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

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### 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.<sup>1</sup> 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

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<sup>1</sup> See, e.g., *Boxer v. City of Beverly Hills*, 201 Cal. Rptr. 3d 371 (2016) (holding that there is no right to a particular view when redwood trees planted by the city of Beverly Hills blocked claimant’s views of downtown L.A.); *Pierce v. Ne. Lake Wash. Sewer & Water Dist.*, 870 P.2d 305 (Wash. 1994); *44 Plaza, Inc. v. Gray-Pac Land Co.*, 845 S.W.2d 576 (Mo. Ct. App. 1992); *Cash v. Cincinnati Bd. of Zoning Appeals*, 690 N.E.2d 593 (Ohio Ct. App. 1996); *Dep’t of Transp. v. Wilson*, 25 Cal. Rptr. 2d 52 (App. 1994); *Pacific Homeowners’ Ass’n v. Wesley Palms Ret. Cmty.*, 224 Cal. Rptr. 380, 385 (App. 1986).

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.<sup>2</sup> While this has yielded some positive results, there are still stories of neighbors deliberately poisoning trees in an attempt to create ocean views.<sup>3</sup> 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.<sup>4</sup> 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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<sup>2</sup> See, e.g., LAGUNA BEACH, CAL., MUN. CODE § 12.16 (2019), [https://qcode.us/codes/lagunabeach/view.php?topic=12-12\\_16&showAll=1&frames=on](https://qcode.us/codes/lagunabeach/view.php?topic=12-12_16&showAll=1&frames=on) [<https://perma.cc/AXU3-EXSE>]; see also RANCHO PALOS VERDES, CAL., MUN. CODE § 17.02.040(A) (2019), [https://library.municode.com/ca/rancho\\_palos\\_verdes/codes/code\\_of\\_ordinances?nodeId=TIT17ZO\\_ARTIREDI\\_CH17.02SIMIRERSDI\\_17.02.040VIPRRE](https://library.municode.com/ca/rancho_palos_verdes/codes/code_of_ordinances?nodeId=TIT17ZO_ARTIREDI_CH17.02SIMIRERSDI_17.02.040VIPRRE) [<https://perma.cc/59AC-PD3X>]; MALIBU, CAL., MUN. CODE § 17.45 (2019), [https://qcode.us/codes/malibu/view.php?topic=17-17\\_45&showAll=1&frames=on](https://qcode.us/codes/malibu/view.php?topic=17-17_45&showAll=1&frames=on) [<https://perma.cc/FM69-636Y>].

<sup>3</sup> Erika I. Ritchie, *Poisoned 50-Foot Tree in Laguna Beach to Be Removed After Efforts to Save It Fail*, ORANGE COUNTY REG. (Dec. 2, 2017, 11:00 AM), <https://www.ocregister.com/2017/12/02/poisoned-50-foot-tree-in-laguna-beach-to-be-removed-after-efforts-to-save-it-fail/> [<https://perma.cc/LJ4R-J6YU>] [hereinafter Ritchie, *Poisoned Tree*]; see also Erika I. Ritchie, *Five Eucalyptus Trees Cut by Vandals at Montage Resort*, ORANGE COUNTY REG. (Dec. 2, 2016, 11:56 AM), <https://www.ocregister.com/2016/12/02/five-eucalyptus-trees-cut-by-vandals-at-montage-resort/> [<https://perma.cc/25EB-6ZJB>] [hereinafter Ritchie, *Montage Resort*].

<sup>4</sup> LAGUNA BEACH, CAL., MUN. CODE § 12.06.100 (2019), [https://qcode.us/codes/lagunabeach/view.php?topic=12-12\\_06-12\\_06\\_100](https://qcode.us/codes/lagunabeach/view.php?topic=12-12_06-12_06_100) [<https://perma.cc/ZW5L-J2B3>]; Bradley Zint, *Ordinance Including Hefty Fines for Illegal Tree Removal Gets Final OK in Laguna Beach*, L.A. TIMES: DAILY PILOT (June 27, 2018, 1:35 PM), <http://www.latimes.com/socal/daily-pilot/news/tn-dpt-me-lb-trees-20180627-story.html> [<https://perma.cc/T9NZ-5PUU>].

## 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.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup> For a resident to have a cause of action for view obstruction and

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<sup>5</sup> 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).

<sup>6</sup> 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).

<sup>7</sup> 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.<sup>8</sup> Otherwise, the person who owns the vegetation will prevail in a common law nuisance action.<sup>9</sup> This can lead to neighbors engaging in self-help by trespassing and illegally poisoning or cutting down vegetation.<sup>10</sup>

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.<sup>11</sup> 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.<sup>12</sup> 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.<sup>13</sup> Under the statute, a plaintiff can be entitled to money damages or injunctive relief to abate the nuisance.<sup>14</sup> The spite fence statute<sup>15</sup> 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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<sup>8</sup> Paul J. Weinberg, *Trees and Neighbors – When Is a View So Valuable That It Should Be Litigated?*, 34 ZONING & PLAN. L. REP. 1, 4 (2011).

<sup>9</sup> See, e.g., *Pierce v. Ne. Lake Wash. Sewer & Water Dist.*, 870 P.2d 305 (Wash. 1994); *44 Plaza, Inc. v. Gray-Pac Land Co.*, 845 S.W.2d 576 (Mo. Ct. App. 1992); *Cash v. Cincinnati Bd. of Zoning Appeals*, 690 N.E.2d 593 (Ohio Ct. App. 1996); *Dep't of Transp. v. Wilson*, 25 Cal. Rptr. 2d 52 (App. 1994); *Boxer*, 201 Cal Rptr. at 379; *Pacifica Homeowners' Ass'n*, 224 Cal. Rptr. at 385.

<sup>10</sup> See, e.g., Bryce Alderton, *Tree Vandalism Raising Concern in Laguna Beach*, L.A. TIMES (Jan. 11, 2018, 5:20 PM), <http://www.latimes.com/socal/coastline-pilot/news/tn-dpt-me-lb-tree-vandalism-20180111-story.html> [<https://perma.cc/283Y-66V9>]; Ritchie, *Poisoned Tree*, *supra* note 3; Ritchie, *Montage Resort*, *supra* note 3; Barnes, *supra* note 6.

<sup>11</sup> See SCOTT ANDERS ET AL., CALIFORNIA'S SOLAR RIGHTS ACT: A REVIEW OF THE STATUTES AND RELEVANT CASES (2014), <https://www.sandiego.edu/law/documents/centers/epic/Solar%20Rights%20Act-A%20Review%20of%20Statutes%20and%20Relevant%20Cases.pdf> [<https://perma.cc/CC77-DJHH>].

<sup>12</sup> 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).

<sup>13</sup> § 841.4 (Westlaw).

<sup>14</sup> CAL. CIV. CODE § 3501 (West, Westlaw through 2019 Reg. Sess.); *Griffin v. Northridge*, 153 P.2d 800, 803–10 (Cal. Dist. Ct. App. 1944) (discussing remedies of abatement and monetary damages).

<sup>15</sup> § 841.4 (Westlaw).

enforceable right to a view.<sup>16</sup> For example, the seaside village of Laguna Beach has a “hedge height” ordinance that goes far beyond the protections of the spite fence statute.<sup>17</sup> 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.<sup>18</sup> As with the spite fence statute, a row of trees can

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<sup>16</sup> See LAGUNA BEACH, CAL., MUN. CODE § 12.16 (2019), [https://qcode.us/codes/lagunabeach/view.php?topic=12-12\\_16&showAll=1&frames=on](https://qcode.us/codes/lagunabeach/view.php?topic=12-12_16&showAll=1&frames=on) [<https://perma.cc/7UCJ-N8LC>]; RANCHO PALOS VERDES, CAL., MUN. CODE § 17.02.040 (2019), [https://library.municode.com/ca/rancho\\_palos\\_verdes/codes/code\\_of\\_ordinances?nodeId=TIT17ZO\\_ARTIREDI\\_CH17.02SIMIRERSDI\\_17.02.040VIPRRE](https://library.municode.com/ca/rancho_palos_verdes/codes/code_of_ordinances?nodeId=TIT17ZO_ARTIREDI_CH17.02SIMIRERSDI_17.02.040VIPRRE) [<https://perma.cc/QCP7-EJ4E>]; MALIBU, CAL., MUN. CODE § 17.45 (2019), [https://qcode.us/codes/malibu/view.php?topic=17-17\\_45&showAll=1&frames=on](https://qcode.us/codes/malibu/view.php?topic=17-17_45&showAll=1&frames=on) [<https://perma.cc/3GT3-57F3>]; S.F., CAL., PUB. WORKS CODE, art. 16.1 § 823 (2019), [http://library.amlegal.com/nxt/gateway.dll/California/publicworks/article161treedisputeresolution?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:sanfrancisco\\_ca\\$anc=JD\\_Article16.1](http://library.amlegal.com/nxt/gateway.dll/California/publicworks/article161treedisputeresolution?f=templates$fn=default.htm$3.0$vid=amlegal:sanfrancisco_ca$anc=JD_Article16.1) [<https://perma.cc/3MDB-QJSY>].

<sup>17</sup> LAGUNA BEACH, CAL., MUN. CODE § 25.50.012 (2019), [https://qcode.us/codes/lagunabeach/view.php?topic=25-25\\_50-25\\_50\\_012](https://qcode.us/codes/lagunabeach/view.php?topic=25-25_50-25_50_012) [<https://perma.cc/RKY9-YFNY>].

<sup>18</sup> *Id.* (providing maximum height of four feet in front yards or six feet for side and rear yards); LAGUNA BEACH, CAL., MUN. CODE § 12.14.040 (2019), [https://qcode.us/codes/lagunabeach/view.php?topic=12-12\\_14-12\\_14\\_040](https://qcode.us/codes/lagunabeach/view.php?topic=12-12_14-12_14_040) [<https://perma.cc/K4KX-DKUJ>] (providing that a claim arises when a hedge above the maximum height creates a safety hazard or obstructs a view and is within one hundred feet of the claimant’s property). Other cities, such as Malibu, also have hedge height ordinances that apply to some properties, but not separate hedge height claims such as what the Laguna Beach ordinance provides—the exclusive remedy in Malibu would be through a view restoration claim, discussed in Section II.B., below. See MALIBU, CAL., MUN. CODE § 17.42.020 (2019), [https://qcode.us/codes/malibu/view.php?version=beta&view=mobile&topic=17-17\\_42-17\\_42\\_020](https://qcode.us/codes/malibu/view.php?version=beta&view=mobile&topic=17-17_42-17_42_020) [<https://perma.cc/4RUM-FCPG>]. Santa Monica’s hedge height ordinance provides a generous limitation of twelve feet for hedges in side and rear yards, as long as the hedge does not create a traffic safety hazard. SANTA MONICA, CAL., MUN. CODE § 9.21.050 (2019), [http://www.qcode.us/codes/santamonica/?view=desktop&topic=9-3-9\\_21-9\\_21\\_050](http://www.qcode.us/codes/santamonica/?view=desktop&topic=9-3-9_21-9_21_050) [<https://perma.cc/T3NN-PL5S>]; SANTA MONICA, CAL., MUN. CODE § 9.21.180 (2019), [http://www.qcode.us/codes/santamonica/view.php?topic=9-3-9\\_21-9\\_21\\_180](http://www.qcode.us/codes/santamonica/view.php?topic=9-3-9_21-9_21_180) [<https://perma.cc/RES4-EMCR>]. This is the most common type of ordinance in the Los Angeles and Orange County areas, with varying height limitations. See, e.g., MANHATTAN BEACH, CAL., MUN. CODE § 10.12.030 (2019), [https://library.municode.com/ca/manhattan\\_beach/codes/code\\_of\\_ordinances?nodeId=TIT10PLZO\\_PTIISEDIRE\\_CH10.12REDI\\_10.12.030PRDERERSRMRHDI](https://library.municode.com/ca/manhattan_beach/codes/code_of_ordinances?nodeId=TIT10PLZO_PTIISEDIRE_CH10.12REDI_10.12.030PRDERERSRMRHDI) [<https://perma.cc/XMA8-A39C>] (providing for a six-foot height limitation); RANCHO PALOS VERDES, CAL., MUN. CODE § 17.76.030 (2019), [https://library.municode.com/ca/rancho\\_palos\\_verdes/codes/code\\_of\\_ordinances?nodeId=TIT17ZO\\_ARTVIIDEAPRE\\_CH17.76MIPEST](https://library.municode.com/ca/rancho_palos_verdes/codes/code_of_ordinances?nodeId=TIT17ZO_ARTVIIDEAPRE_CH17.76MIPEST) [<https://perma.cc/UM6Z-ZXTL>] (providing for a sixteen-foot hedge height limitation); NEWPORT BEACH, CAL., MUN. CODE § 20.30.040, tbl. 3-1 (2010), [http://www.newportbeachca.gov/Pln/Zoning\\_Code\\_Adopted/Chapter\\_20.30.pdf](http://www.newportbeachca.gov/Pln/Zoning_Code_Adopted/Chapter_20.30.pdf) [<https://perma.cc/RPT9-BYHT>] (providing for generally a six-foot hedge height limitation). See also Adrian Glick Kudler, *Trump Gets Neighbor-Blocking Golf Course Hedge on Third Try*, L.A. CURBED (Jan. 19, 2012, 5:23 PM), <https://la.curbed.com/2012/1/19/10405504/trump-gets-neighborblocking-golf-course-hedge-on-third-try> [<https://perma.cc/CLT5-P8MS>] (discussing the Trump National Golf Course’s discussion with the

also be subject to a hedge height claim.<sup>19</sup> However, individual trees would not be subject to a claim under the ordinance.<sup>20</sup>

Maintaining the proper vegetation height is the responsibility of the vegetation owner.<sup>21</sup> To file a claim under the hedge height ordinance, a resident must first attempt to discuss the vegetation with the neighbor.<sup>22</sup> 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).<sup>23</sup> A claimant must also pay a \$794 fee to the city and provide public notice regarding the claim.<sup>24</sup> Once the claim is submitted, the city will consider the evidence, hold a public hearing, and render a decision.<sup>25</sup> 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

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City of Rancho Palos Verdes to gain approval for installation of six- to nine-foot ficus hedge at the driving range).

<sup>19</sup> Compare *Wilson v. Handley*, 119 Cal. Rptr. 2d 263, 269 (App. 2002) with LAGUNA BEACH, CAL., MUN. CODE § 12.14.030 030 (2019), [https://qcode.us/codes/lagunabeach/view.php?topic=12-12\\_14-12\\_14\\_030](https://qcode.us/codes/lagunabeach/view.php?topic=12-12_14-12_14_030) [<https://perma.cc/G8WG-AX34>] (defining “hedge” as “generally dense vegetation so aligned as to form a physical barrier or fence,” where vegetation includes “all types of plants, bushes, hedges, and shrubs, including trees”).

<sup>20</sup> See LAGUNA BEACH, CAL., MUN. CODE § 12.14.030 (2019), [https://qcode.us/codes/lagunabeach/view.php?topic=12-12\\_14-12\\_14\\_030](https://qcode.us/codes/lagunabeach/view.php?topic=12-12_14-12_14_030) [<https://perma.cc/FYM8-4WZ6>].

<sup>21</sup> See LAGUNA BEACH, CAL., MUN. CODE § 12.14.060 (2019), [https://qcode.us/codes/lagunabeach/view.php?topic=12-12\\_14-12\\_14\\_060](https://qcode.us/codes/lagunabeach/view.php?topic=12-12_14-12_14_060) [<https://perma.cc/SN4R-EJXD>].

<sup>22</sup> *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/blobdload.aspx?blobid=14709> [<https://perma.cc/GRA8-8HFP>] [hereinafter HEDGE HEIGHT CLAIM PROCESS].

<sup>23</sup> LAGUNA BEACH, CAL., MUN. CODE § 12.14.060; HEDGE HEIGHT CLAIM PROCESS, *supra* note 22.

<sup>24</sup> 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).

<sup>25</sup> *Id.* (providing that a decision may be appealed within 14 calendar days with submission of an additional \$748 fee).

mechanism.<sup>26</sup> In 1989, Rancho Palos Verdes implemented the first view ordinance.<sup>27</sup> 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."<sup>28</sup> 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."<sup>29</sup> 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.<sup>30</sup> 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

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<sup>26</sup> See LAGUNA BEACH, CAL., MUN. CODE ch. 12.16 (2019), [https://qcode.us/codes/lagunabeach/view.php?topic=12-12\\_16&showAll=1&frames=on](https://qcode.us/codes/lagunabeach/view.php?topic=12-12_16&showAll=1&frames=on) [<https://perma.cc/Z68F-RU3U>]; RANCHO PALOS VERDES, CAL., MUN. CODE § 17.02.040 (2019), [https://library.municode.com/ca/rancho\\_palos\\_verdes/codes/code\\_of\\_ordinances?nodeId=TIT17ZO\\_ARTIREDI\\_CH17.02SIMIRERSDI\\_17.02.040VIPRRE](https://library.municode.com/ca/rancho_palos_verdes/codes/code_of_ordinances?nodeId=TIT17ZO_ARTIREDI_CH17.02SIMIRERSDI_17.02.040VIPRRE) [<https://perma.cc/KB3E-5FHH>]; MALIBU, CAL., MUN. CODE ch. 17.45 (2019), [https://qcode.us/codes/malibu/view.php?topic=17-17\\_45&showAll=1&frames=on](https://qcode.us/codes/malibu/view.php?topic=17-17_45&showAll=1&frames=on) [<https://perma.cc/2DFZ-WGZJ>]; see also *History of Ordinance 378 – Citywide View Preservation and Restoration*, CITY MALIBU, <https://www.malibucity.org/DocumentCenter/View/12605/History-of-View-Ordinance-378?bidId=> [<https://perma.cc/A4MC-H6B5>] (last visited Feb. 11, 2020).

<sup>27</sup> *Echevarrieta v. City of Rancho Palos Verdes*, 103 Cal. Rptr. 2d 165 (App. 2001), *cert. denied*, 534 U.S. 950 (2001). Outside of Southern California, San Francisco adopted an ordinance in 1988 that created an affirmative right to a view but did not provide for any City involvement in resolving the claim besides hosting mediation. If mediation fails, then a claimant in San Francisco must resort to arbitration or civil litigation. S.F., CAL., PUB. WORKS CODE, art. 16.1 § 823 (2019), [http://library.amlegal.com/nxt/gateway.dll/California/publicworks/article161treedisputeresolution?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:sanfrancisco\\_ca\\$anc=JD\\_Article16.1](http://library.amlegal.com/nxt/gateway.dll/California/publicworks/article161treedisputeresolution?f=templates$fn=default.htm$3.0$vid=amlegal:sanfrancisco_ca$anc=JD_Article16.1) [<https://perma.cc/EJK5-DXJ4>]. Santa Barbara enacted a similar ordinance to San Francisco in 2002. City of Santa Barbara Parks & Recreation, *Trees and Views*, CITY SANTA BARBARA 2–3, <https://www.santabarbaraca.gov/civicax/filebank/blobdload.aspx?BlobID=17615> [<https://perma.cc/SYMG-PV4L>] (last visited Feb. 11, 2020).

<sup>28</sup> *Notice of Intent to File View Restoration or View Preservation*, CITY RANCHO PALOS VERDES, <https://www.rpvca.gov/DocumentCenter/View/1310/View-Restoration-Application-Forms-PDF?bidId=> [<https://perma.cc/K7ZW-TD9U>] (last visited Feb. 11, 2020) [hereinafter CITY RANCHO PALOS VERDES, *Notice*]; see RANCHO PALOS VERDES, CAL., MUN. CODE § 17.02.040.

<sup>29</sup> CITY RANCHO PALOS VERDES, *Notice*, *supra* note 28.

<sup>30</sup> *Id.*; RANCHO PALOS VERDES, CAL., MUN. CODE § 17.02.040.

decision.<sup>31</sup> 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.<sup>32</sup> 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.<sup>33</sup> 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.<sup>34</sup> 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.<sup>35</sup> The burden of view restoration is on the applicant to show what the state of their view was at the earlier time.<sup>36</sup> Each ordinance provides for a mediation process.<sup>37</sup> If mediation is unable to

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<sup>31</sup> CITY RANCHO PALOS VERDES, *Notice*, *supra* note 28 (comparing view preservation flowchart with view restoration flowchart). The view restoration process requires payment of a \$5,106 fee if not resolved at mediation. *Id.* Additional, unspecified fees are also provided to reimburse the city for work performed in reviewing bids and monitoring foliage removal. *Id.* For view preservation, the City notifies the vegetation owner of the proposed decision and provides thirty days for voluntary compliance before issuing a final decision. *Id.* Once a final decision is issued, the owner has ninety days to comply. *Id.* There is no prescribed time frame for a view restoration permit, but hearings may be held only on the second or last Tuesday of a month. *Id.* In addition to fees paid to the City, the applicant is also responsible for the cost of foliage removal. RANCHO PALOS VERDES, CAL., MUN. CODE § 17.02.040(C)(2)(d).

<sup>32</sup> *Echevarrieta*, 103 Cal. Rptr. 2d at 168–74.

<sup>33</sup> LAGUNA BEACH, CAL., MUN. CODE § 12.16.040 (2019), [https://qcode.us/codes/lagunabeach/view.php?topic=12-12\\_16-12\\_16\\_040](https://qcode.us/codes/lagunabeach/view.php?topic=12-12_16-12_16_040) [<https://perma.cc/PJW7-9W2P>]; MALIBU, CAL., CODE § 17.45.050 (2019), <http://www.qcode.us/codes/malibu/?cite=17.45.050> [<https://perma.cc/4CNU-TZYH>].

<sup>34</sup> LAGUNA BEACH, CAL., MUN. CODE § 12.16.040; MALIBU, CAL., MUN. CODE § 17.45.050, [https://qcode.us/codes/malibu/view.php?topic=17-17\\_45-17\\_45\\_050&frames=on](https://qcode.us/codes/malibu/view.php?topic=17-17_45-17_45_050&frames=on) [<https://perma.cc/Z768-8DJV>].

<sup>35</sup> LAGUNA BEACH, CAL., MUN. CODE §§ 12.16.050–.060, [https://qcode.us/codes/lagunabeach/view.php?topic=12-12\\_16&showAll=1&frames=on](https://qcode.us/codes/lagunabeach/view.php?topic=12-12_16&showAll=1&frames=on) [<https://perma.cc/HZ3Q-WNBY>] (providing that in Laguna Beach the view claimant is responsible for cost of foliage trimming or removal); MALIBU, CAL., MUN. CODE §§ 17.45.060–.110.

<sup>36</sup> LAGUNA BEACH, CAL., MUN. CODE §§ 12.16.050–.060; MALIBU, CAL., MUN. CODE §§ 17.45.060–.110.

<sup>37</sup> LAGUNA BEACH, CAL., MUN. CODE §§ 12.16.050–.060; MALIBU, CAL., MUN. CODE §§ 17.45.060–.110. Malibu's ordinance provides for voluntary private mediation, while Laguna Beach's ordinance provides that a claimant must seek to resolve the dispute through a City-contracted mediator prior to obtaining a decision. The Laguna Beach mediator specializes in these types of disputes. Interview with Tony Farr, Assistant Planning Dir.,



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.<sup>38</sup>

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.<sup>39</sup> However, a resident of that city who does not live in an HOA community would not have a remedy.<sup>40</sup> 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.<sup>41</sup>

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City of Laguna Beach, in Laguna Beach, Cal. (Dec. 26, 2018). Since the Laguna Beach ordinance was enacted in 2014, there have been fifty-two cases filed, with about forty percent of those cases resolved through mediation. *Id.* Mediated cases take about three to four months to resolve, including time for notification to the vegetation owner and the vegetation owner's opportunity to accept or reject mediation. Telephone Interview with Tony Farr, Assistant Planning Dir., City of Laguna Beach (Nov. 14, 2018); Interview with Tony Farr, Assistant Planning Dir., City of Laguna Beach, in Laguna Beach, Cal. (Dec. 26, 2018).

<sup>38</sup> 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 claims filed since the effective date of the ordinance in December 2014, there were thirteen claims adjudicated. Interview with Tony Farr, *supra* note 37. In 2018, only one case went through adjudication. *Id.*

<sup>39</sup> CAL. CIV. CODE § 1462 (West, Westlaw through 2019 Reg. Sess.) (covenants run with the land); Amir Amini, *A Right to a View*, L.A. LAW., Sept. 2016, at 18, 20 (2016).

<sup>40</sup> See, e.g., *Resolution No. 182*, PALOS VERDES HOMES ASS'N (July 24, 2018), <http://pvha.org/home/wp-content/uploads/2014/02/Resolution-182-View-signed.pdf> [<https://perma.cc/CNS3-9DXT>] (providing an avenue for neighbors to have the HOA render a decision to their dispute). The Palos Verdes Homes Association covers all homes within the jurisdiction of the City of Palos Verdes Estates, which is adjacent to Rancho Palos Verdes on the peninsula. Charles F. Peterson, *Scenic View Preservation in Palos Verdes Estates*, AVVO (Apr. 6, 2014), <https://www.avvo.com/legal-guides/ugc/restoring-obstructed-views-in-palos-verdes-estates> [<https://perma.cc/7BCM-YPNW>].

<sup>41</sup> 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\\_e8aef91a-3c56-11e8-8ba8-ab4b66308042.html](http://tbrnews.com/news/manhattan_beach/manhattan-beach-case-over-ocean-view-decided-by-appeals-court/article_e8aef91a-3c56-11e8-8ba8-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.<sup>42</sup> 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.<sup>43</sup> 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.<sup>44</sup> This is an approach to dispute resolution that draws lineage

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<sup>42</sup> 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).

<sup>43</sup> See R. Seth Shippee, "Blessed Are the Peacemakers": Faith-Based Approaches to Dispute Resolution, 9 ILSA J. INT'L & COMP. L. 237, 238-39 (2002); *Notice of Intent to File View Restoration*, CITY LAGUNA BEACH, <http://www.lagunabeachcity.net/civicax/filebank/blobdload.aspx?BlobID=14710> [<https://perma.cc/Y7FH-U3VX>] (last revised July 1, 2019).

<sup>44</sup> Of course, the success of this first step depends on the disposition of the neighbors to resolving the dispute. See Stanley Allison, *Trees vs. Views: Something Must Give*, L.A. TIMES (Aug. 25, 2003, 12:00 AM), <http://articles.latimes.com/2003/aug/25/local/me-views25> [<https://perma.cc/NCG6-ACAC>] (providing anecdote of one Laguna Beach homeowner, prior to enactment of the ordinance, that "success in negotiating with neighbors

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.<sup>45</sup>

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.<sup>46</sup> 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.<sup>47</sup> 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.<sup>48</sup> Mediation is also useful because it provides claimants a realistic expectation of what they could seek to obtain through the process.<sup>49</sup> 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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was spotty. Some ignored [the complaining homeowner], and one agreed to trim his trees once in a while, but if [the complaining homeowner] paid.”)

<sup>45</sup> *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.

<sup>46</sup> 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).

<sup>47</sup> LAGUNA BEACH, CAL., MUN CODE § 12.16.050(c)(2)(D).

<sup>48</sup> ROBERT A. BARUCH BUSH & JOSEPH P. FOLGER, *THE PROMISE OF MEDIATION: THE TRANSFORMATIVE APPROACH TO CONFLICT*, at 9–11, 13 (2005).

<sup>49</sup> Interview with Tony Farr, *supra* note 37.

obtain an enforceable decision from the city.<sup>50</sup> 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.<sup>51</sup> Civil court proceedings can take months or years to reach an enforceable decision.<sup>52</sup> 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.<sup>53</sup> The Laguna Beach process is also far less expensive than the Rancho Palos Verdes process.<sup>54</sup> 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."<sup>55</sup> While Laguna Beach recognizes the right to a view, it also

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<sup>50</sup> Compare LAGUNA BEACH, CAL. MUN. CODE § 12.16.050 with MALIBU, CAL. MUN. CODE § 17.45.060 (2019), [https://qcode.us/codes/malibu/view.php?topic=17-17\\_45-17\\_45\\_060&frames=on](https://qcode.us/codes/malibu/view.php?topic=17-17_45-17_45_060&frames=on) [<https://perma.cc/2RWN-HN69>].

<sup>51</sup> 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).

<sup>52</sup> 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/J96W-F2SK>] (last visited Feb. 11, 2020).

<sup>53</sup> Compare LAGUNA BEACH, CAL. MUN. CODE § 12.16.050 with MALIBU, CAL. MUN. 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).

<sup>54</sup> Compare LAGUNA BEACH, CAL. MUN. CODE § 12.16.050 with CITY RANCHO PALOS VERDES, *Notice*, *supra* note 28, at 8.

<sup>55</sup> See *Trees*, CITY LAGUNA BEACH, <http://www.lagunabeachcity.net/cityhall/cd/trees/default.htm> [<https://perma.cc/3NXS-Q5VP>] (last visited Feb. 11, 2020) (discussing how preserving "the aesthetics and the health of our trees is fundamental to maintaining our urban forest."); see also Irus Braverman, "Everybody Loves Trees": *Policing American Cities Through Street Trees*, 19 DUKE ENVTL. L. & POL'Y. F. 81, 84-85 (2008) (discussing the importance of maintaining urban forests).

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.”<sup>56</sup> 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.”<sup>57</sup> Heritage Trees are added to the list through application by the tree’s owner and approval by the city council.<sup>58</sup>

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.<sup>59</sup> 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.”<sup>60</sup> 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.<sup>61</sup> The city

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<sup>56</sup> LAGUNA BEACH, CAL., MUN. CODE § 12.08.010 (2019), [https://qcode.us/codes/lagunabeach/view.php?topic=12-12\\_08-12\\_08\\_010&frames=on](https://qcode.us/codes/lagunabeach/view.php?topic=12-12_08-12_08_010&frames=on) [<https://perma.cc/X5GC-QAAK>].

<sup>57</sup> LAGUNA BEACH, CAL., MUN. CODE § 12.08.020 (2019), [https://qcode.us/codes/lagunabeach/view.php?topic=12-12\\_08-12\\_08\\_020&frames=on](https://qcode.us/codes/lagunabeach/view.php?topic=12-12_08-12_08_020&frames=on) [<https://perma.cc/TSK4-Y6SE>].

<sup>58</sup> *Heritage Tree Application*, CITY LAGUNA BEACH, <http://www.lagunabeachcity.net/civicax/filebank/blobdload.aspx?blobid=7880> [<https://perma.cc/X59Y-8EGG>] (last modified July 31, 2018); LAGUNA BEACH, CAL., MUN. CODE § 12.08.040 (2019), [https://qcode.us/codes/lagunabeach/view.php?topic=12-12\\_08-12\\_08\\_040&frames=on](https://qcode.us/codes/lagunabeach/view.php?topic=12-12_08-12_08_040&frames=on) [<https://perma.cc/EBQ9-KKLT>] (there are currently sixty-three trees or stands of trees protected on the Heritage Tree List). *Heritage Tree List*, CITY LAGUNA BEACH, <http://www.lagunabeachcity.net/civicax/filebank/blobdload.aspx?blobid=21806> [<https://perma.cc/NGU6-WZFT>] (last revised Jan. 21, 2020).

<sup>59</sup> LAGUNA BEACH, CAL. MUN. CODE § 12.16.080 (2019), [https://qcode.us/codes/lagunabeach/view.php?topic=12-12\\_16-12\\_16\\_080&frames=on](https://qcode.us/codes/lagunabeach/view.php?topic=12-12_16-12_16_080&frames=on) [<https://perma.cc/3JYX-UJ9D>]; LAGUNA BEACH, CAL., MUN. CODE § 12.16.050(c)(3)(D), [https://qcode.us/codes/lagunabeach/view.php?topic=12-12\\_16-12\\_16\\_050&frames=on](https://qcode.us/codes/lagunabeach/view.php?topic=12-12_16-12_16_050&frames=on) [<https://perma.cc/X42Z-UD7R>].

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

<sup>61</sup> See Kazutoki Abe & Robert R. Ziemer, *Effect of Tree Roots on a Shear Zone: Modeling Reinforced Shear Stress*, 21 CAN. J. FOREST RES. 1012, 1018–19 (1991), <https://www.fs.fed.us/psw/publications/ziemer/Zierner91.pdf> [<https://perma.cc/YB3M-UMFB>]; see also Emilia Pramova et al., *Forests and Trees for Social Adaptation to Climate*

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."<sup>62</sup> 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.<sup>63</sup> 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.<sup>64</sup> Since the ordinance became effective, as of the writing of this Article, there have been no cases where removal has been ordered.<sup>65</sup> However, if removal were ordered, the claimant may be required to provide replacement vegetation to the owner.<sup>66</sup> 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."<sup>67</sup> 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

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*Variability and Change*, 3 WIREs CLIMATE CHANGE 581, 585 (2012) (noting that fewer landslides occur in forested areas because tree roots "increase soil cohesion").

<sup>62</sup> LAGUNA BEACH, CAL., MUN. CODE § 12.16.050(c)(3)(D)(v) (2019).

<sup>63</sup> See, e.g., *USGS Statement on Bluebird Canyon Landslide in Laguna Beach, California*, U.S. GEOLOGICAL SURV., [https://www2.usgs.gov/homepage/landslide\\_laguna.asp](https://www2.usgs.gov/homepage/landslide_laguna.asp) [<https://perma.cc/Z22K-JARF>] (last visited Feb. 12, 2020).

<sup>64</sup> LAGUNA BEACH, CAL., MUN. CODE § 12.16.050(c)(3)(D)(vi) (providing that in removal cases, other methods, such as culling, lacing, trimming, crown reducing, or crown raising are ineffective in reducing significant view impairment).

<sup>65</sup> 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.*

<sup>66</sup> 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).

<sup>67</sup> 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.<sup>68</sup> 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.<sup>69</sup> 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.<sup>70</sup> 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.<sup>71</sup> 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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<sup>68</sup> LAGUNA BEACH, CAL., MUN. CODE § 12.06.100 (2019), [https://qcode.us/codes/lagunabeach/view.php?topic=12-12\\_06-12\\_06\\_100](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.

<sup>69</sup> Ellis Raskin, *The Definitive Guide to Tree Disputes in California*, 21 HASTINGS W.-N.W. J. ENVTL. L. & POL'Y 113, 128 (2015).

<sup>70</sup> 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.

<sup>71</sup> 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://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.<sup>72</sup> 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.<sup>73</sup> Finally, municipalities should have a stiff penalty provision to deter illicit self-help and preserve urban forests.<sup>74</sup>

### *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.<sup>75</sup> The hedge height ordinance governs only hedges that are above the applicable hedge height standard and block views or sunlight.<sup>76</sup> There is significant overlap between what these two

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<sup>72</sup> See David C. Swedelson, *View Law in Laguna Beach Provides Some Good Ideas for California HOAs*, HOALAWBLOG (Jan. 19, 2016), [https://www.hoalawblog.com/view\\_law\\_in\\_laguna\\_beach\\_provi\\_1/](https://www.hoalawblog.com/view_law_in_laguna_beach_provi_1/) [<https://perma.cc/V37Y-D7GY>].

<sup>73</sup> See LAGUNA BEACH, CAL., MUN. CODE § 12.16.050(c)(3)(D) (2019), [https://qcode.us/codes/lagunabeach/view.php?topic=12-12\\_16-12\\_16\\_050&frames=on](https://qcode.us/codes/lagunabeach/view.php?topic=12-12_16-12_16_050&frames=on) [<https://perma.cc/X42Z-UD7R>] (providing criteria that must be met before trimming or removal of vegetation could be ordered).

<sup>74</sup> See LAGUNA BEACH, CAL., MUN. CODE § 12.06.100 (2019), [https://qcode.us/codes/lagunabeach/view.php?topic=12-12\\_06-12\\_06\\_100](https://qcode.us/codes/lagunabeach/view.php?topic=12-12_06-12_06_100) [<https://perma.cc/G8DF-7AH9>] (providing table of administrative penalties, in addition to civil penalties and misdemeanor prosecution).

<sup>75</sup> Compare LAGUNA BEACH, CAL., MUN. CODE § 12.14.040 (2019), [https://qcode.us/codes/lagunabeach/view.php?topic=12-12\\_14-12\\_14\\_040](https://qcode.us/codes/lagunabeach/view.php?topic=12-12_14-12_14_040) [<https://perma.cc/79EM-J6KQ>], with LAGUNA BEACH, CAL., MUN. CODE § 12.16.050.

<sup>76</sup> 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.<sup>77</sup> The only difference between the two is that the hedge height ordinance also applies to safety hazard or sunlight claims.<sup>78</sup> The hedge height ordinance provides for a public hearing and city determination without mediation as an intermediate step.<sup>79</sup> 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.<sup>80</sup> This will also preserve harmony by reducing confusion and by promoting conciliatory resolution rather than adversity.<sup>81</sup>

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.<sup>82</sup> 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

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<sup>77</sup> Compare LAGUNA BEACH, CAL., MUN. CODE § 12.14.040, with LAGUNA BEACH, CAL., MUN. CODE § 12.16.050.

<sup>78</sup> Compare LAGUNA BEACH, CAL., MUN. CODE § 12.14.040, with LAGUNA BEACH, CAL., MUN. CODE § 12.16.050.

<sup>79</sup> Compare LAGUNA BEACH, CAL., MUN. CODE § 12.14.060 (2019), [https://qcode.us/codes/lagunabeach/view.php?topic=12-12\\_14-12\\_14\\_060&frames=on](https://qcode.us/codes/lagunabeach/view.php?topic=12-12_14-12_14_060&frames=on) [<https://perma.cc/SN4R-EJXD>] (providing for private consultation and then public hearing and decision if that fails), with § 12.16.050 (providing for private consultation and then mediation prior to seeking a decision from the City).

<sup>80</sup> See BARUCH BUSH & FOLGER, *supra* note 48, at 9–13 (discussing benefits of mediation to resolve disputes amicably).

<sup>81</sup> *Id.*

<sup>82</sup> See LAGUNA BEACH, CAL., MUN. CODE § 12.14.060(i).

good approach would be to periodically use local radio, print, and online media sources to ensure that residents are aware of the program.<sup>83</sup>

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.<sup>84</sup> Under the ordinance, only a “property owner or authorized agent” can make a view restoration claim.<sup>85</sup> 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.<sup>86</sup> On the other hand, the landlord may not want to cede that degree of

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<sup>83</sup> See *KX 93.5, Laguna’s FM Radio Station, Launches Community Awareness Campaign “Tune In,”* STU NEWS LAGUNA, <https://www.stunewslaguna.com/index.php/front-page-ii/4903-kx-93-5-laguna-s-fm-radio-station-060518> [<https://perma.cc/5NP5-P7JL>] (last visited Feb. 12, 2020) (discussing the radio station’s new “Tune In” campaign about community issues, as KX 93.5 is the “only live, local medium capable of sparking public discourse on important Laguna Beach topics”); Richard Wagoner, *Radio: Low-Power FM Station Takes the Air in Laguna Beach*, L.A. DAILY NEWS (Oct. 18, 2012, 12:00 AM), <https://www.dailynews.com/2012/10/18/radio-low-power-fm-station-takes-the-air-in-laguna-beach/> [<https://perma.cc/9CUN-EWT4>] (stating that in Laguna Beach, the hills cut off the signal of all other radio stations except KX 93.5); see also LAGUNA BEACH INDEPENDENT, <https://www.lagunabeachindy.com> [<https://perma.cc/RTN9-JWL2>] (providing a forum for local Laguna Beach news and discussion) (last visited Feb. 12, 2020).

<sup>84</sup> 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).

<sup>85</sup> LAGUNA BEACH, CAL., MUN. CODE § 12.16.020 (2019), [https://qcode.us/codes/lagunabeach/view.php?topic=12-12\\_16-12\\_16\\_020](https://qcode.us/codes/lagunabeach/view.php?topic=12-12_16-12_16_020) [<https://perma.cc/VV2B-USM8>] (providing that the definition of “claimant” is “any residential property owner or authorized agent”).

<sup>86</sup> 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.<sup>87</sup> For instance, only a “property owner” may make an application for Heritage Tree designation since the program brings responsibilities with such a designation.<sup>88</sup> 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.”<sup>89</sup> 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.<sup>90</sup> 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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<sup>87</sup> See LAGUNA BEACH, CAL., MUN. CODE § 12.16.100 (2019), [https://qcode.us/codes/lagunabeach/view.php?topic=12-12\\_16-12\\_16\\_100](https://qcode.us/codes/lagunabeach/view.php?topic=12-12_16-12_16_100) [<https://perma.cc/FNJ5-D7GT>] (providing that view decisions “run with the land” and are binding on future owners).

<sup>88</sup> See LAGUNA BEACH, CAL., MUN. CODE § 12.08.040 (2019), [https://qcode.us/codes/lagunabeach/?view=desktop&topic=12-12\\_08-12\\_08\\_040](https://qcode.us/codes/lagunabeach/?view=desktop&topic=12-12_08-12_08_040) [<https://perma.cc/FUV8-RLD4>] (providing that “[a]ny property owner . . . may apply”); LAGUNA BEACH, CAL., MUN. CODE § 12.08.050, [https://qcode.us/codes/lagunabeach/view.php?topic=12-12\\_08-12\\_08\\_050](https://qcode.us/codes/lagunabeach/view.php?topic=12-12_08-12_08_050) [<https://perma.cc/8U4T-L3S2>] (establishing a responsibility for an owner of a Heritage Tree to properly maintain the tree).

<sup>89</sup> Zint, *supra* note 4.

<sup>90</sup> See 28 U.S.C.A. § 2461 (West, Westlaw through Pub. L. No. 116-66) (codifying the Federal Civil Penalties Inflation Adjustment Act, as amended).

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.