INTRODUCTION

View rights litigation is fairly uncommon in most of the United States because, in the common law, there simply is no right to a view. However, in hilly coastal areas, like Southern California’s beach cities, view rights litigation has become a boutique practice area driven by residents who want neighbors’ trees chopped down or...
trimmed to maintain a valuable ocean view. In response, several cities, such as the city of Laguna Beach, have created legislation that gives homeowners a right to maintain their property’s ocean view and provides for mediation to facilitate the resolution of disputes.\(^2\) While this has yielded some positive results, there are still stories of neighbors deliberately poisoning trees in an attempt to create ocean views.\(^3\) Unfortunately, it is also difficult to bring to justice the perpetrators of these crimes because it is hard to prove that a particular neighbor committed the crime.

While there is probably no way to prevent all these disputes from escalating into animosity and criminal activity, Laguna Beach’s mediation-based approach provides a model for handling view disputes. It is also unique in providing protections for trees and stiff penalties for unpermitted tree removal, which should further disincentivize criminal “self-help” activity.\(^4\) This Article will review the history of California view law, discuss the strengths of the Laguna Beach ordinances, and provide suggestions for modifications to streamline the view dispute resolution process.

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I

BACKGROUND

It is difficult to quantify how much value an ocean view adds to the price of a property, but, needless to say, it can add substantial value. Residents with an ocean-view property may want to improve their view when it is blocked by vegetation, such as hedges or mature trees, for a myriad of reasons. These reasons may include improved aesthetics (such as the ability to see a sunset over the ocean or watch breaking waves), improved resale value, or increased equity in their property. In some instances, disputes between neighbors over vegetation height have turned acrimonious or even resulted in criminal actions. The bottom line is that the added value that an ocean view provides creates an incentive for homeowners to use legal action to maintain an existing view or create a new view.

A. Development of View Rights

Although residents trying to maintain valuable ocean views have attempted to assert their right through nuisance actions, courts have held that there simply is no common law right to maintain such a view. For a resident to have a cause of action for view obstruction and

5 See, e.g., Michael Pruser, How Much Is a Great View Worth?, DOUGH ROLLER (Apr. 26, 2010), https://www.doughroller.net/real-estate-investing/how-much-is-a-great-view-worth/ [https://perma.cc/SQ38-ZQ8F] (estimating that an unobstructed water view could add anywhere from fifteen percent to eighty percent to the value of a property). Real estate values are very localized and specific to a particular property (this is especially true for properties zoned single family residential), so values will vary based on city and the type of view or amenities provided. See, e.g., Robert Stammers, Top Things That Determine a Home’s Value, INVESTOPEDIA (May 10, 2019), https://www.investopedia.com/articles/mortgages-real-estate/08/housing-appreciation.asp [https://perma.cc/WS4G-KEN6]; Jason Scorse, Frank Reynolds III & Amanda Sackett, Impact of Surf Breaks on Home Prices in Santa Cruz, CA, 21 TOURISM ECON. 409, 416 (2015) (concluding that homes located near a surf break were worth upward of $106,000 more than coastal homes located one mile from a surf break).

6 See, e.g., Megan Barnes, Did Ocean View Dispute Prompt Destruction of Couple’s Trees in Rancho Palos Verdes?, DAILY BREEZE (Aug. 5, 2015, 10:50 PM), https://www.dailybreeze.com/2015/08/05/did-ocean-view-dispute-prompt-destruction-of-couples-trees-in-rancho-palos-verdes/ [https://perma.cc/36W8-RQ3Y] (noting that six trees, including a forty-year-old eucalyptus tree, were cut down while the homeowners were away on vacation).

7 See Pacifica Homeowners’ Ass’n v. Wesley Palms Ret. Cmty., 224 Cal. Rpt. 380, 385 (App. 1986) (showing there is no natural right to an unobstructed view in case where homeowners’ association argued that retirement community breached its permit to operate based on trees growing taller than five-story building when there was a restriction in its permit); see also Boxer v. City of Beverly Hills, 201 Cal. Rptr. 3d 371, 379 (2016).
mitigation, the resident has to rely on an easement; on conditions, covenants, and restrictions enacted by a homeowners’ association (HOA); or on statutory law at the state or municipal level.\(^8\) Otherwise, the person who owns the vegetation will prevail in a common law nuisance action.\(^9\) This can lead to neighbors engaging in self-help by trespassing and illegally poisoning or cutting down vegetation.\(^10\)

California has a state law that provides a cause of action for trimming vegetation to permit sufficient light for solar panels but does not have a statutory view right.\(^11\) However, California nuisance law does provide a remedy when a neighbor constructs a “spite fence,” including when the fence is made of vegetation, such as hedges or a row of trees.\(^12\) In order to be considered a “spite fence,” the structure must be at least ten feet tall and have been “maliciously erected or maintained for the purpose of annoying” an adjacent neighbor.\(^13\) Under the statute, a plaintiff can be entitled to money damages or injunctive relief to abate the nuisance.\(^14\) The spite fence statute\(^15\) presents a more palatable alternative to a common law nuisance action for restoring a view, but a plaintiff may have difficulty proving the intent element required to prevail under the spite fence statute.

In order to resolve disputes and alleviate the self-help problem, some California cities have developed view ordinances that create an

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\(^12\) CAL. CIV. CODE § 841.4 (West, Westlaw through 2019 Reg. Sess.); Wilson v. Handley, 119 Cal. Rptr. 2d 263, 269 (App. 2002) (holding that a row of trees on or near the property line may be construed to be a “structure” within the meaning of the spite fence statute).

\(^13\) § 841.4 (Westlaw).


\(^15\) § 841.4 (Westlaw).
enforceable right to a view.\textsuperscript{16} For example, the seaside village of Laguna Beach has a “hedge height” ordinance that goes far beyond the protections of the spite fence statute.\textsuperscript{17} The Laguna Beach statute creates a view rights claim process when a neighbor’s fences or hedges exceed four to six feet in height and are within one hundred feet of the claimant’s property.\textsuperscript{18} As with the spite fence statute, a row of trees can


also be subject to a hedge height claim. However, individual trees would not be subject to a claim under the ordinance.

Maintaining the proper vegetation height is the responsibility of the vegetation owner. To file a claim under the hedge height ordinance, a resident must first attempt to discuss the vegetation with the neighbor. If informal discussion does not resolve the issue, then the resident may file a claim with the city, and the claimant must provide evidence that the vegetation is within one hundred feet of their property and obscures their view (or creates a hazard). A claimant must also pay a $794 fee to the city and provide public notice regarding the claim. Once the claim is submitted, the city will consider the evidence, hold a public hearing, and render a decision. While the hedge height ordinance is an avenue to resolve some neighbor disputes over vegetation blocking scenic views, it does not capture all view disputes because of its limitations.

B. Southern California View Preservation and Restoration Ordinances

In Southern California, the cities of Rancho Palos Verdes, Laguna Beach, and Malibu have developed similar approaches that create an enforceable view right while providing a dispute resolution process.

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22 Id. This discussion occurs “informally,” and the City does not require documentation of the discussion when submitting a hedge height claim. CMTY. DEV. DEP’T, CITY OF LAGUNA BEACH, HEDGE HEIGHT CLAIM PROCESS (2019), http://www.lagunabeachcity.net/civicax/filebank/blobdownload.aspx?blobid=14709 [https://perma.cc/8HZH-JHPZ] [hereinafter HEDGE HEIGHT CLAIM PROCESS].


24 HEDGE HEIGHT CLAIM PROCESS, supra note 22 (providing if the claimant prevails in the decision, then the claimant receives a refund of half of the fee, so a successful claimant need only pay $397).

25 Id. (providing that a decision may be appealed within 14 calendar days with submission of an additional $748 fee).
mechanism. In 1989, Rancho Palos Verdes implemented the first view ordinance. It provides two parallel programs: view preservation and view restoration. View preservation is not clearly addressed in the ordinance but is a provision where a resident can request to have a neighbor’s foliage trimmed in order “[t]o preserve views, which existed in November 1989, or any time thereafter, and have since become significantly impaired.” View restoration is broader and provides an avenue for a resident to request to “restore views, which are significantly impaired by foliage on private property.” Both processes require the resident to attempt to contact the owner of the vegetation to reach a private agreement prior to submitting a request to the city. There are some significant differences between the two programs. View preservation is an abbreviated process resulting in a decision by the city, while view restoration is a more comprehensive process that involves mediation as an intermediary step prior to the city rendering a decision.


29 CITY RANCHO PALOS VERDES, Notice, supra note 28.

30 Id.; RANCHO PALOS VERDES, CAL., MUN. CODE § 17.02.040.
The city’s ordinance was tested through litigation in 2001, and a court held (1) that the city had the zoning authority to create the ordinance, (2) the application of the ordinance was not a taking of private property, and (3) the ordinance provided residents with due process. This decision paved the way for other similar ordinances.

While Rancho Palos Verdes was a pioneer within this space, Malibu and Laguna Beach created similar ordinances within the past decade that have both a view preservation and a view restoration component. The view preservation programs for Malibu and Laguna Beach allow a resident to register their view with the city to create a record of the condition of the property and neighboring vegetation. The view restoration programs allow a resident to file a claim with the city for alteration or removal of vegetation to restore a view back to what it was on a prior date. The burden of view restoration is on the applicant to show what the state of their view was at the earlier time. Each ordinance provides for a mediation process. If mediation is unable to
resolve the dispute, Malibu’s ordinance provides an option for binding arbitration, while Laguna Beach’s ordinance provides for a decision from the city’s View Restoration Committee.\(^{38}\)

Whether a resident attempting to resolve a view dispute has a remedy varies between municipalities, or even between neighborhoods within a city, due to the differences in ordinances. For example, a resident of a city that does not have a view ordinance may have a remedy if they live in a neighborhood with an HOA.\(^{39}\) However, a resident of that city who does not live in an HOA community would not have a remedy.\(^{40}\) If the resident lives outside of an HOA in a city with no view ordinance, the vegetation owner would prevail in a litigated dispute over the resident trying to restore a view.\(^{41}\)

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\(^{38}\) MALIBU, CAL., MUN. CODE § 17.45.110 (providing for an Advisory Opinion from the City Planning Director if arbitration is refused, and ultimately a civil court action if the Advisory Opinion fails to resolve the dispute); LAGUNA BEACH, CAL., MUN. CODE § 12.16.050. In Laguna Beach, of the fifty-two cases filed since the effective date of the ordinance in December 2014, there were thirteen claims adjudicated. Interview with Tony Farr, Assistant Planning Dir., City of Laguna Beach, in Laguna Beach, Cal. (Dec. 26, 2018).


\(^{41}\) See, e.g., Armato v. City of Manhattan Beach, No. B267734, 2018 WL 1312046, at *20 (Cal. Ct. App. Mar. 14, 2018) (holding that the City did not have any obligation to protect resident’s view because there was no ordinance providing such); see also David Rosenfeld, Manhattan Beach Case over Ocean View Decided by Appeals Court, BEACH REP. (Apr. 10, 2018), http://tbrnews.com/news/manhattan_beach/manhattan-beach-case-over-ocean-view-decided-by-appeals-court/article_e8ae9f91a-3e56-11e8-8ba8-ab4b66308042.html [https://perma.cc/85X2-7AQK] (discussing the Armato dispute).
II

DISCUSSION

While individual local municipalities should determine what is in the best interest of that community’s residents, Laguna Beach’s ordinances provide a model approach to resolve view disputes. However, Laguna Beach’s ordinances can use some modifications to make the process more user friendly.

A. Why Laguna Beach’s View Ordinances Provide a Good Approach

While the Laguna Beach, Malibu, and Rancho Palos Verdes view ordinances each provide a mediation component, Laguna Beach’s ordinances provide the most effective approach to preserve neighbor relations. Additionally, Laguna Beach has the most efficient and cost-effective process. Finally, in Laguna Beach the view preservation and restoration ordinances interact with other ordinances that preserve notable trees and impose stiff penalties for those who engage in self-help.

The Laguna Beach view restoration procedure follows a good model for preserving neighbor relations. Most importantly, the procedure provides that the neighbor who requests to have a view restored must first approach the neighbor who owns the vegetation and attempt to resolve the dispute. This requirement for neighbors to discuss their differences can lead to an amicable solution and the quickest resolution with no fees involved as the parties are in control of their agreement.

While no statistical data is available on the number of disputes this requirement has resolved, this step preserves neighborly harmony because it requires neighbors to attempt to work together on a solution. This is an approach to dispute resolution that draws lineage

42 LAGUNA BEACH, CAL., MUN. CODE § 12.16.050(c)(1) (providing that prior to resorting to a view restoration claim, a resident must first make an attempt to discuss the vegetation with the owner and resolve the dispute).


back to a biblical model of dispute resolution, where the first step is for people to work to privately resolve disputes before getting others involved.45

Of course, not every dispute will be resolved at this level, and there may be a recalcitrant neighbor who does not want to negotiate at all. Requiring mediation as a next step if neighbors are unable to privately resolve the dispute is also effective in amicably resolving disputes.46 This mediation requirement is enforced by a provision that states that the view claimant will not be able to pursue their claim if they do not participate in the mediation process.47 This requirement is beneficial because mediation frames the dispute as a “mutual problem,” and “facilitate[s] collaborative, integrative problem solving” instead of an adversarial, zero-sum-game approach, and empowers the disputing neighbors to craft their own resolution.48 Mediation is also useful because it provides claimants a realistic expectation of what they could seek to obtain through the process.49 The Laguna Beach approach is likely to build a stronger community because of the requirements for private discussions and mediation to resolve issues.

The Laguna Beach process is more efficient than the Malibu process and more cost-effective than either the Malibu or Rancho Palos Verdes processes. The Laguna Beach process is more efficient than Malibu’s process because, if mediation fails, Laguna Beach residents are able to

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45 Matthew 18:15 (NIV) (Jesus instructed his followers that “If your brother or sister sins [against you], go and point out their fault, just between the two of you. If they listen to you, you have won them over.”); see also Shippee, supra note 43, at 238–39.

46 In the first year the ordinance had been in place, the City of Laguna Beach received twenty-five applications for view restoration. Bryce Alderton, View Law in Laguna Beach Draws Fewer Claims than Expected, L.A. TIMES (Jan. 8, 2016, 9:05 PM), http://www.latimes.com/local/orangecounty/la-me-0109-laguna-beach-views-20160109-story.html [https://perma.cc/M7WF-CDWW]. Of those, five were resolved by mediation, and two others were resolved by the neighbors themselves. Id. Since then, mediation has had a forty percent success rate of obtaining a settlement. Interview with Tony Farr, supra note 37. To continue the parallel to the Biblical approach, while Jesus did not specify for parties to mediate disputes using our contemporary concept, he did provide that should private discussions fail, parties should “take one or two others along” to aid in resolving the dispute. Matthew 18:16 (NIV).

47 LAGUNA BEACH, CAL., MUN CODE § 12.16.050(c)(2)(D).


49 Interview with Tony Farr, supra note 37.
obtain an enforceable decision from the city. In Malibu, parties are able to obtain an advisory opinion only from the city and must rely on civil court proceedings to obtain a binding decision should voluntary mediation or arbitration fail. Civil court proceedings can take months or years to reach an enforceable decision. Additionally, while Malibu’s fee is comparable to the fees Laguna Beach charges, the cost of mediation or arbitration is entirely borne by the parties, while Laguna Beach’s fee includes the cost of mediation. The Laguna Beach process is also far less expensive than the Rancho Palos Verdes process. Thus, the Laguna Beach process is superior in terms of efficiency and cost-effectiveness.

In addition to providing an effective process, Laguna Beach’s approach also strikes a balance between preservation of views and preservation of trees and vegetation to promote Laguna Beach’s “urban forest.”


51 MALIBU, CAL., MUN. CODE §§ 17.45.060–.110; see also City of Malibu Planning Department, View Restoration, CITY MALIBU, https://www.malibucity.org/771/View-Restoration [https://perma.cc/73PG-RZXA] (last visited Feb. 11, 2020) (providing that an advisory opinion may be requested by application with a fee of $604).

52 See Michael Stern, See You in Court? Not Anytime Soon in Los Angeles, L.A. TIMES (Sept. 1, 2016), https://www.latimes.com/opinion/op-ed/la-oe-stern-civil-court-cutbacks-20160901-snap-story.html [https://perma.cc/DSS8-JJM5] (discussing, from a Superior Court judge’s perspective, the reasons for the massive backlog in cases, sometimes up to three years). If a vegetation owner in Malibu could expect that a decision wouldn’t be rendered in litigation for up to three years, then their best approach is to refuse arbitration and force the view claimant to resort to court proceedings, which move at a glacial pace. The Laguna Beach approach provides far quicker resolution, as the view restoration committee is available to meet once a month to hear any cases. See Flowchart of Laguna Beach View Restoration Process, CITY LAGUNA BEACH, http://www.lagunabeachcity.net/civicax/filebank/blobdload.aspx?blobid=15669 [https://perma.cc/92G4-28YZ] (last visited Feb. 11, 2020); View Restoration Committee, CITY LAGUNA BEACH, http://www.lagunabeachcity.net/cityhall/council/committees/viewcomm.htm [https://perma.cc/3NXS-Q5VP] (last visited Feb. 11, 2020).

53 Compare LAGUNA BEACH, CAL. MUN. CODE § 12.16.050 with MALIBU, CAL. MUNI. CODE § 17.45.060; Interview with Tony Farr, supra note 37 (providing that the fee Laguna Beach charges at this stage is entirely for payment of the mediator).

54 Compare LAGUNA BEACH, CAL. MUNI. CODE § 12.16.050 with CITY RANCHO PALOS VERDES, Notice, supra note 28, at 8.

The War on Trees: How to Diffuse Neighborly Feuds over View Rights

has a Heritage Tree program to “preserve distinctive trees in the city, which, because of their size, age and/or special features, promote the beauty, character and/or sense of history in the city.” The criteria for Heritage Trees are those of “historical significance” and “older than fifty years,” those with “distinctive characteristics,” trees “associated with a person or an event of community-wide significance,” trees that are from an original stand of California native trees, or trees that are “scenically prominent from public view corridors.” Heritage Trees are added to the list through application by the tree’s owner and approval by the city council.

In view preservation or restoration claims, the city treats Heritage Trees as exempt from trimming or removal; thus, those trees are protected even if they impair a view. In order to grant a claimant’s request to trim vegetation, the city also considers the vegetation owner’s privacy interests and must find that the requested trimming or removal will not constitute an “unreasonable infringement of the privacy or other vegetation benefits.” Additionally, the city considers the benefits that healthy trees provide to prevent erosion and landslides, which would also be of importance to an uphill neighbor. The city

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60 LAGUNA BEACH, CAL., MUN. CODE § 12.16.050(c)(3)(D)(iv) (discussing “privacy, shade, erosion control, enhancement of outdoor spaces and community aesthetics”).

cannot approve a claimant’s request if trimming or removal of the
vegetation at issue would “have a substantial adverse impact on a
hillside, drainage, or erosion control.” These are reasonable factors
for the city to consider, especially given competing interests between
view claimants and vegetation owners and the significant role that
vegetation plays in a hilly community, such as Laguna Beach, that
may be prone to landslides. Finally, when the city does make a finding
that the vegetation impairs a view and that there would not be an adverse
privacy or erosion impact by modifying it to accommodate a view,
removal of the vegetation is the last resort. Since the ordinance
became effective, as of the writing of this Article, there have been no
cases where removal has been ordered. However, if removal were
ordered, the claimant may be required to provide replacement
vegetation to the owner. Replacement vegetation must be “reasonably
comparable to the vegetation removed in terms of function and/or
aesthetics,” and must be at least a fifteen-gallon size and usually no
“larger than a twenty-four-inch box size.” The city appears to have an
appropriate balance between preserving views and preserving
vegetation.

The requirement that neighbors attempt to resolve the disputes
amongst themselves, in addition to providing a mechanism for
mediation and ultimately a binding decision, should reduce the
incentive for illegal, surreptitious self-help. This approach gives
neighbors both the flexibility to craft their own solution and, if they are

Variability and Change, 3 WIREs CLIMATE CHANGE 581, 585 (2012) (noting that fewer
landslides occur in forested areas because tree roots “increase soil cohesion”).
63 See, e.g., USGS Statement on Bluebird Canyon Landslide in Laguna Beach,
64 LAGUNA BEACH, CAL., MUN. CODE § 12.16.050(c)(3)(D)(vi) (providing that if
removal cases, other methods, such as culling, lacing, trimming, crown reducing, or crown
raising are ineffective in reducing significant view impairment).
65 Interview with Tony Farr, supra note 37. The criteria for removal was a later
amendment to the ordinance so that removal could be ordered if there was an egregious case
of failure to maintain vegetation. Id. However, this would likely also require involvement
of the City Fire Marshal for fire safety reasons. Id.
66 LAGUNA BEACH, CAL., MUN. CODE § 12.16.050(c)(3)(F) (providing criteria for when
replacement vegetation is required to be provided by the claimant). Additionally, if trimmed
vegetation dies within two years of having been trimmed to accommodate the claimant’s
request, the claimant is responsible for providing replacement vegetation. LAGUNA BEACH,
CAL., MUN. CODE § 12.16.050(c)(3)(E).
67 LAGUNA BEACH, CAL., MUN. CODE § 12.16.050(c)(3)(F) (referring to pot size for
replacement trees or shrubs).
unable to come to a solution, the ability to obtain a binding decision in a faster time frame than litigation. However, while the process has not been completely successful at eliminating criminal trespass to trees, the city of Laguna Beach has enacted stiff penalties in the case of removing a tree without a permit to serve as a self-help deterrence. Additionally, a vegetation owner can seek civil damages through litigation against a neighbor if the vegetation owner is able to ascertain and prove that the neighbor committed the act. The stiff penalties and potential for both criminal and civil damages should reduce the problem of residents resorting to self-help instead of the view restoration process.

**B. Other Communities Could Benefit from This Approach**

Southern California has numerous coastal cities that do not have robust view ordinances. These cities could benefit from Laguna Beach’s approach. For cities such as Malibu that create a view right but do not provide for a binding decision from the city, adopting the Laguna Beach approach of a city forum that renders a binding decision would provide quicker, less expensive resolution to these types of cases. Additionally, it is not just coastal cities that could benefit from a view ordinance. Any location that provides notable mountain, canyon, or cityscape views should consider this type of ordinance.

For unincorporated areas, a county could tailor a resolution that addresses these issues. Additionally, HOAs could consider modeling their approach on Laguna Beach’s to require private consultation, and

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68 LAGUNA BEACH, CAL., MUN. CODE § 12.06.100 (2019), https://qcode.us/codes/lagunabeach/view.php?topic=12-12_06-12_06_100 [https://perma.cc/G8DF-7AH9], (providing, in addition to misdemeanor prosecution or civil remedies, a table of administrative penalties providing escalation from $1,000 to $30,000 based on category of tree, trunk diameter, and number of violations); see also, Zint, supra note 4.


70 Compare Stern, supra note 52, with Flowchart of Laguna Beach View Restoration Process, supra note 52, at 2, and View Restoration Committee, supra note 52.

71 The Laguna Beach ordinance is not just designed to protect ocean views, though that has been the primary focus of discussion. In addition to protecting views of “bodies of water, beaches, white water, coastlines, skylines, [and] islands,” the ordinance also protects views of “ridges, hillside terrains, canyons, geologic features or landmarks.” LAGUNA BEACH, CAL., MUN. CODE § 12.16.020 (2019), https://qcode.us/codes/lagunabeach/view.php?topic=12-12_16-12_16_020 [https://perma.cc/YJ2A-QAC5] (providing a non-exhaustive definition of “visual scene” that is protected under the “view” definition of the same section).
then mediation, before pursuing a claim through the HOA. For municipalities and HOAs that do have a view ordinance or rules in place, the Laguna Beach approach of balancing the interests of view claimants with the interests of maintaining a healthy urban forest are also good considerations to incorporate. Finally, municipalities should have a stiff penalty provision to deter illicit self-help and preserve urban forests.

C. Improvements to the Laguna Beach Process

While the Laguna Beach ordinances provide a good model for handling these types of disputes, some improvements to the process could make it more user friendly and better achieve the objectives of the ordinances. First, the hedge height ordinance should be consolidated into view restoration. Second, to encourage settlement, there could be a partial fee refund if mediation successfully resolves the claim, coupled with a slightly higher fee for filing a claim. Third, to promote environmental justice, the view restoration and the Heritage Tree processes should be periodically advertised through local media, and the programs should be modified to let renters use the programs as well. Fourth, the Heritage Tree list should be reviewed to ensure it is still current. Finally, penalties for illegal self-help should be advertised to the public and should automatically adjust for inflation to ensure the penalties remain current.

Laguna Beach maintains a hedge height process along with its view restoration process. The hedge height ordinance governs only hedges that are above the applicable hedge height standard and block views or sunlight. There is significant overlap between what these two

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76 LAGUNA BEACH, CAL., MUN. CODE § 12.14.040; HEDGE HEIGHT CLAIM PROCESS, supra note 22.
ordinances govern in that they both apply to view claims. The only difference between the two is that the hedge height ordinance also applies to safety hazard or sunlight claims. The hedge height ordinance provides for a public hearing and city determination without mediation as an intermediate step. Maintaining these dueling approaches presents a risk that a view claimant would engage in “forum shopping” through the hedge height claim ordinance to force a decision without the opportunity for mediation to resolve the issue. Because mediation is beneficial to resolving claims, the city should modify the ordinance to channel all view claims through the view restoration process instead of maintaining two avenues. This will also preserve harmony by reducing confusion and by promoting conciliatory resolution rather than adversity.

One aspect of the hedge height claim that could be incorporated into the view restoration process is that the hedge height claim ordinance provides for partial reimbursement of the filing fee in cases where the claimant prevails. However, to encourage mediation, this could be adopted as a partial refund of mediation costs to the claimant where mediation produces a settlement, either at mediation or subsequently. An offsetting increase in the fee charged for seeking a determination from the city could then be incorporated. While this would complicate the fee structure set out in the ordinance, it would provide a financial incentive for the resolution of claims at mediation. Thus, this approach would bolster the efficacy of mediation.

Having the view preservation and restoration ordinances and Heritage Trees programs in the municipal code is beneficial. However, ensuring that the whole community is aware of and able to take advantage of these programs, as well as advertising the penalties for self-help, takes the additional step of ensuring environmental justice. A

80 See BARUCH BUSH & FOLGER, supra note 48, at 9–13 (discussing benefits of mediation to resolve disputes amicably).
81 Id.
82 See LAGUNA BEACH, CAL., MUN. CODE § 12.14.060().
Another approach would be to permit renters to bring claims under the ordinance. In 2018, just under forty percent of Laguna Beach residents were renters. Under the ordinance, only a “property owner or authorized agent” can make a view restoration claim. Currently, a renter who wants to have a view restored would have to work through their landlord. The landlord may not want to incur the fees and work associated with the view restoration process or may not want to provide authorization to a tenant to pursue a claim. This leaves the renter with no recourse, increasing the risk of self-help. By modifying the ordinance to deem a renter as an “authorized agent,” the ordinance could provide a more equitable outcome because the individual living in the property could have more control over their view. Of course, since the renter would be the one bringing the claim, the renter should be responsible for the fees. Expanding the program in this manner would promote the landlord’s property value, increase fair market rent, and encourage a renter to occupy the property on a longer-term basis.

On the other hand, the landlord may not want to cede that degree of

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84 S. CAL. ASS’N OF GOVTS, PROFILE OF THE CITY OF LAGUNA BEACH (2019), https://www.scag.ca.gov/Documents/LagunaBeach.pdf [https://perma.cc/KDA3-L9SW] (noting that in 2018, renters comprised 37.5% of the population, and the trend since 2000 has been that the renter population is increasing while the owner-occupied population is correspondingly decreasing).


86 See generally Pruser, supra note 5 (discussing the concept that a water view can add from fifteen to eighty percent to the value of a property). This proposition also relies on the concept that the tenant’s “sweat equity” invested in going through the process would increase their likelihood of renewing their lease term.
control, which affects both the landlord and potential purchasers of the property. For instance, only a “property owner” may make an application for Heritage Tree designation since the program brings responsibilities with such a designation. At the very least, it would be beneficial to have periodic public announcements to let renters know that they can pursue a view claim under the current ordinance if their landlord authorizes it. Finally, advertising the penalty provisions provides a deterrent effect to prevent self-help.

The final point of improvement concerns maintaining the currency of the Heritage Tree list and ensuring that the new administrative penalties keep up with inflation. The Heritage Tree list may be “out of date” because some of the trees on the list “may already be gone.” Keeping the list updated will ensure that it has the greatest level of relevance and highlight it as a local issue. Furthermore, escalating the penalties for illegal removal of trees with inflation will maintain the deterrence effect in future years, mirroring the approach taken by federal civil penalties. Each of these suggested improvements will provide more assurance of the intent of the ordinances to provide a reasonable alternative to illegal self-help.

CONCLUSION

Laguna Beach’s view preservation and view restoration ordinances provide a model approach to answer the problem of residents engaging in self-help, where residents illegally trim or remove their neighbors’ trees. The view preservation ordinance provides a streamlined process to establish a view and prevent future altercations with neighbors. The view restoration ordinance provides an effective method to produce a binding decision on a view claim, leveraging the benefits of private consultation and mediation. The Laguna Beach approach also

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89 Zint, supra note 4.

maintains an appropriate balance between the rights of view claimants and the importance of preserving vegetation, especially promoting a healthy urban forest. While the ordinance provides a model for other communities to adopt, there are improvements that could be made. First, the view ordinances and hedge height ordinances could be consolidated to capitalize on their overlap and prevent forum shopping. Second, the fee structure could be modified to encourage resolution at mediation. Third, the view programs and penalties for self-help could be advertised to the community, and these programs could be expanded to allow renters standing to raise a view claim. Finally, the Heritage Tree list should be updated to be current, and penalties for illegal self-help should rise with inflation.