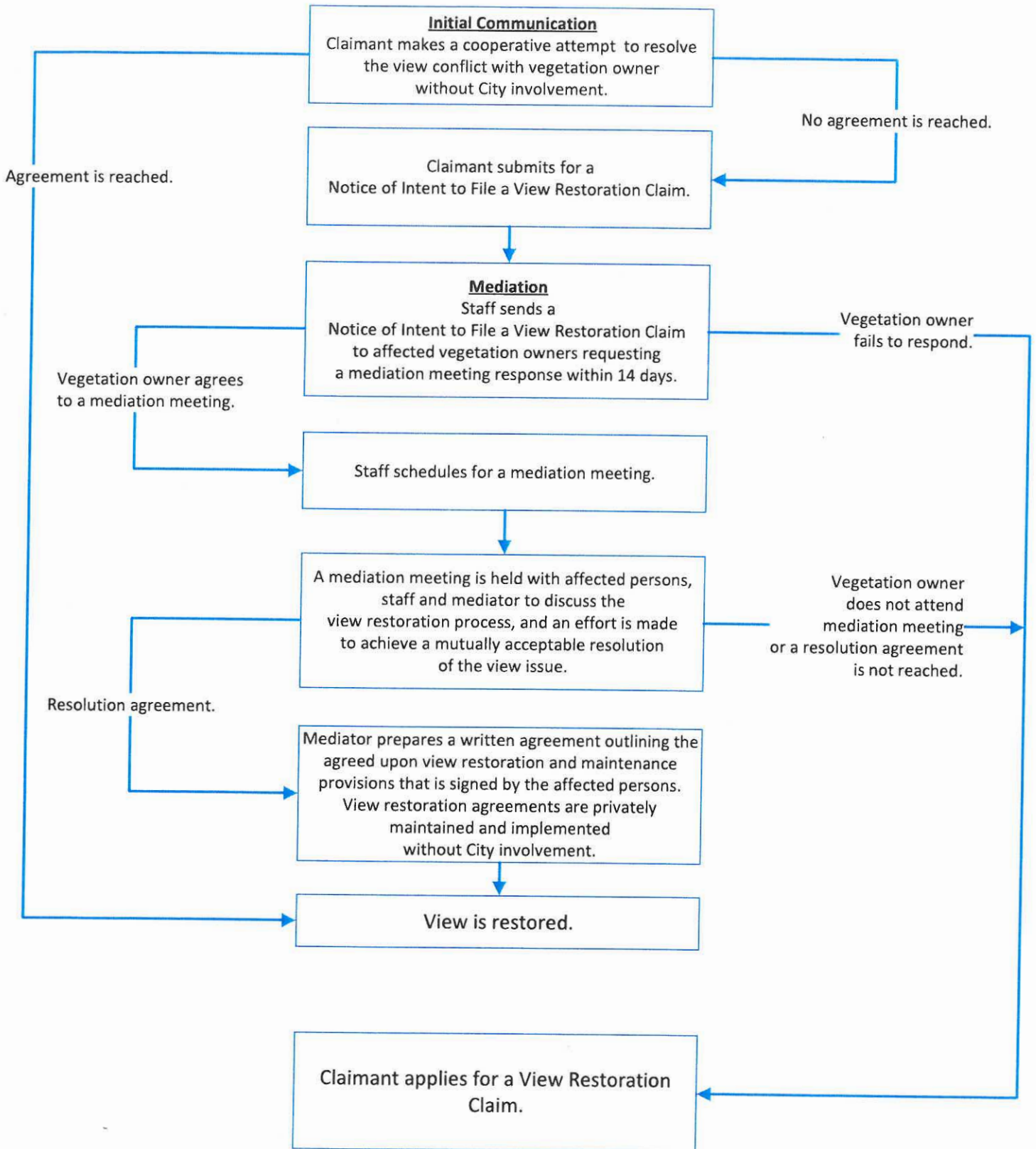
**CITY OF LAGUNA BEACH:
ADOPTION OF ORDINANCE 1618 REGARDING
PRESERVATION AND RESTORATION OF VIEWS**

Adopted Ordinance No. 1618 entitled "AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAGUNA BEACH, CALIFORNIA, AMENDING CHAPTER 12.16 OF THE LAGUNA BEACH MUNICIPAL CODE RELATING TO THE PRESERVATION OF VIEWS AND RESTORATION OF VIEWS SIGNIFICANTLY IMPAIRED BY VEGETATION" was introduced at the City Council meeting of August 30, 2016, and adopted on September 13, 2016, on the following 4-1 vote: AYES: Boyd, Whalen, Zur Schmiede, Dicterow; NOES Iserman; ABSENT: None. View Restoration Committee proposed Ordinance amending Chapter 12.16 of the Laguna Beach Municipal Code relating to the preservation and restoration of views significantly impaired by vegetation on private property.

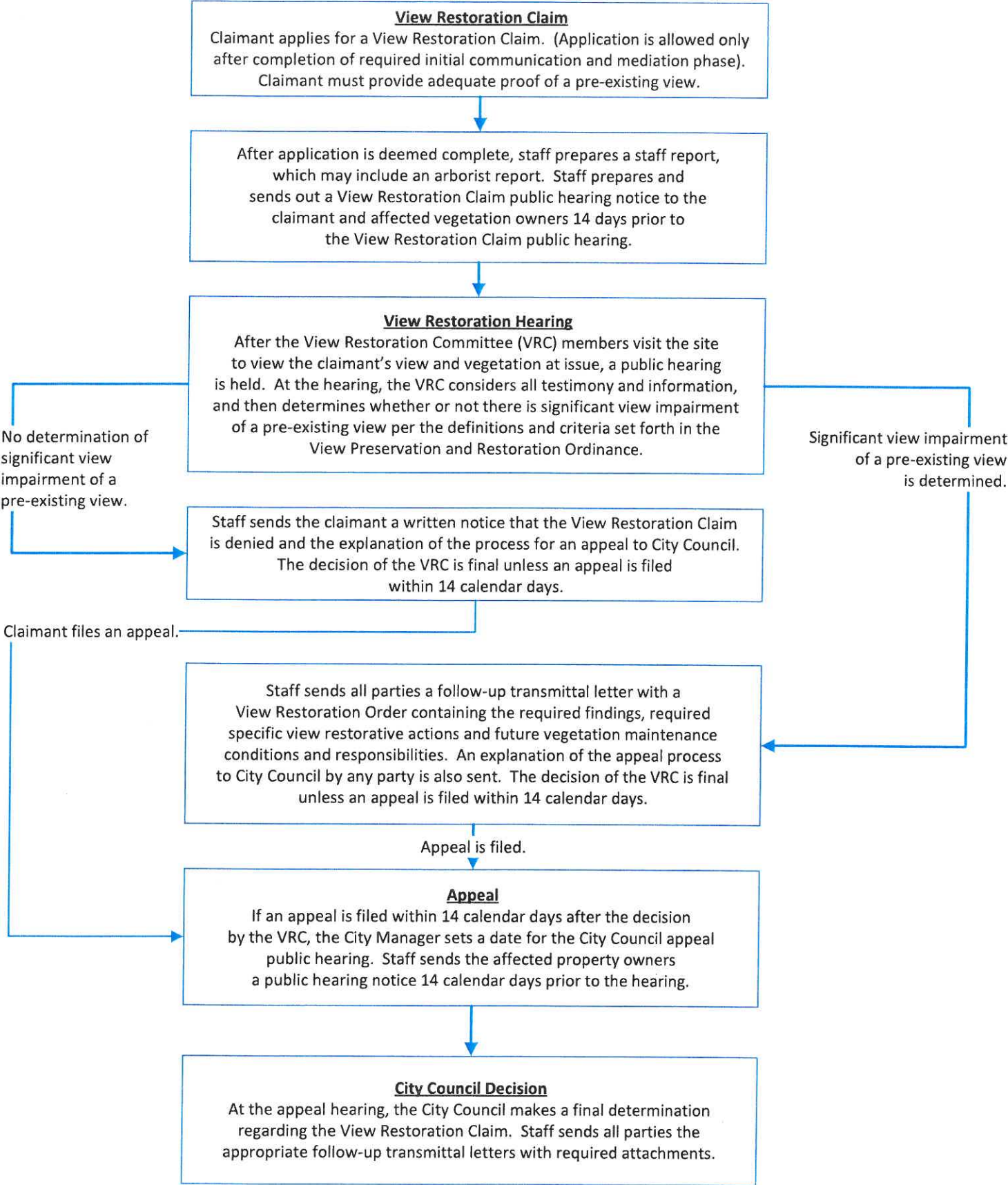
Lisette Chel-Walker, CMC, City Clerk

Publish: September 23, 2016

Laguna Beach
View Restoration Process
 Initial Communication and Mediation
 1st Phase



Laguna Beach
View Restoration Process
View Restoration Claim
2nd Phase



View Restoration Claim

Claimant applies for a View Restoration Claim. (Application is allowed only after completion of required initial communication and mediation phase).
Claimant must provide adequate proof of a pre-existing view.

After application is deemed complete, staff prepares a staff report, which may include an arborist report. Staff prepares and sends out a View Restoration Claim public hearing notice to the claimant and affected vegetation owners 14 days prior to the View Restoration Claim public hearing.

View Restoration Hearing

After the View Restoration Committee (VRC) members visit the site to view the claimant's view and vegetation at issue, a public hearing is held. At the hearing, the VRC considers all testimony and information, and then determines whether or not there is significant view impairment of a pre-existing view per the definitions and criteria set forth in the View Preservation and Restoration Ordinance.

No determination of significant view impairment of a pre-existing view.

Staff sends the claimant a written notice that the View Restoration Claim is denied and the explanation of the process for an appeal to City Council. The decision of the VRC is final unless an appeal is filed within 14 calendar days.

Significant view impairment of a pre-existing view is determined.

Claimant files an appeal.

Staff sends all parties a follow-up transmittal letter with a View Restoration Order containing the required findings, required specific view restorative actions and future vegetation maintenance conditions and responsibilities. An explanation of the appeal process to City Council by any party is also sent. The decision of the VRC is final unless an appeal is filed within 14 calendar days.

Appeal is filed.

Appeal
If an appeal is filed within 14 calendar days after the decision by the VRC, the City Manager sets a date for the City Council appeal public hearing. Staff sends the affected property owners a public hearing notice 14 calendar days prior to the hearing.

City Council Decision

At the appeal hearing, the City Council makes a final determination regarding the View Restoration Claim. Staff sends all parties the appropriate follow-up transmittal letters with required attachments.

View Restoration Process

View Restoration Order

3rd Phase

View Restoration Order

Staff sends the view claimant and vegetation owners the View Restoration Order (VRO), which outlines the required specific view restorative actions and future vegetation maintenance conditions and responsibilities.



Bid and Deposit

The VRO contains the notification of and condition that the view claimant is required to obtain bids for the required restorative action, from a licensed, bonded and insured tree service contractor and post a deposit for that cost with the City within 30 days.



Vegetation Trimming

After the view claimant establishes a deposit trust account with the City and deposits the funds to pay for the required restorative action, staff sends the vegetation owner a 90-day notice to contract with the tree trimming service and to perform the required restorative action. After the required restorative action is performed and staff verifies all of the terms of the VRO, the vegetation owner is paid for the cost of the work from the funds held in the deposit trust account.



View is Restored



Enforcement

If there is any VRO noncompliance issue, either initially or long-term in regards to on-going vegetation limits or property access issues, City staff starts the processes to obtain the appropriate legal access authorization and code enforcement and/or nuisance abatement in order to authorize and obtain compliance. Liens or assessments recorded against the vegetation owner's property are allowed.

9.55.010 Intent and Purpose.

This Chapter promotes and encourages high quality landscape improvements in Dana Point that recognize and respect the limited availability of water in the State of California. These provisions are intended to effect landscapes that can be maintained with low water use serviced by irrigation systems which will not overuse or waste the available water supply. This Chapter requires the consideration of water conservation measures through the appropriate design, installation and maintenance of landscape and irrigation systems in accordance with Governor Brown's April 1, 2015 Drought Executive Order (B-19-25).

The purpose of the City's Water Efficient Landscape Ordinance is to establish an alternative model acceptable under Executive Order No. B-19-25 as being at least as effective as the State Model Water Efficient Landscape Ordinance in the context of conditions in the City in order to:

- (1) Promote the benefits of consistent landscape ordinances with neighboring local and regional agencies;
- (2) Promote the values and benefits of landscapes while recognizing the need to invest water and other resources as efficiently as possible;
- (3) Establish a structure for planning, designing, installing, and maintaining and managing water efficient landscapes in new construction and rehabilitated projects;
- (4) Establish provisions for water management practices and water waste prevention for existing landscapes;
- (5) Use water efficiently without waste by setting a Maximum Applied Water Allowance (MAWA) as an upper limit for water use and reduce water use to the lowest practical amount; and
- (6) Encourage the use of economic incentives that promote the efficient use of water, such as a budget-based tiered-rate structure, providing rebate incentives and offering educational programs.

9.55.020 Applicability.

(a) Beginning February 1, 2016, and consistent with Executive Order No. B-29-15 all planting, irrigation, and landscape-related improvements shall comply with this Chapter and a landscape permit shall be required for the following types of landscape projects:

- (1) New landscape projects with an aggregate landscape area equal to or greater than 500 square feet, requiring a building or landscape permit, plan check or a discretionary permit;
- (2) Rehabilitated landscape projects with an aggregate landscape area, equal to or greater than 2,500 square feet, requiring a building or landscape permit, plan check or a discretionary permit;
- (3) New or rehabilitated landscape projects with an aggregate landscape area of 2,500 square feet or less may comply with the performance requirements of this

ordinance or conform to the prescriptive measures contained in Appendix A of the Submittal Requirements and Guidelines;

(4) New or rehabilitated projects using treated or untreated graywater or rainwater capture on site, any lot or parcels within the project that has less than 2,500 square feet of landscape area and meets the lot or parcel's landscape water requirement (Estimated Total Water Use - ETWU) entirely with the treated or untreated graywater or through stored rainwater capture on site is subject only to Appendix A of the Submittal Requirements and Guidelines;

(5) At cemeteries, Sections 2.9, 2.10, and Appendix C of the Submittal Requirements and Guidelines shall apply to new landscape installations and Sections 2.9, 2.10, and 3 of the Submittal Requirements and Guidelines shall apply to landscape rehabilitation projects.

(6) Landscape Height Limitation Applicability

(A) Compliance with the requirements of Section 9.55.050(f) shall occur with/when:

- 1. New construction on a vacant lot; or**
- 2. 50% or more of the existing interior and exterior walls are demolished; or**
- 3. a landscape permit is required pursuant to Subsection (1) through (5) above.**

(B) Exceptions to Landscape Height Limitation

- 1. When a property owner(s)/applicant can show that privacy would be negatively impacted by removing existing trees, shrubs, and/or hedges that exceed the zoning district maximum height pursuant to Section 9.55.050(f); or**
- 2. When a property owner(s)/applicant can provide evidence that removal of a mature tree, shrub, and/or hedge would be a detriment to the neighborhood or community; or**
- 3. The existing tree, shrub, and/or hedge exceeds the zoning district maximum height pursuant to Section 9.55.050(f), but the property owner/applicant can show that no views will be negatively impacted by preserving the existing landscaping.**
- 4. All exception approvals are subject to the approval of the Director of Community Development, or their designee, and are subject to the appeal process pursuant to Section 9.61.110.**

(i) Pursuant to Section 9.71.020(d), the Director of Community Development can require an exception request be placed on the Planning Commission agenda for review. Notice of a public hearing shall be provided pursuant to Section 9.61.050.

(b) Section 9.55.050(b) of the Landscape Water Use Standards of this Chapter shall apply to:

- (1) All landscape areas, whether installed prior to or after January 1, 2010; and
 - (2) All landscape areas installed after February 1, 2016 to which Section 9.55.020(a) is applicable.
- (c) This Chapter does not apply to:
- (1) Registered local, State, or Federal historical sites;
 - (2) Ecological restoration projects that do not require a permanent irrigation system;
 - (3) Mined-land reclamation projects that do not require a permanent irrigation system; or
 - (4) Plant collections, as part of botanical gardens and arboretums open to the public.

9.55.030 General Provisions.

- (a) Landscape design and construction shall emphasize water conservation through the appropriate use and groupings of plant materials that are well adapted to particular sites and to local climatic, geological, or topographical conditions.
- (b) All landscape plan approvals are subject to and dependent upon the applicant complying with all applicable City ordinances, codes, regulations, adopted policies, and the payment of all applicable fees.
- (c) All landscape areas shall be maintained in an orderly, attractive and healthy condition. This shall include proper pruning, mowing of turf areas, weeding, removal of litter, fertilization, replacement of plants when necessary and the regular application of appropriate quantities of water to all landscape areas.
- (d) All irrigation systems shall be maintained in proper operating condition. Water line breaks, head/emitter ruptures, overspray or runoff conditions and other irrigation system failures shall be repaired immediately.

9.55.040 Procedures.

The submittal, review, revision and approval of all required landscape and irrigation plans shall be in compliance with the following provisions:

- (a) Prior to the issuance of grading permits or building permits, whichever occurs first, a Landscape Documentation Package shall be submitted to the City for review and approval and a landscape permit shall be issued for all landscape projects subject to the provisions of this Chapter. Any Landscape Documentation Package submitted to the City shall comply with the provisions of the Submittal Requirements and Guidelines.
- (b) The Landscape Documentation Package shall include a certification by a professional appropriately licensed to prepare landscape and irrigation plans in the State of California stating that the landscape design and water use calculations have been prepared by or under the supervision of the licensed professional and are certified

to be in compliance with the provisions of this Chapter and the Submittal Requirements and Guidelines.

- (1) Landscape and irrigation plans shall be submitted to the City for review and approval with appropriate water use calculations. Water use calculations shall be consistent with calculations contained in the Submittal Requirements and Guidelines and shall be provided to the local water purveyors, as appropriate, under procedures determined by the City.
 - (2) Verification of compliance of the landscape installation with the approved plans shall be obtained through a Certification of Completion in conjunction with a Certificate of Use and Occupancy or Permit Final process, as provided in the Submittal Requirements and Guidelines. The Certification of Completion shall be prepared by the record professional that prepared the landscape design certification required in Section 9.55.040(a) and in accordance with the provisions of Submittal Requirements and Guidelines.
- (c) Conceptual landscape and irrigation plans shall be required for all projects subject to this Chapter pursuant to Section 9.55.020, which also require discretionary approval. Conceptual landscape and irrigation plans shall be included as part of the application package submitted to the Community Development Department, and required for discretionary permits, and shall incorporate the principles of this Chapter. Final landscape and irrigation plans shall be required for all projects subject to this Chapter pursuant to Section 9.55.020.
- (d) All required landscape and irrigation plans shall be prepared in accordance with the Submittal Requirements and Guidelines available from the Community Development Department.
- (e) All final landscape and irrigation plans shall be prepared by a professional appropriately licensed in the State of California.
- (f) Conceptual landscape and irrigation plans shall be acted upon in conjunction with the specific discretionary approval application.
- (g) Final landscape and irrigation plans shall be submitted for review, and approved, by the Community Development Department prior to the issuance of grading permits or building permits, whichever occurs first.
- (h) Any modification to an approved final landscape or irrigation plan must first be approved by the Director of Community Development prior to the installation of the subject landscaping or irrigation.

9.55.050 Landscape Water Use and Design Standards.

The design and installation of all proposed landscape improvements subject to this Chapter shall be in compliance with the following general provisions:

- (a) For applicable landscape installation or rehabilitation projects subject to Section 9.55.020(a) of this Water Efficient Landscape Ordinance, the ETWU allowed for the landscape area shall not exceed the MAWA calculated using an ET adjustment factor of 0.7, except for special landscape areas where the MAWA is calculated using an ET

adjustment factor of 1.0; or the design of the landscape area shall otherwise be shown to be equivalently water-efficient in a manner acceptable to the City; as provided in the Submittal Requirements and Guidelines.

(b) Irrigation of all landscape areas shall be conducted in a manner conforming to the Submittal Requirements and Guidelines, and shall be subject to penalties and incentives for water conservation and water waste prevention as determined and implemented by the local water purveyors or as mutually agreed by local water purveyors and the City.

(c) Landscape design shall illustrate a concern for aesthetic elements such as balance, scale, texture, form, and unity.

(d) Landscape design shall address the functional aspects of landscaping such as grading, drainage, erosion control, minimal runoff, erosion prevention, wind barriers, provisions for shade and reduction of glare.

(e) Landscape design shall provide for the planting of all unpaved areas with an effective combination of trees, ground cover, turf, shrubbery, and/or approved dry landscape materials including, but not limited to, accessory decorative outdoor landscape elements such as ponds, fountains, artificial turf, and paved or decorated surfaces, and sculptural elements.

(f) Landscape Height Limitation

(1) Landscape plans shall clearly indicate the mature height of all trees, shrubs, and/or hedges. The mature heights of all trees, shrubs, and/or hedges shall be labeled and provided in a standalone table within all landscape plans, including projects requesting Prescriptive Compliance. No proposed trees, shrubs, and/or hedges at maturity shall exceed the maximum height for a primary structure in the applicable zoning district. All landscaping must also comply with water efficient requirements as set forth in subsection (a) through (e) above.

9.55.060 Delegation.

The City may delegate to, or enter into a contract with, a local agency to implement, administer, and/or enforce any of the provisions of this Chapter on behalf of the City.