

ORDINANCE NO. 317

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MALIBU  
ESTABLISHING VIEW RESTORATION AND PRESERVATION GUIDELINES  
FOR THE MALIBU COUNTRY ESTATES OVERLAY ZONE

THE CITY COUNCIL OF THE CITY OF MALIBU DOES ORDAIN AS FOLLOWS:

Section 1. Findings and Intent.

- A. Outward views contribute greatly to the quality of life in Malibu and promote the general welfare of the entire community.
- B. In enacting this ordinance, the City Council seeks to establish a right for property owners and legal occupants to preserve a primary view as defined within this ordinance.
- C. Through the City's adoption of Ordinance No. 122 and associated property development criteria, the City established an overlay zone for the Malibu Country Estates area. The regulations contained herein are intended to be used exclusively within the Malibu Country Estates subdivision generally defined within Exhibit A (map of subdivision).
- D. The Malibu Country Estates subdivision was graded in approximately 1974 and was graded and designed to provide terraced views of the surrounding mountains and/or the Pacific Ocean.
- E. Some vegetation that has been planted since grading of the subdivision is now in conflict with the intent of the grading design of the subdivision.

Section 2. Code Amendment.

Title 17 of the Malibu Municipal Code is hereby amended by adding a new Chapter 17.43 to read as follows:

“CHAPTER 17.43 VIEW RESTORATION AND PRESERVATION  
FOR MALIBU COUNTRY ESTATES (MCE)”

17.43.010. Title.

This chapter shall be known as the “Malibu Country Estates View Restoration and Preservation Ordinance.”

17.43.020. Purpose.

The purpose of this chapter is to establish a right for property owners and legal occupants to

restore and preserve a primary view, as defined within this chapter. This chapter is not intended to affect, and shall not be construed as affecting, obligations imposed by restrictive covenants or other agreements.

17.43.030. Definitions.

The following definitions shall apply for purposes of this chapter.

A. "Arbitrator" means a person who conducts arbitration proceedings in accordance with California Code of Civil Procedure Section 1280 et seq.

B. "Arbitration" means arbitration proceedings in accordance with California Code of Civil Procedure Section 1280 et seq.

C. "Complainant" means a property owner or legal occupant who alleges that one or more trees located on the property of another person are causing an obstruction of a primary view.

D. "Mediator" means a neutral third person that assists the complainant and a tree owner in finding a mutually satisfactory solution to a tree dispute.

E. "Primary view" means visually impressive scenes of the Pacific Ocean, offshore islands, the Santa Monica Mountains, canyons, valleys, or ravines as viewed from the primary view area. "Primary view" does not include a view of the sky, yards or structure interiors on neighboring properties, or vacant land that is developable under the zoning ordinance or the LCP.

F. "Primary view area" means that portion of a residence within the Malibu Country Estates subdivision (excluding bathrooms, closets, garages and hallways) from which the primary view is observed. A property shall have only one primary view area. The primary view area shall be determined by the planning manager or his/her designee in consultation with the property owner. The primary view area determination shall be made by balancing the nature of the view to be restored and the importance of the area within the structure from where the view is taken. The primary view area shall be assessed from a single fixed location and direction in the structure, 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 building as selected by the complainant and the planning manager. In the event the property owner and the planning manager (or designee) cannot agree on the primary view area, the decision of the planning manager shall control. Once a primary view area is finally determined for purposes of this chapter or for any other purpose pursuant to this Code or the Local Coastal Program, it may not be changed. The primary view area determination is final and not appealable.

- G. "Removal" means the elimination of a tree from its present location.
- H. "Restorative action" means conduct undertaken to eliminate an obstruction of a primary view.
- I. "Stump growth" means new growth from the remaining portion of a tree trunk, the main portion of which has been cut off.
- J. "Thinning" means the selective removal of entire branches from a tree so as to improve visibility through the tree or to improve the tree's structural condition.
- K. "Topping" means the elimination of the upper portion of a tree's trunk or main leader.
- L. "Tree" means a woody plant with the potential to obstruct primary views. "Tree" includes without limitation shrubs, hedges and bushes.
- M. "Tree owner" means a person owning property containing one or more trees that a complainant alleges are causing an obstruction of a primary view.
- N. "Trimming" means the selective removal of portions of branches from a tree so as to modify the tree's shape or alter its appearance.

17.43.040. View Preservation Right.

Owners and legal occupants of property in the Malibu Country Estates shall have right to a primary view as defined within this chapter, unimpeded by trees within the Malibu Country Estates subdivision. To vindicate this right, a complainant must follow the process prescribed by this chapter.

17.43.050. Obstruction Prohibited.

No person shall plant, maintain or permit to grow any tree that causes an obstruction of the primary view from the primary view area of any property within the Malibu Country Estates.

17.43.060. Obstruction Criteria.

The following non-exclusive criteria shall be considered in determining whether an obstruction has occurred.

- A. The extent of obstruction of a primary view from the primary view area of the complainant's property, both currently and at tree maturity.

B. The quality of the primary view being obstructed, including without limitation obstruction of landmarks, vistas or other unique features.

C. The extent to which the complainant's primary view has been diminished over time by factors other than tree growth.

17.43.070. Types of Restorative Action.

A. Restorative action includes without limitation:

1. Trimming
2. Thinning or windowing
3. Topping
4. Removal with replacement plantings
5. Removal without replacement plantings

B. Restorative action may include written conditions (including ongoing maintenance) and directions as to appropriate timing of the required conduct. Restorative action may be made to run with the land and apply to successors in interest. Where removal is required, replacement by appropriate native species shall be considered.

17.43.080. Restorative Action Evaluation.

Each type of restorative action shall be evaluated based on the above restorative action criteria and with consideration of the following factors:

- A. The effectiveness of the restorative action in restoring the primary view.
- B. Any adverse impact of the restorative action on the benefits derived from the growth in question.
- C. The cost of the restorative action.

17.43.090. Restorative Action Hierarchy.

Restorative actions shall be undertaken with consideration given to the following factors:

- A. All restorative action should consider the restorative action evaluation, above.
- B. Restorative actions shall include shaping, thinning, and/or heading of branches where possible and, as a last resort, removal.

C. When shaping and/or thinning of branches is not a feasible solution, heading or topping shall be preferable to tree removal.

D. Tree removal shall only be considered when all other restorative actions are judged to be ineffective in restoring the primary view while preserving the health of the tree. Replacement planting can be required on the property of either parties or both.

E. In those cases, where tree removal eliminates or significantly reduces the tree owner's benefits of visual screening, windscreening or privacy, replacement screen plantings shall, at the tree owner's option, be established prior to tree removal; notwithstanding the provisions of the restorative action evaluation above, the tree owner may elect tree removal with replacement planting as an alternative to shaping, thinning, heading or topping.

F. All shaping, thinning, heading, topping and tree removal of native oak, walnut, sycamore, alder or toyon tree required within the Local Coastal Program and under this chapter must be performed under the daily supervision of an arborist.

17.43.100. Restorative Action Guidelines.

The following guidelines shall apply to the imposition of restorative action.

A. A tree permit must be obtained for the removal of a native oak, walnut, sycamore, alder or toyon tree as required by the Local Coastal Program (Chapter 5). Every attempt should be made to preserve these trees. Their removal shall be prohibited except where no other feasible alternative exists.

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

C. Trimming is the most minor form of restorative action. This option is recommended when a minor obstruction has occurred, provided that ongoing maintenance is guaranteed.

D. When trimming of native oak, walnut, sycamore, alder or toyon trees will not resolve an obstruction, thinning or windowing may be necessary. These shall be supervised by a certified arborist.

E. Tree removal may be required where such removal is essential to preserve a primary view. While normally considered a drastic measure, tree removal may be the preferred solution in some circumstances.

F. Once restorative action has been undertaken, it is incumbent upon the tree owner to continually maintain the trees in a manner that preserves the complainant's restored primary view.

G. Conditions of restorative action may be recorded and run with the land to guarantee permanent preservation of a view from the designated primary view area of the complainant's residence.

H. Once restorative action is completed, the Planning Manager shall be notified and a photograph shall be submitted to the Manager which shall memorialize the restored primary view.

17.43.110. Informal Negotiation.

A complainant who believes that tree growth on the property of another has caused an obstruction of their primary view shall notify the tree owner in writing of such concerns. The notification should, if possible, be accompanied by personal discussions to enable the complainant and the tree owner to attempt to reach a mutually satisfactory solution.

17.43.120. Mediation.

A. If informal negotiation fails, the complainant must provide the tree owner a written tree claim and a written offer to submit the tree dispute to mediation.

B. A tree claim shall consist of all of the following:

1. A description of the nature and extent of the alleged obstruction, including corroborating physical evidence. Evidence may include without limitation photographic prints, negatives or slides.

2. The location of all trees alleged to cause the obstruction, the address of the property upon which the trees are located, and the present tree owner's name and address.

3. Evidence of the failure of informal negotiation to resolve the dispute. Evidence may include, but is not limited to, copies of and receipts for certified or registered mail correspondence.

4. Restorative action proposed by the complainant to eliminate the alleged obstruction.

C. The tree owner shall have 30 days from service of the offer to accept or reject mediation. If the tree owner does not respond to the offer within 30 days of its receipt, the offer may be considered rejected. If accepted, the parties shall agree on a mediator within 21 days and shall indicate such agreement in writing.

D. The mediation meeting may be informal. The mediation process may include the hearing of viewpoints of lay or expert witnesses, and shall include a site visit to the properties of the complainant and the tree owner. The mediator shall consider the purpose of this chapter in attempting to resolve the dispute. The mediator shall not have the power to issue binding orders for restorative action, but shall strive to enable the parties to resolve their dispute by written agreement in order to eliminate the need for arbitration or court action.

17.43.130 Arbitration.

A. If informal negotiation has failed, and if mediation has been declined or also has failed, the complainant must provide the tree owner a written offer to submit the tree dispute to arbitration.

B. The tree owner shall have 30 consecutive calendar days from service of the offer to accept or reject binding arbitration. If the tree owner does not respond to the offer within 30 days of its receipt, the offer may be considered rejected. If accepted, the parties shall agree on an arbitrator within 21 days and shall indicate such agreement in writing: if the parties fail to so agree, then the complainant shall deliver a list of three (3) arbitrators to the tree owner who shall have then (10) days from receipt of such list to choose one arbitrator from the list and if the tree owner fails to timely do so, the complainant may choose an arbitrator from the list.

C. The arbitrator shall use the provisions of this chapter to reach fair resolution of the tree claim and shall submit a complete written report to the complainant and the tree owner. The report 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. A copy of the arbitrator's report shall be filed with the city clerk upon completion. The arbitrator's decision shall be binding and enforceable pursuant to the provisions of California Code of Civil Procedure Section 1280 et seq.

17.43.140 Court Action.

If binding arbitration is declined by the tree owner, then the complainant may initiate court action to resolve the tree dispute under this chapter. The complainant must state in the lawsuit that binding arbitration was offered and not accepted. A copy of the lawsuit shall be filed with the city clerk. A copy of any court order or settlement shall also be filed with the city clerk.

17.43.150. Cost Apportionment.

- A. The complainant and the tree owner shall each pay 50% of mediation and arbitration fees, unless they agree otherwise or allow the mediator or arbitrator discretion to allocate costs.
- B. The court shall allocate costs of a court action unless they are allocated through a settlement.
- C. All restorative action costs shall be borne 50% by the complainant and 50% by the tree owner in the first instance. All restorative action must be performed by a licensed and bonded tree service unless mutually agreed otherwise by the affected property owners.
- D. After the restorative action is completed, all costs of continuing maintenance of tree growth necessary to maintain the restored primary view shall be borne by the tree owner.

17.43.160. City Immunity.

The issuance of mediation findings, an arbitration report or a court decision shall not create any liability of the City with regard to restorative actions to be performed. Failure of the City to enforce the provisions of this chapter shall not give rise to any civil or criminal liability on the part of the City.

17.43.170. Exemption.

Trees and all other forms of landscaping located on City property are exempt from this chapter.

Section 3. Severability.

If any section, subsection, sentence, clause, portion, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of any competent jurisdiction, such decision shall not affect the validity of the remaining sections, subsections, sentences, clauses, portions, or phrases of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, portion, or phrase without regard to whether any other section, subsection, sentence, clause, portion, or phrase of this Ordinance would be subsequently declared invalid or unconstitutional.



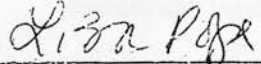
Section 4. Certification.

The City Clerk shall certify the adoption of this Ordinance.

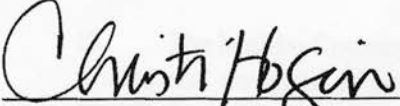
PASSED, APPROVED AND ADOPTED this 10<sup>th</sup> day of December 2007.

  
JEFF JENNINGS, Mayor

ATTEST:

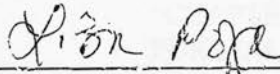
  
LISA POPE, City clerk  
(seal)

APPROVED AS TO FORM:

  
CHRISTI HOGIN, City Attorney

I CERTIFY THAT THE FOREGOING ORDINANCE NO. 317 was passed and adopted at the regular City Council meeting of December 10, 2008, by the following vote:

AYES: 5 Councilmembers: Barovsky, Kearsley, Stern, Conley Ulich, Jennings  
NOES: 0  
ABSTAIN: 0  
ABSENT: 0

  
LISA POPE, City Clerk  
(seal)