

Chapter 17.45 CITYWIDE VIEW PRESERVATION AND RESTORATION

Note

* Prior ordinance history: Ord. 361.

17.45.010 Title.

This chapter shall be known as “Citywide View Preservation and Restoration.” (Ord. 378 § 3, 2014)

17.45.020 Purpose.

A. The purpose of this chapter is to establish a right for property owners to preserve a primary view that existed on or after February 13, 2012 and to restore a pre-existing view, as defined in this chapter, which has been significantly obstructed by foliage, while striking an equitable balance between the right to reasonable use of one’s property including the maintenance of privacy and the right to protection against unreasonable loss of views. This chapter applies to all properties within the city’s permitting jurisdiction, excluding state and county-owned properties.

B. This chapter is not intended to encourage or result in the clear-cutting or substantial denuding of any property of its trees by overzealous application of provisions of this chapter. It is also not the intent or purpose of this chapter for the city to supplant any private covenants, conditions, and restrictions (CC&Rs) which may place more restrictive controls on the growth or placement of foliage.

C. This chapter is not intended to affect, and shall not be construed as affecting, Chapter [17.43](#), View Restoration and Preservation for Malibu Country Estates. (Ord. 378 § 3, 2014)

17.45.030 Definitions.

The following definitions shall apply for purposes of this chapter:

A. “Arbitration” means a voluntary legal procedure for settling disputes and leading to a determination of rights of parties, usually consisting of a hearing before an arbitrator where all relevant evidence may be freely admitted.

B. “Arbitrator” means a mutually agreed upon neutral third party professional intermediary who conducts a hearing process, and who hears testimony, considers evidence and makes decisions for the disputing parties.

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

D. “Claimant” means a property owner who alleges that foliage is causing a significant obstruction of a primary view.

E. “Disaster” means a local emergency proclaimed by the city manager that broadly affects view determinations.

F. “Disaster areas” means the area within a one thousand (1,000)-foot radius of a property that was damaged or destroyed by a disaster, as determined by the planning director.

G. “Environmentally sensitive habitat areas or (ESHA)” as defined as set forth in the certified Malibu LCP Local Implementation Plan.

H. “Foliage” means a woody plant with the potential to obstruct primary views. “Foliage” includes, without limitation, trees, shrubs, hedges and bushes.

I. “Foliage owner” means a person owning property containing foliage that a claimant alleges is causing a significant obstruction of a protected view.

J. “Hedge” means any plant material, trees, stump growth, or shrubbery planted or grown in a dense continuous line, so as to form a thicket, barrier or the substantial equivalent of a living fence.

K. “Main viewing area” means the ground floor of a commercial, institutional or principal residential structure unless the ground floor of a commercial structure consists of garages, parking areas and storage and unless the primary living area of a principal residential structure is not located on the ground floor. If the ground floor of a commercial structure consists of garages, parking areas and storage, the “main viewing area” means the first habitable floor. If the primary living area of a principal residence is not located on the ground floor, the main viewing area means the primary living area of the principal residence. The “main viewing area” may be an abutting outdoor deck or patio area located at relatively the same elevation as the ground floor of a commercial or institutional structure or a primary living area of a residence, whichever has the superior view corridor. Bedrooms, master bedroom retreats, offices, hallways, closets, laundry rooms, mechanical rooms, bathrooms and garages shall not be considered main viewing areas. Application of a primary view corridor requires an established “main viewing area.”

L. “Mediation” means a process of using a neutral third person to facilitate a mutually satisfactory solution to a view dispute.

M. “Mediator” means a neutral third person that assists the claimant and foliage owner in finding a mutually satisfactory solution to a view dispute.

N. “Pre-existing view” means a primary view within the structure’s assessed primary view corridor that existed on the date of acquisition of the property or city incorporation, whichever is more recent. If the property was acquired without a developed, legally-habitable structure, a pre-existing view shall mean a primary view that existed as of issuance of a certificate of occupancy or city incorporation, whichever is more recent. The pre-existing view cannot be a result of a natural disaster or a result of illegal activities.

O. “Primary living area” means the living room, family room, dining room, kitchen or a combination thereof.

P. “Primary view” means visually impressive scenes of the Pacific Ocean, offshore islands, the Santa Monica Mountains, canyons, valleys, or ravines, within a primary view corridor.

Q. “Primary view corridor” means a one hundred eighty (180) degree view assessed by the planning director or designee from a single fixed location and direction within the main viewing area, at an elevation of five feet as measured from the room floor or on an abutting outdoor deck or patio at any one point within ten (10) feet of the nearest outside wall of the structure as selected by the affected property owner and the city.

R. “Primary view determination” means a process by which the planning director or designee documents the location of a claimant’s primary view corridor.

S. “Principal residence” and “principal residential structure” mean the primary residential structure located on a lot. Guest houses, granny flats and second units are not principal residences or principal residential structures.

T. “Protected tree” as defined in Section 5.2 of the Malibu Local Coastal Program Local Implementation Plan.

U. “Removal” means the destruction or displacement of foliage by cutting or other mechanical method that result in physical transportation of the foliage from its site and/or death of the foliage.

V. “Replacement landscaping” means any proposed landscaping sited in the same location and of the same relative size at maturity as previously existing legal landscaping that was damaged or destroyed by a disaster.

W. “Replacement structure” means any proposed structure sited in the same location and of the same relative size as a previously existing legal structure that was damaged or destroyed by a disaster.

X. “Restorative action” means measures undertaken to eliminate a significant obstruction of a primary view.

Y. “Stump growth” means new growth from the remaining portion of a tree trunk, the main portion of which has been cut off.

Z. “View preservation permit” means a permit issued by the city, requiring restorative actions on foliage located on a foliage owner’s property in order to preserve a claimant’s primary view. (Ord. 450 § 4, 2019; Ord. 378 § 3, 2014)

17.45.040 Criteria for determining significant obstruction.

The following criteria shall be considered in determining whether a significant obstruction has occurred in view preservation and view restoration disputes:

- A. The extent the foliage obstructs a pre-existing view and/or primary view, both currently and at foliage maturity.
- B. The location of the obstruction within a view frame; foliage located within the center of a primary view is more likely to be found to create significant obstruction than obstruction located on the outer edge of a primary view.
- C. The quality of the primary view being obstructed, including obstruction of landmarks, vistas or other unique features.
- D. The extent to which the primary view has been diminished over time by factors other than tree growth, such as new additions or residences.
- E. The extent to which the primary view contributes to the economic value and/or enjoyment of the claimant's property. (Ord. 378 § 3, 2014)

17.45.050 View preservation right.

Subject to the limitations in Section 17.45.020, and consistent with the process and procedures set forth in this chapter, property owners shall have the right to preserve a primary view corridor documented by staff on or after February 13, 2012 that has been significantly obstructed by foliage located within one thousand (1,000) feet of the point of the main viewing area from which the claimant's primary view corridor has been assessed.

Property owners wishing to preserve views protected by this chapter shall pay the associated fee and request a primary view determination. Upon receipt of a primary view determination request, staff will confirm whether a primary view corridor has been established previously in connection with a prior development project. If a previous primary view corridor has been established, planning department staff will document the current view within the same primary view corridor. In the event planning staff and the owner cannot agree on the main viewing area, the owner may appeal the decision to the planning commission. Once a primary view corridor has been established, whether in connection with a previous development project or a view preservation permit, it cannot be changed for future applications or owners.

Upon receipt of a complete view preservation permit application, staff will return to the claimant's residence and document the current view within the same primary view corridor. Property owners wishing to preserve views protected by this chapter must proceed in accordance with the procedure set forth in Section 17.45.060(A) through (D). (Ord. 378 § 3, 2014)

17.45.060 Preservation procedure.

Claimants may initiate the preservation procedure as outlined below.

- A. **Informal Discussion.** The claimant and foliage owner shall attempt to reach a mutually satisfactory solution to the view dispute by having personal discussions. The personal discussions shall be accompanied by a written notification sent by the claimant to the foliage owner, informing the foliage owner of such concerns by registered or certified letter with return receipt requested. The foliage owner's mailing address shall be obtained from ownership records on file with the Los Angeles County assessor's office.
- B. **Mediation.** If informal discussion is unsuccessful, the claimant shall invite, by registered or certified letter with return receipt, the foliage owner to participate in mediation. The foliage owner shall have no more than sixty (60) calendar days from service of a written request for mediation, as indicated on the return receipt, to accept or reject the offer of mediation. Failure to respond in writing with return receipt within sixty (60) calendar days shall be deemed as a refusal of mediation. Acceptance of mediation shall be voluntary. If mediation is accepted, the parties shall mutually agree upon a mediator and conduct mediation within sixty (60) calendar days. The mediation meeting may be informal or formal. The mediator shall be guided by the provisions of this chapter. The mediator shall not have the power to issue binding orders for restorative actions, but shall strive to enable parties to resolve their dispute by written agreement in order to eliminate the need for arbitration or submission of a view restoration claim.
- C. **Binding Arbitration.** If informal discussion is unsuccessful and if mediation has been declined or also unsuccessful, the claimant shall propose binding arbitration. The claimant shall notify the foliage owner of such proposal

in writing, sent by registered or certified letter with return receipt requested. Acceptance of arbitration shall be voluntary, but the foliage owner shall have no more than sixty (60) calendar days from service of a written request for arbitration to accept or reject the offer of arbitration. Failure to respond in writing with return receipt within sixty (60) calendar days shall be deemed as a refusal of arbitration. If arbitration is accepted, the parties shall mutually agree upon an arbitrator and conduct arbitration within sixty (60) calendar days of acceptance. The arbitrator shall be guided by the provisions of this chapter in resolving the view dispute. The arbitrator shall provide a written decision to the parties and the city which shall include the arbitrator's findings, a pertinent list of all mandated restorative actions with any appropriate conditions concerning such actions, and a schedule by which the mandates must be completed. The arbitrator's decision shall be binding and enforceable pursuant to the provisions of California Code of Civil Procedure Section 1280 et seq.

D. View Preservation Permit (Planning Director). If the provisions of subsections A, B and C of this section produce a satisfactory result to the claimant or foliage owner, either party may submit a view preservation permit to memorialize the agreement and seek city enforcement of a decision by submitting the following documents:

1. Authorization from claimant and foliage owner to submit a view preservation permit; and
2. Decision made in informal discussion, mediation or binding arbitration.

Such permits shall be approved at the discretion of the planning director if the planning director finds that mediation or binding arbitration decisions are in compliance with this chapter and shall not be appealable to the planning commission or city council. Such approval does not require a public hearing.

E. View Preservation Permit (Planning Commission). If the provisions of subsections A, B and C of this section are exhausted and do not produce a satisfactory result to the claimant, the claimant may submit a view preservation permit application to the city requesting preservation of a primary view corridor documented by staff on or after February 13, 2012.

1. Application. An application for a view preservation claim shall include each of the following information:
 - a. The name(s) of the foliage owner(s) and the address(es) of the property where the foliage is located;
 - b. Primary view determination photographs taken by staff demonstrating photographic evidence of the primary view prior to obstruction. As such may exist, photographs, prints, negatives, and/or slides must be date-stamped. The claimant may provide supporting evidence such as, but not limited to, arborist statement of foliage's age, property descriptions prepared in connection of the sale of the property, such as, but not limited to, multiple listing service (MLS) information, newspaper advertisements, real estate flyers, etc.;
 - c. Evidence confirming the ownership and the date of acquisition of the claimant's property;
 - d. Evidence of attempt at informal discussion;
 - e. Evidence of attempt at mediation;
 - f. Evidence of attempt at arbitration;
 - g. Tree survey, at the discretion of the planning director. A description of the nature and extent of the alleged obstruction, including the location and height of all foliage alleged to cause the obstruction on a tree survey. The tree survey shall be prepared in conjunction with a land surveyor and signed or stamped by a registered landscape architect or arborist. If a foliage owner does not grant access to his or her property for the purpose of conducting a tree survey, the tree survey shall be prepared with as much of the above information as possible, using other information sources such as photographs taken from other properties, satellite photographs, public record permit information for work performed on foliage owner's property, and other similar information sources. The survey must indicate the boundaries of the one thousand (1,000) radius as measured from the point of the main viewing area from which the claimant's primary view corridor has been assessed;
 - h. Restorative actions proposed by the claimant to preserve the primary view;
 - i. Declaration of the claimant's willingness to bear the cost of the restorative actions;
 - j. Any supporting documents, such as arborist reports or any private agreements reached in mediation or non-binding arbitration decisions, etc.; and
 - k. Associated fees, as set by resolution of the city council.
2. Site Visits.

a. Upon receipt of a complete view preservation permit application, planning department staff will conduct a site visit to the claimant's property and document the alleged obstruction of the previously documented primary view.

b. Planning department staff shall make reasonable attempts to conduct a site visit to the foliage owner's property, subject to the foliage owner's authorization. If the foliage owner does not permit access to the foliage owner's property, planning department staff shall review the case using other information available, including, but not limited to, information provided by the claimant.

3. Public Hearing and Notice. The view preservation permit shall be considered by the planning commission at a noticed public hearing, unless said permit is approved at the discretion of the planning director to memorialize a decision made in mediation or binding arbitration. Not less than ten (10) days before the date of the public hearing, public notice shall be given of such hearing in the following manner:

a. A public notice shall be published in a newspaper of general circulation within the city. Such notice shall state the nature of the request, the claimant's property address, the addresses of all properties on which the foliage at issue is located, and the time and place of the scheduled hearing.

b. A public notice shall be mailed to the claimant and the record owners and occupants of all properties on which the foliage at issue in the view preservation permit application is located.

4. Findings. The planning commission may issue a view preservation permit to require removal or alteration and maintenance of foliage at the designated maximum height, including trimming, thinning, or reducing the height or width of foliage, on a foliage owner's property if it makes all of the following findings:

a. The claimant has provided evidence of attempt at informal discussion, mediation, and binding arbitration to resolve view dispute;

b. The claimant has a primary view that has been significantly obstructed by foliage that is not exempt pursuant to Section 17.45.130;

c. Alteration or removal of the foliage will not have a substantial adverse impact on a hillside, drainage or erosion control;

d. If the recommended restorative actions include removal, that all other restorative actions are ineffective in restoring the primary view while preserving the health of the foliage; and

e. The recommended restorative action is the minimum required to restore the claimant's primary view, unless restorative action will result in future stump growth in which case, more aggressive action is preferred.

5. Conditions. In approving a view preservation permit, the planning commission or planning director may impose such restrictions or conditions, including restorative action, as deemed necessary or proper to restore a primary view; protect the foliage owner's privacy; protect the public health, safety or welfare; or any combination thereof. Every view preservation permit shall include the following condition:

The Claimant(s), and their successors in interest, shall indemnify and defend the City of Malibu and its officers, employees and agents from and against all liability and costs relating to the City's actions concerning this project, including (without limitation) any award of litigation expenses in favor of any person or entity who seeks to challenge the validity of any of the City's actions or decisions in connection with this project. The City shall have the sole right to choose its counsel and property owners shall reimburse the City's expenses incurred in its defense of any lawsuit challenging the City's actions concerning this project.

The claimant must sign an affidavit of acceptance of conditions of approval prior to commencement of any restorative actions.

6. Effective Date. Any decision of the planning commission made pursuant to Section 17.45.060 takes effect ten (10) calendar days from the date of adoption of a resolution unless an appeal is filed. If appealed, the effective date is the date on which final action is taken by the city council.

7. Appeal. Any decision made by the planning commission 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 ten (10) calendar days of the planning commission's adoption of its resolution regarding the view preservation permit. 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 preservation permit application. Public notice of an appeal hearing shall be given in the manner required by subsection (D)(3). (Ord. 378 § 3, 2014)

17.45.070 Permits binding on future owners—Disclosure obligations.

Planning commission decisions regarding view preservation shall be binding on all current and future owners of claimant's property and foliage owner's property, and such decisions must be disclosed by each owner to subsequent owners of the property. (Ord. 378 § 3, 2014)

17.45.080 Violations and penalties.

A. Failure to abide by the terms and conditions of a view preservation permit shall constitute a violation punishable in accordance with Section 1.16.010.

B. In addition to all penalties authorized by Section 1.16.010 or any other provision of law, violations of any view restoration permit granted pursuant to this chapter are subject to the administrative penalty provisions of Chapter 1.10. Each day that a violation continues shall constitute a separate offense.

C. To the extent any foliage is in violation of the terms of a view preservation permit shall constitute a public nuisance.

D. Nothing in this chapter shall be construed as preventing a claimant or foliage owner from bringing a civil action against a foliage owner to enforce the terms of a view preservation permit. (Ord. 378 § 3, 2014)

17.45.090 City immunity.

A. The city shall not be liable for any damages, injuries, costs or expenses which are the result of a decision issued by a city employee or official or any agreements or determinations resulting from mediation, arbitration or litigation concerning view restoration claims or a claimant's assertions pertaining to views granted or conferred herein. Nor shall the city have any liability because a particular neighborhood or overlay district is granted or denied an exemption pursuant to Section 17.45.130 of this chapter.

B. Under no circumstances shall the city have any responsibility or liability to enforce or seek any legal redress, civil or criminal, for any decision that any other person or entity makes concerning a view preservation permit. (Ord. 378 § 3, 2014)

17.45.100 View restoration right.

Subject to the limitations in Section 17.45.020, and consistent with the process and procedures set forth in this chapter, property owners shall have the private right of action to restore a pre-existing view, as defined in Section 17.45.030 that has been significant obstructed by foliage located within one thousand (1,000) feet of the point of the main viewing area from which the claimant's primary view corridor has been assessed. Property owners wishing to restore views protected by this chapter must proceed in accordance with the restoration procedure set forth in Section 17.45.110. (Ord. 378 § 3, 2014)

17.45.110 View restoration procedure.

Claimants may initiate the restoration procedure as outlined below.

A. Informal discussion in accordance with Section 17.45.060(A).

B. Mediation, in accordance with Section 17.45.060(B).

C. Binding arbitration, in accordance with Section 17.45.060(C).

D. Written Advisory Opinion. If the provisions of subsections A and B of this section are exhausted and do not produce a satisfactory result to the claimant, and the foliage owner has declined binding arbitration in subsection C, the claimant may request that the planning director assess and issue an advisory opinion on the view dispute. Such requests shall be made to the planning director in writing within thirty (30) days after binding arbitration is refused or deemed refused. The planning director may, but is not required to, assist the parties in resolving the view equity dispute. It is the intention that the advisory opinion be admissible as evidence in any civil action.

E. Court Action. If a claimant has attempted to obtain but has been unsuccessful in attaining agreement or resolution in accordance with subsections A, B and C, the claimant may initiate civil action in a court of competent jurisdiction under the provisions of this chapter. (Ord. 378 § 3, 2014)

17.45.120 Restorative actions.

Restoration actions required by a view preservation permit, agreed upon through mediation, or imposed by an arbitrator or a court of law shall be consistent with the following guidelines.

A. The minimum restorative action shall be required to preserve or restore the claimant's primary view.

B. Restorative action that will result in future stump growth should be avoided as stump growth generally results in the hazard of weak limbs and is not desirable. When considering restorative action for stump growth, aggressive action is preferred.

C. All restorative actions shall be conducted in compliance with the California Department of Fish and Game or U.S. Fish and Wildlife Service policies and regulations, including the Federal Migratory Bird Treaty Act and California Fish and Game Code Sections 3503, 3503.5 and 3513 which prohibit taking of birds and their active nests, including raptors and other migratory nongame birds. Restorative actions shall take place outside of the breeding bird season (February 1st through September 1st) unless a nesting survey is conducted and confirms that no active nests are located within the minimum buffer as determined by a qualified biologist. A report discussing the results of nesting bird surveys shall be submitted to the city biologist prior to any foliage removal on-site.

D. The claimant and foliage owner shall make arrangements regarding access to foliage owner's property for restoration actions. The claimant shall select a certified arborist to perform the restorative action and subsequent maintenance unless the foliage owner prefers to select the arborist. If the foliage owner selects the arborist, the foliage owner shall pay the claimant the difference between the fee charged by the claimant's arborist and the foliage owner's arborist unless a different allocation of cost is required by this chapter or by mutual agreement of the parties. (Ord. 378 § 3, 2014)

17.45.130 Cost apportionment.

A. Mediation cost shall be borne by the claimant unless the parties involved agree otherwise.

B. Arbitration cost shall be determined by the arbitrator, unless the parties involved agree otherwise.

C. For view preservation permits and view restoration disputes, the claimant shall be responsible for paying the cost of any required restorative action and the foliage owner shall be responsible for paying the costs of any subsequent maintenance of the subject foliage unless otherwise agreed to by the parties or required pursuant to any final arbitration decision or court order. (Ord. 378 § 3, 2014)

17.45.140 Exemptions.

The following types of foliage are exempt from the provisions of this chapter.

A. Foliage that does not significantly obstruct a pre-existing view.

B. Foliage that is located more than one thousand (1,000) feet from the point where the claimant's primary view is assessed.

C. Foliage that, in the opinion of the city biologist, meets the definition of environmentally sensitive habitat area.

D. Protected trees.

E. Foliage located within the Malibu Country Estate Overlay. (Ord. 378 § 3, 2014)

17.45.150 Primary view determination prohibition in disaster areas.

A. Purpose. The purpose of this section is to protect victims of disasters from having primary view corridors established over their properties that would unfairly limit the size and/or location of future replacement structures or replacement landscaping damaged or destroyed by a disaster.

B. Prohibition. All properties within a disaster area are temporarily prohibited from obtaining a new or updated primary view determination unless: (1) the request was submitted prior to February 1, 2019; or (2) the primary view determination would not impose any limitation on replacement landscaping or replacement structures.

C. Expiration of Prohibition. A temporary prohibition imposed by subsection B of this section shall expire: (1) for primary view determinations that would limit replacement structures, four years from the date of the disaster that created the disaster area at issue; and (2) for primary view determinations that would limit replacement landscaping, ten (10) years from the date of the disaster that created the disaster area at issue which can be extended up to five years if the planning director determines it is necessary for replacement landscaping to fully regrow. (Ord. 450 § 4, 2019)

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