

ORDINANCE NO. 1592

AN ORDINANCE OF THE CITY COUNCIL OF LAGUNA BEACH, CALIFORNIA AMENDING CHAPTER 12.16 OF THE LAGUNA BEACH MUNICIPAL CODE RELATING TO THE PRESERVATION AND RESTORATION OF VIEWS SIGNIFICANTLY IMPAIRED BY VEGETATION, AND ADOPTION OF NEGATIVE DECLARATION 13-1690

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

SECTION 1.

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

Chapter 12.16 View Preservation and Restoration

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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 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 impaired by trees or other vegetation.

(D) The determination of a significant 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.

(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 clearly 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.

“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.

“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.

“Principal residence” and **“principal residential structure”** means the primary residential structure located on a lot. Guest houses, granny flats, second units and 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.

“Removal” means the destruction or displacement of vegetation by cutting or other mechanical method, which results in physical transportation of the vegetation from its site and/or death of the vegetation.

“Restoration action” means steps undertaken to eliminate a significant impairment of views, and may include, but is not limited to, 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.

“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 taken regarding vegetation located on a vegetation owner's property in order to restore a claimant's view.

“Visual scene” means the arraignment 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 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.

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. 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 restorative action.

If the vegetation owner(s) does not perform the necessary restorative action, then the City may issue a view restoration order and require the restorative 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 restorative 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 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 may 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 restorative 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. 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. 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 restorative action.

(d) Findings required for a view restoration order.

The view restoration committee shall issue a view restoration order to require restorative 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.
- (iv) Alteration or 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 or removal of the vegetation will not have a substantial adverse impact on a hillside, drainage or erosion control.
- (vi) If the recommended restorative action includes removal, all other restorative actions are ineffective in restoring the pre-existing view while preserving the health and aesthetic value of the vegetation, provided that the vegetation owner consents to the removal.
- (vii) The recommended restorative action is the minimum action required to restore the claimant's pre-existing views.

(e) Restorative Action Limitations.

If the view restoration committee is able to make all of the mandatory findings set forth in subsection (d), then the committee shall determine the restorative action that must be taken to restore the pre-existing views. Such actions may include culling, lacing, trimming or removal of the vegetation that is significantly impairing the view from the selected viewing locations or areas.

- (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.
- (vi) "*Removal*" means the removal and disposal of vegetation by sawing or grinding the limbs, leaves, trunk and stump to the existing grade or a depth below existing grade as determined by the view restoration committee on a case-by-case basis. Removal shall not include or require the removal and disposal of a plant's root system.

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 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.

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 public 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.

(f) Replacement Vegetation.

The view restoration committee may also order the claimant to replace vegetation that have 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 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.

(g) Conditions.

In approving a view restoration order for restorative 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 vegetation is ordered to be removed, 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 restorative action.

Claimant shall select an ISA certified tree trimmer or accredited arborist to perform the restorative 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 restorative 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 restorative 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 12.05.040.

(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).

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.

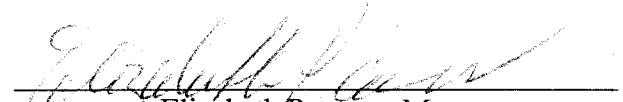
SECTION 2: Pursuant to the authority and criteria contained in the California Environmental Quality Act (CEQA), the proposed project (View Preservation and Restoration Ordinance adoption and implementation) has been analyzed for potentially significant environmental effects. An Initial Study and Negative Declaration were prepared and circulated for public review. It has been determined that the project will not have a significant adverse effect on the environment. Based on the whole record, there is no substantial evidence that the Municipal Code Amendments will have a significant adverse effect on the environment. None of the criteria for reconsideration described in State CEQA Guidelines Sections 15073.5 or 15162 are present. Therefore, the City Council hereby adopts Negative Declaration No. 13-1690. Documents related to this Negative Declaration are located in the Community Development Department of the City of Laguna Beach.

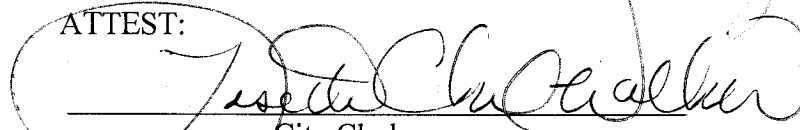
SECTION 3: All ordinances and provisions of the Laguna Beach Municipal Code and sections thereof inconsistent herewith shall be hereby repealed to the extent of such inconsistency. Nothing in the hedge height regulations contained in Laguna Beach Municipal Code Chapter 12.14 is deemed to be inconsistent with this Ordinance.

SECTION 4: If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or otherwise invalid, such invalidity shall not affect the validity of this entire Ordinance or any of the remaining portions hereof. The City Council hereby declares that it would have passed this Ordinance, and each section, subsection, subdivision, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses or phrases be declared unconstitutional or otherwise invalid.

SECTION 5: 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 manner required by law in the City of Laguna Beach. This Ordinance shall become effective on the expiration of 180 days from and after the date of its adoption.

ADOPTED this 17th day of June, 2014.


Elizabeth Pearson, Mayor

ATTEST:

City Clerk

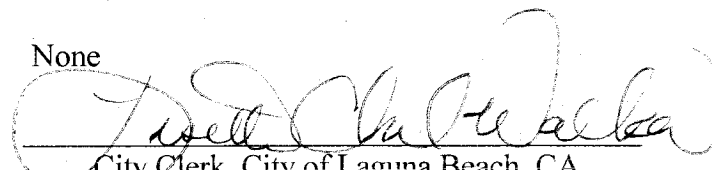
I, Lisette Chel-Walker, City Clerk of the City of Laguna Beach, do hereby certify that the foregoing Ordinance No. 1592 was introduced at a special meeting of the City Council on May 29, 2014 and was finally adopted at a regular meeting of the City Council of said City held on June 17, 2014 by the following vote:

AYES: COUNCILMEMBER(S): Boyd, Dieterow, Iseman, Whalen, Pearson

NOES: COUNCILMEMBER(S): None

ABSTAIN: COUNCILMEMBER(S): None

ABSENT: COUNCILMEMBER(S): None


City Clerk, City of Laguna Beach, CA