



*City of Rolling Hills*

INCORPORATED JANUARY 24, 1957

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**Agenda Item No.: 8-A**  
**Mtg. Date: 04/25/16**

**TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL**

**FROM: YOLANTA SCHWARTZ, PLANNING DIRECTOR** *Y*

**THROUGH: RAYMOND R. CRUZ, CITY MANAGER** *RC*

**SUBJECT: DISCUSSION AND PUBLIC FORUM ON A POSSIBLE BALLOT MEASURE TO REPEAL OR AMEND MEASURE B RELATING TO VIEW PRESERVATION.**

**ATTACHMENTS:** A. RHMC 17.20.220 & 17.26 View Preservation, as amended  
B. Resolution No. 1182 of the City Council adopting administrative regulations interpreting Measure B

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**BACKGROUND**

1. In March 2013, the residents of Rolling Hills passed Measure B, an initiative that amended the City's View Preservation Ordinance in several respects. Most notably, Measure B: 1) limited the view that may be restored to the view that existed when the current owner of a property actually acquired the property; 2) exempted trees that were mature at the time of property acquisition from the Ordinance; and 3) specified that the purpose of the Ordinance is to create "view corridors" and views through trees, rather than unobstructed views. In addition, Measure B specified that its provisions apply retroactively.

2. As Measure B contained several ambiguities that have resulted in uncertainty in its application, the City Council following public hearings adopted administrative regulations interpreting Measure B in order to achieve uniformity (and eliminate the potential for inconsistent case-by-case determinations) in the consideration of view complaints.

As a voter-approved initiative, Measure B cannot be amended by the City Council, but may only be amended by the voters. However, to the extent that Measure B is unclear or susceptible to interpretation, the City Council adopted clarification of the measure. The resolution adopting the administrative interpretation is attached.

Concurrently with the adoption of the interpretation of Measure B, the City Council, following Planning Commission's public hearings and recommendations for amendments, held public hearings and amended the View Preservation Ordinance to correct and clarify some of the ambiguous and uncertain provisions and to better reflect the provisions that were not amended by Measure B. The amended Zoning Ordinance is attached.

3. During the public hearings, as different views were expressed, it became apparent that the provisions of the Measure B, no matter how they were to be interpreted, caused a conflict because of its practical difficulties in interpretation.

4. At the April 11, 2016 City Council meeting, Councilmember Pieper expressed a desire to place a Measure on the March 2017 election to cure some of the problems and suggested that public forums be held to provide the residents of Rolling Hills an opportunity to voice their opinion regarding the provisions and how to amend them.

5. Should it be decided that a ballot measure should be placed on the March 2017 election, it is necessary that the City Council provide the City Attorney with specific directions in a timely fashion on how to proceed and what amendments to make.

6. Some of the options the City Council could explore to remedy the difficulties of Measure B and the ordinance include:

1. Repeal Measure B in its entirety and simultaneously amend the Municipal Code View Preservation Ordinance to incorporate desired provisions, including those from the current Measure B.
2. Place a new Measure on the ballot modifying the current Measure.
3. Leave Measure B as is and apply the recently adopted administrative interpretation to each view complaint case.

It is important to note that a voter approved initiative cannot be changed by City Council via the public hearing process, but must be voted on by the voters, whereas provisions in an Ordinance could be amended by the City through the public hearing process.

#### RECOMMENDATION

7. It is recommended that the City Council convene the public forum, receive public testimony, and commence deliberation on how to proceed.

#### NOTIFICATION

8. Notice of this public forum to inform the community was published in the agenda portion of the City's Newsletter and a short announcement about the public forums was also included in the Newsletter. The agenda was emailed to those residents who previously expressed interest in this topic together with the link to the website, where the staff report is available. The staff report and the agenda was also provided to the RHCA.

17.12.220 - "V" words, terms and phrases.

"Variance" means permission, granted in accordance with the provisions of this chapter, to depart from a literal provision of this title when, because of special circumstances applicable to the property, strict application of title provisions deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning. Any variance granted will assure that the adjustment granted will not constitute a special privilege.

"View" means a view from a principal residence, but not including from garages or closets, and any immediately adjoining patio or deck area at the same elevation as the residence which consists of a visually impressive scene or vista not located in the immediate vicinity of the residence, such as a scene of the Pacific Ocean, off-shore islands, city lights of the Los Angeles basin, the Palos Verdes Hills or Los Angeles Harbor.

"View corridor" means a view from a designated viewing area broken into segments by vegetation.

"View impairment" means a significant interference with and obstruction of a view by landscaping, trees or any other planted vegetation.

(Ord. 239 §11(part), 1993).

(Ord. No. 346, § 6A, 2-8-2016)

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## Chapter 17.26 - VIEW PRESERVATION

### Sections:

#### 17.26.010 - Intent and purpose.

The City recognizes the contribution of views to the overall character and beauty of the City. Views of the Pacific Ocean, Catalina Island, City lights and Los Angeles Harbor are a special quality of property ownership for many residential lots in the City. These views have the potential to be diminished or eliminated by maturing landscaping located on private property. The purpose of this chapter is to protect this important community asset by establishing procedures for the protection of views and abatement of view obstructions created by landscaping, while at the same time protecting natural vegetation from indiscriminate removal.

(Ord. 239 §11(part), 1993).

(Ord. No. 346, § 6B, 2-8-2016)

#### 17.26.020 - Committee on trees and views.

A Committee on Trees and Views is established for the purpose of administering the provisions of this chapter. The Committee shall be composed of three members of the Planning Commission appointed by the Commission annually at the same time as the Commission selects its officers, or whenever a vacancy occurs. Committee meetings shall be scheduled as adjourned or special meetings of the Commission. The Committee is authorized to consult with City officials and with specialists such as landscape architects and arborists as required, but shall not incur any expense on behalf of the City without prior approval of the City Council.

(Ord. 292 §4, 2003: Ord. 239 §11(part), 1993).

#### 17.26.030 - Desirable and undesirable trees.

The Committee is authorized and directed to prepare lists of types of desirable and undesirable trees for planting within the City. The list shall be based upon tree size and shape, rate of growth, depth of roots, fall rate of leaves or bark or fruit or branches, and other factors related to safety, maintenance and appearance. The purpose of this provision is to make information available to property owners which may serve to avoid future occasion for permits, complaints, and other proceedings authorized by this chapter.

(Ord. 239 §11(part), 1993).

#### 17.26.040 - Abatement of view impairment—Procedure.

Any person who owns or has lawful possession of a residence from which a view is impaired, pursuant to the definition of "view impairment" in Section 17.12.220 of this title, by vegetation growing on property other than their own may seek abatement of the view impairment under the following procedure:

- A. **Mediation Application.** The complainant shall submit a complete application for abatement of view impairment by mediation on a form provided by the City. The application shall be accompanied by a fee as provided for in Section 17.30.030 of this title. The complainant shall describe in the application what efforts have been made by the complainant to resolve the view impairment prior to filing the mediation application. An application shall not be accepted for filing

unless the complainant can demonstrate that the owner of the view-impairing vegetation has been given notice of the impairment and a reasonable opportunity to abate it, but has refused to do so.

- B. **Eligibility.** A person shall not be precluded from filing an application for abatement of view impairment on grounds that vegetation located on the complainant's property contributes to impairment of the requested view. A person who has obtained an order abating impairment of a view against a property shall not be precluded from filing a subsequent application to abate impairment of the same view by vegetation on another property. An application may be filed to abate impairment of one or more distinct views listed in Section 17.12.220 "View;" however, if multiple views are identified, each must be disjointed and observable from a separate viewing area.
- C. **Mediation.** Upon receipt and acceptance of an application as complete, the City Manager shall refer the matter to a mediator for conduct of a mediation session to abate the view impairment. The mediator shall be responsible for notifying the property owner of the view-impairing vegetation of the application and for scheduling and managing the mediation process. At the conclusion of mediation, the mediator shall advise the City Manager as to whether the complaint has been resolved. Agreement reached through mediation shall be reflected in an executed contract and implemented in accordance with the terms of the agreement.
- D. **Public Hearing Application.** In the event mediation fails to achieve agreement, the complainant may submit an application and accompanying fee as provided for in Section 17.30.030 of this title for a public hearing. Upon receipt and acceptance of an application for a public hearing as complete, the City Manager shall schedule the matter for a public hearing before the Committee on Trees and Views. If a complete application for a public hearing is not received within sixty days of the mediator's notification set forth in Section 17.26.040(C), the City shall terminate, without prejudice, all proceedings related to the application.

(Ord. 292 §5, 2003; Ord. 239 §11(part), 1993).

(Ord. No. 346, § 6C, 2-8-2016)

**17.26.050 - Hearing procedure and findings.**

- A. **Notice Required.** Public notice of the hearing shall be given a minimum of fifteen days prior to the hearing. The hearing shall not proceed unless proof is shown that the owner of the tree or other obstructing vegetation received notice of the hearing as provided herein:
  - 1. Notice shall be given by certified mail, return receipt requested, to the owner of the tree or other obstructing vegetation and to the complainant;
  - 2. Notice shall be given by first class mail to all property owners within one thousand feet of the exterior boundary of the property on which the tree or other obstructing vegetation are located and to other persons who, in the Committee's judgment, might be affected.
- B. **Content of Notice.** The notice shall state the name of the complaining party, the name of the property owner against whom the complaint is filed, the location of the tree or other vegetation, and the time and place of hearing. The notice shall invite written comments to be submitted prior to or at the hearing.
- C. **Conduct of Hearing.** The Committee shall adopt rules for the conduct of required hearings. At the hearing, the Committee shall consider all written and oral testimony and evidence presented in connection with the application. If during the course of the proceedings it is discovered that information submitted in an application is inaccurate or incomplete such that it could be misleading, or a significant change has occurred impacting either the view or the obstruction, an applicant may be directed to amend the application or submit supplemental information. In the event the Committee requires expert advice in consideration of the matter, the cost of obtaining such evidence shall be

borne by the complainant, pursuant to written agreement with the City. The City shall select such expert and enter into an agreement only upon receipt of a payment for the selected service from the party. An application shall be deemed withdrawn and all proceedings shall be terminated with respect thereto, without prejudice, if the parties to a complaint notify the City that it has been voluntarily resolved, or if the complainant fails or refuses to provide supplemental information requested by the City or fails or refuses to pay the cost of the expert services, or the complainant requests a delay of the proceedings for more than one hundred eighty days unless good cause exists for the delay.

- D. Findings. Based on the evidence received and considered, the Committee may find any of the following:
  - 1. That no view exists within the meaning of this chapter;
  - 2. That a view exists within the meaning of this chapter, but that the view is not significantly impaired; or
  - 3. That a view exists within the meaning of this chapter and that it is significantly impaired.
  - 4. The Committee shall make specific written findings in support of the foregoing determinations.
- E. Action. If the Committee makes finding of subsection (D)(3) of this section, it shall order such restorative action as is necessary to abate the view impairment, including, but not limited to, removal, pruning, topping, thinning or similar alteration of the vegetation. Such order is not intended to create an unobstructed view for applicants. Instead it is intended to create view corridors and a view through trees. The Committee may impose conditions as are necessary to prevent future view impairments. In no event shall restorative action be required if such action would adversely affect the environment or would unreasonably detract from the privacy or enjoyment of the property on which the objectionable vegetation is located. If restorative action is precluded by the existence of one or more such limiting factors, the Committee shall make specific written findings to that effect.
- F. Environmental Review. If the Committee makes finding of subsection (D)(3) of this section and orders restorative action, the proposed order shall be reviewed by City staff to determine the appropriate level of environmental review. If the action is determined to be exempt from the California Environmental Quality Act ("CEQA"), a resolution containing the Committee's written findings shall be presented for adoption at the Committee's next meeting. If the action is determined not to be exempt from CEQA, the complainant shall bear the City's reasonable costs of environmental review and CEQA compliance, including consultant fees.
- G. Finality of Decision. The Committee's decision shall be final on the date the Committee adopts a resolution setting forth its decision. The decision shall become effective thirty days after adoption of the resolution, unless an appeal has been filed to the City Council pursuant to the provisions of Chapter 17.54. For purposes of such an appeal, references to the Planning Commission in Chapter 17.54 shall be interpreted as inclusive of the Committee on Trees and Views.

(Ord. 295 §7 (Exh. B (part)), 2004; Ord. 239 §11(part), 1993)

(Ord. No. 333 (Measure B), 3-18-2013; Ord. No. 346, § 6D, 2-8-2016)

#### 17.26.060 - Implementation of restorative action.

- A. The complainant shall bear the cost of the initial restorative action. Within thirty days of a final decision ordering restorative action, the complainant shall obtain and present to the owner of the obstructing vegetation three bids from licensed and qualified contractors for performance of the work, as well as cash deposit in the amount of the lowest bid. In order to qualify, the contractors must provide insurance, which protects and indemnifies the City and the complainant from damages attributable to negligent or wrongful performance of the work. Any such insurance shall be subject to the approval of the City.

- B. The owner of the obstructing vegetation may select any licensed and qualified contractor to perform the restorative action (as long as the insurance requirements of subsection A of this section are satisfied), but shall be responsible for any cost above the amount of the cash deposit. The work shall be completed no more than ninety days from receipt of the cash deposit or if additional time is necessary due to weather or unique conditions of the vegetation, at the earliest date recommended by the contractor, but no later than one year, and shall be approved by the City Manager.
- C. Subsequent maintenance of the vegetation in question shall be performed at the cost and expense of the owner of the property on which the vegetation is growing. The vegetation shall be maintained in accordance with the final decision so as not to allow for future view impairments.

(Ord. 239 §11(part), 1993).

(Ord. No. 346, § 6E, 2-8-2016)

17.26.070 - Enforcement.

- A. Failure or refusal of any person to comply with a final decision under this chapter or to comply with any provision of this chapter shall constitute a misdemeanor and shall be punishable by a fine of one thousand dollars or six months in County Jail, or both. Failure or refusal of any person to comply with a final decision under this chapter shall further constitute a public nuisance which may be abated in accordance with the procedure contained in Chapter 8.24.
- B. A final decision rendered under this chapter may be enforced civilly by way of action for injunctive or other appropriate relief, in which event the prevailing party may be awarded attorney's fees and costs as determined by the court.
- C. Nothing in this chapter shall preclude the prosecution of any civil cause of action under the law by any person with respect to the matters covered herein.

(Ord. 239 §11(part), 1993).

17.26.080 - Notification of subsequent owners.

Within thirty days of the final decision of the Committee, or the City Council on appeal, a document shall be recorded against the title of the property on which the offending vegetation exists and the complainant's property, on a form provided by the City, which shall run with the land and be binding upon all successors in interest.

(Ord. 239 §11(part), 1993).

(Ord. No. 346, § 6F, 2-8-2016)

17.26.090 - Preservation of views defined.

Notwithstanding any other provision of Chapter 17.26.010 to 17.26.080 inclusive, the following provision shall apply and supersede in priority any other provision.

1. A view is defined in Chapter [Section] 17.12.220 and only applies to that view existing from the date any current owner of a property in the City of Rolling actually acquired the property.
2. Chapter [Section] 17.26.010 provides that the intent of the Ordinance is to protect views from "maturing" vegetation. As such, in addition to the limitations otherwise set forth in Chapter 17.26, including but limited to this Section 17.26.090, any vegetation which is already mature at the time any party claiming a view impairment actually acquired the property shall be exempt

from Chapter 17.26. "Mature" versus "Maturing" shall be defined by industry standards predominantly accepted by arborists.

3. The burden of proof to show that any view is impaired shall be upon the party claiming such impairment, and the standard shall be by "clear and convincing evidence". Evidence shall be weighted in the following order of priority:
  - a. Photographs;
  - b. Expert testimony; and lastly
  - c. Other evidence.

(Ord. No. 333 (Measure B), 3-18-2013)

**Editor's note**— Ord. No. 333 (Measure B) which added the provisions set out herein, was adopted March 18, 2013, as a result of a vote of the electorate and thus cannot be changed except by another vote. Said ordinance states, "This Section 17.26.090 shall be effective retroactively to the date Chapter 17.26 was first made an Ordinance to the City of Rolling Hills."

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RESOLUTION NO. 1182

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROLLING HILLS ADOPTING ADMINISTRATIVE REGULATIONS INTERPRETING MEASURE B RELATING TO VIEW PRESERVATION.

The City Council of the City of Rolling Hills does hereby resolve and order as follows:

Section 1. In June 1988, the City adopted a View Preservation Ordinance. The ordinance established preservation of views as a primary value of the community and created a process by which a property owner could seek to abate an obstructed view. In November 2003, the ordinance was modified relative to the composition of the Committee on Views and Trees, the body designated to consider view applications.

Section 2. In March 2013, the residents of Rolling Hills passed Measure B to amend the View Preservation Ordinance. The principal effect of Measure B was to shift the protection of the ordinance from views that are *capable* of being enjoyed from a property to views that were *actually* enjoyed from a property when the property owner acquired the property. In particular, the initiative amended the ordinance as follows:

- Only a view that existed when the current property owner "actually acquired" the property may be restored;
- Abatement of view impairment is limited to obstructions caused by trees that were "maturing" at the date of acquisition and trees that were "mature" at the time of property acquisition are excluded from consideration;
- Measure B specified that abatement of view impairment is intended to create "view corridors" and views through trees, and not unobstructed views;
- Measure B specified that its provisions are to be applied retroactively.

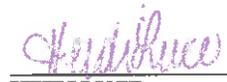
Section 3. Measure B contains various ambiguities that have resulted in uncertainty in its application in view obstruction cases submitted to the City's Committee on Trees and View for consideration. Measure B can only be amended by the voters; however, the City may adopt administrative regulations providing guidance and interpreting ambiguities in voter initiatives in order to assure uniformity in the application of Measure B to future view complaint cases. Based on this authority and recommendation by the Planning Commission, the City Council reviewed, discussed and developed a policy interpreting Measure B.

Section 4. The City Council finds that Attachment A titled City of Rolling Hills Administrative Regulations Interpreting Measure B Relating to View Preservation clarify the initiative and is hereby adopted:

PASSED, APPROVED AND ADOPTED THIS 14<sup>TH</sup> DAY OF MARCH, 2016.

  
JEFF PIEPER  
MAYOR

ATTEST:

  
HEIDI LUCE  
CITY CLERK

Any action challenging the final decision of the City made as a result of the public hearing on this application must be filed within the time limits set forth in section 17.54.070 of the Rolling Hills Municipal Code and Code of Civil Procedure Section 1094.6.

STATE OF CALIFORNIA)  
COUNTY OF LOS ANGELES ) §§  
CITY OF ROLLING HILLS )

I certify that the foregoing Resolution No. 1182 entitled:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
ROLLING HILLS ADOPTING ADMINISTRATIVE REGULATIONS  
INTERPRETING MEASURE B RELATING TO VIEW  
PRESERVATION

was approved and adopted at a regular meeting of the City Council on March 14, 2016 by the following  
roll call vote:

AYES: Councilmembers Mirsch, Wilson and Mayor Pieper.

NOES: Councilmembers Black and Dieringer.

ABSENT: None.

ABSTAIN: None.

and in compliance with the laws of California was posted at the following:

Administrative Offices.

  
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HEIDI LUCE, CITY CLERK

Attachment A

City of Rolling Hills  
Administrative Regulations Interpreting Measure B  
Relating to View Preservation

Chapter 1	Date of Property Acquisition
Chapter 2	"Mature" versus "Maturing" Trees
Chapter 3	Retroactivity of Measure B

Chapter 1  
DATE OF PROPERTY ACQUISITION

Section 1001. Interpretation of the Date of Acquisition of Property.

Measure B provides that a person may only apply to restore the view existing from the date that the current owner of the property actually acquired the property. The City interprets this provision to mean that the protectable view under the ordinance is the view possessed by the property on the date it was most recently purchased for fair market value. Hence, in determining the date on or after which the protectable view is established, the acquisition date shall be the most recent date title to the property was conveyed for fair market value (as evidenced by a deed) through an arms-length purchase and sale.

Chapter 2  
"MATURE" VERSUS "MATURING" TREES

Section 2001. Definition of "Mature" Trees

For purposes of RHMC Section 17.26.090 (2) a tree will be considered mature if at the time the party claiming view impairment acquired the property the tree had achieved 75% of its maximum canopy height and width (spread). Maximum canopy height and width will be as set forth in the latest edition of the Sunset Western Garden Book that contains the tree species under consideration. The Sunset Western Garden Book is a trusted reference guide on trees, plants and other vegetation present in the region and displays a plant species' height ranges and other characteristics.

Should the Rolling Hills Committee on Trees and Views, City Council or any of the parties involved in a view complaint case require or wish to obtain an expert opinion on maturity of trees, such opinion shall be provided by a certified consulting arborist who is a member of the American Society of Consulting Arborists (ASCA).

For the purpose of measuring the height of a tree, the height shall be measured between the base of the tree and the tip of the highest branch on the tree. The base of the tree is the point of the tree where the pith (center) of the tree intersects the ground surface. The width (spread) of a tree canopy shall be measured across the canopy from the tip of the outermost branch at one end of the tree to the tip of the outermost branch at the opposite side of the tree (from dripline to dripline).

Section 2002. Definition of "Maturing" Trees

Trees and other vegetation that are not "mature" as specified in these regulations are "maturing."

Chapter 3  
RETROACTIVITY OF MEASURE B

Section 3001. Retroactive Application.

Any resolution of the City of Rolling Hills adjudicating any complaint regarding view impairments adopted by the Committee on Trees and Views, or the City Council on appeal, prior to March 18, 2013, is hereby considered void and will not be enforced by the City.