



City of Rolling Hills

INCORPORATED JANUARY 24, 1957

NO. 2 PORTUGUESE BEND ROAD
ROLLING HILLS, CA 90274
(310) 377-1521
FAX (310) 377-7288

Agenda Item No.: 8B
Mtg. Date: 07/18/17

TO: HONORABLE CHAIRMAN AND MEMBERS OF THE PLANNING COMMISSION

**FROM: NATALIE C. KARPELES, ASSISTANT CITY ATTORNEY
YOLANTA SCHWARTZ, PLANNING DIRECTOR**

**SUBJECT: CONSIDERATION OF A DRAFT RESOLUTION NO. _____;
RECOMMENDING THAT THE CITY COUNCIL APPROVE A ZONING
TEXT AMENDMENT TO THE ROLLING HILLS MUNICIPAL CODE
TO AMEND SECTION 17.12.220 OF CHAPTER 17.12 (DEFINITIONS);
AND TO REPEAL AND REPLACE CHAPTER 17.26 (VIEW
PRESERVATION) IN ORDER TO ESTABLISH AN ADVISORY
PROCESS FOR THE RESTORATION OF VIEWS OBSTRUCTED BY
VEGETATION.**

DATE: JULY 18, 2017

ATTACHMENTS:

- I. DRAFT RESOLUTION NO. _____**
- II. MOST RECENT CORRESPONDENCE**

BACKGROUND:

At the May 16, 2017 meeting, the Planning Commission continued its discussions to evaluate and formulate a view impairment ordinance, ultimately providing direction on whether and to what extent the City would be involved in any dispute resolution process; what restorative action would be required under the ordinance; and miscellaneous provisions such as (1) whether the City would maintain a "view database," (2) whether the City would provide mechanisms for determining when a property has or will be transferred, (3) whether the City will require the removal of offending vegetation as a condition of approval for new construction; (4) whether the City will establish educational programs to provide residents and real estate persons with information regarding the City's view preservation ordinance; and (5) whether the City will notify subsequent property owners of any agreements or decisions rendered under the City's view preservation ordinance.

Pursuant to the Planning Commission's direction on these issues, as well as its prior direction (regarding applicable definitions and considerations related to views, view corridors, established views and viewing points), Staff has prepared a draft Resolution recommending to amend Section 17.12.220 and repeal and replace Chapter 17.26, in order to establish an advisory process for the restoration of views obstructed by vegetation.

Since the May 16, 2017 Planning Commission meeting staff received correspondence from property owners, which is attached, in which they ask that the Planning Commission develop an ordinance that protects ones view; the view they purchased or the one that was amicably agreed to by the neighbors by allowing one neighbor trim the trees on another neighbor's property.

DISCUSSION

The draft Resolution attached to this Staff Report proposes altering the Municipal Code as follows:

1. Proposed Amendments to Section 17.12.220.

Prior to this endeavor, the definitions for "view," "view corridor" and "view impairment" were contained in Chapter 17.12 of the City Municipal Code; this Chapter contained all of the defined terms relied upon in applying the City's Zoning Ordinance. For clarity and consistency, and in order to assist persons unfamiliar with the City's Municipal Code (such as third-party mediators and arbitrators) in its application, Staff proposes moving all view-related definitions to the new Chapter 17.26.

Additionally, pursuant to the Planning Commission's direction, the definition of "view corridor" is proposed to be deleted from the Municipal Code.

2. Proposed Repeal and Replacement of Chapter 17.26.

A. *Intent and Purpose (17.26.010), Definitions (17.26.020).*

In this vein, the Intent and Purpose Section now explicitly recognizes that landscaping and trees contribute to the City's character and beauty; emphasizes that the purpose of the ordinance is to strike a balance between the rights of tree owner's and view seekers; and clarifies that it is not the City's intent to allow for clearcutting or other drastic measures.

Lastly, the draft Resolution proposes modifying existing definitions, while also incorporating some new ones. The new definitions include industry terms related to arboriculture. Where available, these definitions were taken from the online dictionary provided by the International Society of Arboriculture ("ISA")¹; otherwise, definitions

¹ See definitions for "crown," "crown raising," "heading back," "lacing," and "pruning."

were crafted based on the Planning Commission's direction and the documents provided by Mr. Spencer Karpf, Mr. Lynn Gill, the Proponents of Measure 2017 and the Ad Hoc Committee.²

i. "Established View/Pre-Existing View."

In contemplating the appropriate definitions for the view ordinance, the Planning Commission created a definition for "established view." In drafting the Resolution, Staff felt that the term "established" sounded too conclusory (*i.e.*, the entire purpose of the view ordinance is to determine whether or not a view is established); therefore, in the spirit of neutrality, Staff proposes replacing the term "established" with "pre-existing." In addition to this semantical change, Staff proposes the following additions to the definition of a "pre-existing view" (additions to the Planning Commission's requested language delineated by double-underline):

"Pre-Existing View" means the view that existed at any time, but not more than 10 years³, since the complainant's property was most recently purchased for fair market value through an arm's length purchase or sale, as evidenced by a deed. The pre-existing view cannot be the result of natural disaster or illegal activities.

Without the "ten-year" addition, the definition of "pre-existing view" would allow any homeowner to bring a view complaint at any time. Staff was unclear whether such a circumstance was the intent of the Planning Commission (especially because it reiterated throughout this process that "the view you bought is the view you get"). With the inclusion of the "ten-year" language, the Planning Commission's position would be preserved.⁴ Additionally, staff proposes the inclusion of the last sentence to harmonize this definition with the concerns raised by the residents and the Ad Hoc Committee - namely, that one is not entitled to a view which was created via natural disaster or illegal activity.

ii. "View."

Pursuant to the Planning Commission's previous direction, the definition of "view" has been modified, as follows (additions delineated by double-underline, deletions via strikethrough):

² See the definition for "maintenance." The definitions for "crown reduction" and "topping" have been crafted utilizing the ISA definitions for these terms, as well as the language contained in Measure 2017.

³ Staff is proposing ten years because (1) the medium growth-rate for a tree is between 13-24" per year (an average of about 19 inches) (see <https://www.arborday.org/Trees/treeguide/growth.cfm>); and (2) the average length of time a person resides in their home before selling it is about thirteen years (<https://www.nahb.org/en/research/housing-economics/special-studies/archives/how-long-buyers-remain-in-their-homes-2009.aspx>). This language may be modified or deleted, based upon the Planning Commission's consideration.

⁴ Without the "ten-year" language, this definition would essentially provide that: "the view you get is the view you bought and/or the view you can prove you had at any time"

~~"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, mountains, ~~city~~ lights of the Los Angeles basin, the Palos Verdes Hills and canyons, ~~the~~ or Los Angeles Harbor and/or Long Beach Harbor, and similar, as observed from a viewing point. A view may include structures or established vegetation in the foreground or background of the view seeker's property. A "view" may be observed from one or more viewing point and may be panoramic.~~

iii. "View Impairment."

Pursuant to the Planning Commission's previous direction, the definition of "view impairment" was modified, as follows (additions delineated by double-underline, deletions via strikethrough):

~~"View impairment" means any a significant interference with and obstruction of a pre-existing view by landscaping, trees or any other planted vegetation on another property within the City that diminishes that pre-existing view.~~

However, following further discussion of the view ordinance, the Planning Commission requested that additional protection for tree owners be implemented into the language of the new ordinance; it then directed Staff to utilize its best judgment in conceptualizing such protections. Therefore, Staff proposes amending the Planning Commission's definition of "view impairment" as follows (additions delineated by double-underline):

~~"View impairment" means any obstruction of a pre-existing view by vegetation on another property within 1,000 feet of the complainant's property within the City that diminishes that pre-existing view.~~

The inclusion of a distancing requirement would (1) create a subjective measurement which can be uniformly applied to each property within the City; (2) eliminate any unforeseen interpretation issues which may arise (*i.e.*, "maturity"); and (3) circumvent the need for the City to create a "protected tree" classification. Due to the large lot sizes within the City, Staff reasoned that 1,000 feet would be a fair (and meaningful) distance; however the Planning Commission may modify (*i.e.*, shorten/extend this distance), or delete this language altogether.

iv. "Viewing Point."

The Planning Commission created the definition of "viewing point" to include multiple panoramic views from "primary residences" and "accessory structures" (as well as pool decks and gazebos); but specifically excluding views from minor rooms (*i.e.*,

garages or closets). However, the Zoning Code includes definitions for both “primary residence” and “accessory structure;” these definitions would apply to the view ordinance, and include:

- Primary residence:
 - Porches
 - Patios
 - Decks
 - Balconies
- Accessory structure:
 - Animal pens
 - Aviaries
 - Cabanas
 - Corrals
 - Decks
 - Greenhouses
 - Guesthouses
 - Porte cocheres
 - Recreational game courts
 - Recreation rooms (including pool houses and hobby shops)
 - Riding rings
 - Run-in sheds
 - Sheds
 - Stables/barns
 - Free-standing storage rooms
 - Tack rooms

Based upon the variety of structures included within the definition of “accessory structure,” and Staffs’ understanding of the Planning Commission’s intent, the proposed definition of “viewing point” in the draft Resolution is as follows (additions delineated by double-underline):

“Viewing point” means any view from a primary residence, excluding views from minor rooms, such as garages or closets, and also includes views from accessory buildings or structures, including pool decks and gazebos, but excluding animal pens, aviaries, corrals, greenhouses, Porte cocheres, riding rings, run-in sheds, sheds, stables/barns, free-standing storage rooms, and tack rooms.

While lengthy, the language in the proposed definition would ensure consistent application, reflective of the Planning Commission’s intent.

It is important to note that the definition of “view” in the current ordinance does not include accessory structures, like guest houses or garages; specifically, the existing definition provides that a views may only be observed “from “ a principal residence...

and any immediately adjoining patio or deck area *at the same elevation as the residence....*" The new definition of "viewing point" will now include views from the primary residence (including porches, patios, decks and balconies) as well as from cabanas, decks, guesthouses, recreational game courts, and recreation rooms (including hobby shops and pool houses) at varying elevations.^{8B}

B. *Dispute Resolution Process (17.26.040).*

In order to trigger the dispute resolution process, the view seeker must complete the initial reconciliation process. The parties may request the assistance of an arborist, which the City will help them to locate. Attempts to resolve the dispute must be in writing and include a link to Chapter 17.26. If the parties are able to come to an agreement, the process ends here. Otherwise, the complainant may request mediation either because the vegetation owner failed to respond to any written attempts at reconciliation, or because the parties could not come to an agreement.

Mediation must be requested in writing and the parties have 60 days to accept or reject mediation. If rejected, the parties may either seek an advisory opinion from the Committee on Trees and Views (CTV) or may engage in arbitration. If mediation is accepted, (1) the parties will have 60 days to select a mediator (or one will be selected by the City); and (2) the mediator will be provided with a link to Chapter 17.26 and must reference Chapter 17.26 when rendering any opinion. The mediator's opinion is advisory, unless the parties choose to memorialize it into the language of an enforceable contract.

It should be noted, however, that under the language of the City's existing view ordinance, the City subsidizes a portion of the mediation costs and also selects the mediator. Under the language of the proposed Resolution, the parties would have to pay for the mediator themselves. (In applying the existing process, the City has seen a 50% success rate with mediation; however it is unclear whether the City's subsidy has bearing on that percentage.) The Planning Commission did not discuss the costs of mediation during its deliberations of this item and Staff is unclear as to whether the Planning Commission wishes to employ the current process and have the City continue to subsidize mediation, or whether its intent was to have the parties pay for mediation themselves. Staff is requesting direction as to this issue.

If the complainant does not agree with the recommendation of the mediator, the complainant may request a public hearing before the CTV. In so doing, the complainant is required to file a view impairment complaint requesting the advisory opinion of the CTV. The CTV will adopt an advisory resolution making recommendations to correct any adverse view impacts pursuant to the guidelines set forth in Sections 17.26.050 and 17.26.060. If the parties agree with the CTV's opinion, they may elect to have the language of the resolution memorialized into an enforceable contract; however, if either party does not agree with the opinion of the CTV, then the parties may proceed to arbitration.

At the arbitration phase, the parties may elect to enter into binding arbitration. If they do so, the City may subsidize a portion of the binding arbitration process. The parties will have 60 days to select an arbitrator, otherwise one will be selected by the City. The arbitrator shall be provided with a copy of Chapter 17.26 and shall reference Chapter 17.26 when rendering an award. If the parties do not select binding arbitration, then they will bear the full costs of arbitration and will have to submit to the procedures outlined by the selected arbitrator. A binding arbitration award may be enforced by a court of law; a non-binding arbitration award would have to be reduced to a contract between the parties in order to be enforceable.

C. *Restorative Action (17.26.060).*

This Section implements the Ad Hoc Committee's suggestion that a hierarchy of restorative action be implemented, starting with the least severe and graduating to the most severe. Certain amendments have been made to this Section; namely, Staff removed the "no action" option, as well as the "trimming/regular maintenance" option. The only time "no action" would be appropriate is when no significant view impairment exists; otherwise some level of restorative action will be necessary. If no significant view impairment exists, then no restorative action would be appropriate - therefore a "no action" option is superfluous. Additionally, homeowners within the City are required to trim and/or regularly main their trees - to reference such measures as restorative action is also superfluous.

D. *Considerations for Applying the View Equity Ordinance (Section 17.26.050).*

Section 17.26.050 lists factors to help the parties gather evidence and to help guide the mediator/arbitrator/CTV when sifting through said evidence. These factors are not mandatory - the parties are not required to provide this evidence - nor are they exhaustive or exclusive. In other words, these factors are unweighted, and if a party provides this evidence, it will be deemed relevant and must be considered by the mediator/arbitrator/CTV. This list is merely a tool to assist the parties in conceptualizing what information may be relevant and helpful to the mediator/arbitrator/CTV when considering the view complaint.

E. *Protections for Vegetation Owners (Sections 17.26.020, 17.26.030, 17.26.050, 17.26.060).*

The proposed "ten-year" language in the definition of "pre-existing view" (see Section 17.26.020) would protect tree owners from view seekers filing a view complaint after some unreasonable amount of time has passed. This language would cause view seekers to remain diligent while also creating a further impediment for view seekers to benefit from any inattentiveness.

The distancing requirement included within the proposed definition of “view impairment” would create further protections for vegetation owners by narrowing the scope of those properties which could be impacted by a view impairment complaint to those properties which are within 1,000 feet (the Planning Commission may shorten/extend/eliminate this distance provision) of the view seeker. Properties more than 1,000 feet from the view seeker cannot be required to perform any restorative action required by a view impairment claim. Furthermore, Section 17.26.030 of the proposed Resolution would preclude a view seeker from including any property which is more than 1,000 feet from their real property boundary in any view impairment claim.

The proposed definition of “viewing point” helps to clarify where on a property a view may exist, and eliminates from consideration a large number of accessory structures and incidental locations; thereby limiting the number of trees/vegetation which could be implicated in a view impairment claim.

Section 17.26.050 helps highlight which considerations a mediator/arbitrator /CTV may take into consideration when determining whether significant view impairment exists. These considerations not only include the types of evidence a view seeker may want to present, but also the types of evidence a vegetation owner may wish to rely on in order to establish that little or no restorative action is appropriate.

Lastly, Section 17.26.060 lays out the City’s preferred means of restorative action and explains that such action shall be implemented as a graduating scale depending on the severity of the view impairment. This hierarchy protects the vegetation owner by taking the guesswork out of the hands of the mediator/arbitrator/CTV by providing a formulaic approach.

F. *The Committee on Tress and Views (17.26.070) and Removal of Previous Section related to “Desirable and Undesirable Trees.”*

The language of Section 17.26.070 was taken from the existing view ordinance and has been modified to provide that the CTV shall provide advisory opinions only.

The language in this Chapter related to “desirable and undesirable trees” has been removed. The City is no longer enforcing the provisions of Chapter 17.26; therefore this provision seemed out of place.

G. *Enforcement and Liability (17.26.090).*

Due to the fact that the City will only be rendering advisory opinions, this Section explains that the City will not be responsible for enforcing any recommendations made by a mediator, arbitrator or otherwise. This Section also explains that the City shall not be liable for any recommendations made by a mediator, arbitrator or otherwise. Lastly, any failure to comply with the provisions of Chapter 17.26 is not a violation of the Municipal Code and will not be enforced by the City.

ALTERNATIVES

The following alternative actions are available to the Planning Commission:

1. Adopt the draft Resolution, with modifications; or
2. Continue the item with direction to staff to provide further modifications or information.

THIS PAGE INTENTIONALLY LEFT BLANK

RESOLUTION NO. ____

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ROLLING HILLS RECOMMENDING THAT THE CITY COUNCIL APPROVE A ZONING TEXT AMENDMENT TO THE ROLLING HILLS MUNICIPAL CODE TO AMEND SECTION 17.12.220 OF CHAPTER 17.12 (DEFINITIONS); AND TO REPEAL AND REPLACE CHAPTER 17.26 (VIEW PRESERVATION) IN ORDER TO ESTABLISH AN ADVISORY PROCESS FOR THE RESTORATION OF VIEWS OBSTRUCTED BY VEGETATION.

The Planning Commission does hereby resolve and order as follows:

Section 1. Recitals.

1. The adoption of Measure B in March 2013 by the electorate has led to practical difficulties in the application of Chapter 17.26 of the Rolling Hills Municipal Code (the City's view preservation ordinance);
2. The City Council appointed a subcommittee to work collaboratively with a group of residents to rewrite the view preservation ordinance in order to address the ambiguities and uncertainties that hamper its effective application and enforcement;
3. On November 20, 2016, the City Council directed the Planning Commission to commence discussions and public hearings relative to the concepts and ideas that were developed by the subcommittee and the residents; and
4. From January 17, 2017 to April 18, 2017, the Planning Commission conducted duly noticed public forums and accepted and considered all of the public testimony on this issue, following which the city attorney was instructed to make specified changes to the view preservation ordinance, and staff was directed to schedule a public hearing.

Section 2. The Planning Commission finds that this resolution is not subject to the California Environmental Quality Act (CEQA) pursuant to the following sections of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3: (i) Section 15031(b)(3) (CEQA only applies to activities which have the potential for having a significant effect on the environment); (ii) Section 15060(c)(3) (the activity is not a project as defined in Section 15378); and Section 15061(b)(3) (the proposed amendments will not in itself result in any environmental impacts nor will the amendment result in any changes in the physical conditions that exist in the City).

Section 3. Based on the foregoing, the Planning Commission of the City of Rolling Hills hereby recommends that the City Council approve Zoning Text Amendment No. 2017-01, attached hereto as Attachment A.

PASSED, APPROVED AND ADOPTED THIS _____ DAY OF _____ 2017.

-DRAFT -

BRAD CHELF, CHAIRMAN

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.

-DRAFT -

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

I certify that the foregoing Resolution No. _____ entitled:

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ROLLING HILLS RECOMMENDING THAT THE CITY COUNCIL APPROVE A ZONING TEXT AMENDMENT TO THE ROLLING HILLS MUNICIPAL CODE TO AMEND SECTION 17.12.220 OF CHAPTER 17.12 (DEFINITIONS); AND TO REPEAL AND REPLACE CHAPTER 17.26 (VIEW PRESERVATION) IN ORDER TO ESTABLISH AN ADVISORY PROCESS FOR THE RESTORATION OF VIEWS OBSTRUCTED BY VEGETATION.

was approved and adopted at a regular meeting of the Planning Commission on _____, 2017 by the following roll call vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

Administrative Offices.

HEIDI LUCE, CITY CLERK

ATTACHMENT A

Section 1. The list of alphabetical definitions of Section 17.12.220 ("V" words, terms and phrases) of Chapter 17.12 (Definitions) of Title 17 (Zoning) of the Rolling Hills Municipal Code is hereby amended to remove the definitions for "View," "View Corridor," and "View Impairment."

Section 2. Chapter 17.26 (View Preservation) of Title 17 (Zoning) of the Rolling Hills Municipal Code is hereby repealed in its entirety, and replaced with the following language:

Chapter 17.26 - VIEW PRESERVATION

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 landscaping located on private property. The City also recognizes the desire of many of its residents and property owners for beautiful and plentiful landscaping, including trees. The City realizes that this desire may sometimes conflict with the preservation of views, and that disputes related to view obstruction are inevitable. It is the intent of the City that the provisions of this chapter are thoughtfully and reasonably applied so as to strike an equitable balance between the right to reasonable use of one's property and the right to protection against unreasonable loss of views. It is not the intent of the City to encourage the clear-cutting or substantial denuding of any property of its trees by overzealous application of the provisions of this Chapter.

17.26.020 - Definitions.

"Crown" means the upper part of a tree, measured from the lowest branch, including all the branches and foliage.

"Crown raising" means the selective removal of lower limbs from a tree crown to provide clearance.

"Crown reduction" means the method of reducing the height and/or spread of a tree crown by making appropriate pruning cuts. This definition also includes reducing the top, sides or individual limbs of a tree by means of removal of the longest portion of limbs to a lateral limb large enough to assume the tree's growth.

"Heading back" means cutting a shoot back to a bud or cutting branches back to buds, stubs, or lateral branches not large enough to assume apical dominance.

"Lacing" means the selective removal of live branches to provide light or air penetration through the tree or to lighten the weight of the remaining branches.

"Maintenance" means pruning a tree with the primary objective of preserving or improving tree health and structure and enhancing aesthetics.

"Pre-Existing View" means the view that existed at any time, but not more than 10 years, since the complainant's property was most recently purchased for fair market value through an arm's length purchase or sale, as evidenced by a deed. The pre-existing view cannot be the result of a natural disaster or illegal activities.

"Pruning" removing branches (or occasionally roots) from a tree or other plant using approved practices, to achieve a specified objective.

"Topping" means cutting back a tree to a predetermined crown by cutting back large diameter branches to stubs and/or truncating the main stem/trunk in order to limit or reduce tree size.

"View" means a visually impressive scene or vista, such as the Pacific Ocean, off-shore islands, mountains, lights of the Los Angeles basin, the Palos Verdes Hills and canyons, the Los Angeles Harbor and/or Long Beach Harbor, and similar, as observed from a viewing point. A view may include structures or vegetation in the foreground or background of the view seeker's property. A "view" may be observed from one or more viewing point, and may be panoramic.

"View impairment" means any obstruction of a pre-existing view by vegetation on another property within 1,000 feet of the complainant's property within the City that diminishes that pre-existing view.

"Viewing point" means any view from a primary residence, excluding views from minor rooms, such as garages or closets, and also includes views from accessory buildings or structures, including pool decks and gazebos, but excluding animal pens, aviaries, corrals, greenhouses, porte cocheres, riding rings, run-in sheds, sheds, stable/barns, free-standing storage rooms, and tack rooms.

17.26.030 - View impairment complaint considerations.

Subject to other provisions of this Chapter, a property owner may initiate a view impairment complaint by way of the process set forth in section 17.26.040. However, a complaint for preserving or restoring a pre-existing view may only be made regarding any vegetation located on real property that is within one thousand (1,000) feet from the complainant's real property boundary. A person shall not be precluded from filing a view impairment complaint on grounds that vegetation located on the complainant's property contributes to impairment of the requested view. A person who has obtained a recommendation abating impairment of a view against a property shall not be precluded from filing a subsequent complaint to abate impairment of the same view by vegetation on another property.

-DRAFT -

17.26.040 - View Impairment Dispute Resolution Process.

The complainant shall follow the process established by this Chapter in seeking preservation or restoration of a pre-existing view.

A. Initial Reconciliation.

1. A complainant whose preexisting view is impaired shall first seek to informally resolve the impairment with the vegetation owner. The initial notification to the vegetation owner must be in writing, include a link to this Chapter and contain the following language: "Failure of the vegetation owner to respond to the written request for initial reconciliation within sixty (60) days from the date on the notification shall be deemed formal refusal by the vegetation owner to participate in the initial reconciliation."
2. During the initial reconciliation, the parties may request assistance from a certified arborist. The City may provide a link to the International Society of Arboriculture to allow residents to search for a certified arborist. If the parties reach an agreement, there is no need to file anything with the City. If initial reconciliation is refused, or if the parties do not agree as to the existence and nature of the complainant's obstruction and the appropriate restorative action, the complainant may proceed with mediation.

B. Mediation.

1. If the initial reconciliation does not yield a resolution of the complaint, and the complainant wishes to further utilize the procedures under this Chapter, then the complainant must request, in writing, that the vegetation owner enter into mediation. The vegetation owner shall have sixty (60) days from the date of the request for mediation to accept or reject the request in writing. The vegetation owner's failure to respond within sixty (60) days will be deemed a formal refusal of mediation and the complainant may proceed to an advisory hearing before the Committee on Trees and Views.
2. The participants will have sixty (60) days from the date of the filing of acceptance of mediation to select a mediator. If they cannot agree on a mediator within sixty (60) days, they may jointly request that the City select a mediator. Any mediator which is selected pursuant to this subsection shall be provided with a link to a copy of this Chapter.
3. The mediator shall be guided by the provisions of this Chapter, including the evaluation criteria set forth in Section 17.26.050, and the hierarchy of restorative actions set forth in Section 17.26.060, respectively, in attempting to resolve the view impairment complaint. The mediator shall also consider the recommendations of any arborists or experts regarding landscape techniques and/or maintenance procedures.

-DRAFT -

4. The mediator's recommendation shall be advisory. Any agreement reached by the parties as a result of the mediation process described herein shall be reduced to writing and shall include steps for maintenance measures and any associated costs. The agreement shall be signed by all of the parties and may be submitted to the City.

C. *Advisory Opinion.* If the complainant is not satisfied by the recommendation of the mediator, the complainant may request a public hearing before the Committee on Trees and Views.

1. *View Impairment Complaint – Required Information.* A view impairment complaint shall consist of the following information:
 - a. A description of the nature and extent of the view, as well as of the alleged obstruction. If multiple views are identified, each must be disjointed and observable from a separate viewing area. Evidence of the views and alleged obstructions must be pertinent and may include, but is not limited to, documentary evidence, dated photographs, or written declarations. Evidence must include the date the property was purchased by the complaining party.
 - b. A description of the type and location of all vegetation alleged to cause obstruction, the address of the property upon which the obstructing vegetation is located, and the present vegetation owner's name and address.
 - c. Documentary evidence establishing that attempts at initial reconciliation (as described in Section 17.26.040(A)) and mediation (as described in Section 17.26.040(B)) have been made and have failed to resolve the dispute.
 - d. The view impairment complaint fee in the amount established by resolution of the city council. Additional funds may be requested as the process continues.
2. *View Impairment Complaint – Processing.* City staff will review the complaint. If staff determines that the complaint is incomplete, a letter will be mailed to the complainant stating what is needed to complete the complaint within sixty (60) days from the date of the letter. If the complaint is deemed complete, staff will process the complaint and prepare a notice pursuant to the requirements in Section 17.26.040(C)(4)(a)-(b), below. If the parties to a complaint voluntarily elect to resolve the issue privately at any time following the filing of the complaint, and notify the City of same, the City shall suspend the hearing before the Committee on Trees and Views until such time as the parties notify the City that they have resolved the issue (thereby eliminating the need for a hearing) or that they are unable to resolve the issue and wish to proceed with the hearing.

3. *View Impairment Complaint – Withdrawal.* A complaint shall be deemed withdrawn and all proceedings shall be terminated with respect thereto, without prejudice, if:
 - a. The parties to a complaint notify the City that it has been voluntarily resolved;
 - b. The complainant fails or refuses to provide supplemental information requested by the City;
 - c. The complainant fails or refuses to pay the cost of the expert services;
 - d. The complainant requests a delay of the proceedings for more than one hundred eighty (180) days (unless good cause exists for the delay); or
 - e. The hearing before the Committee on Trees and Views is suspended by the parties to a complaint for more than one hundred eighty (180) days.
4. *View Impairment Complaint – Review by Committee on Trees and Views.*
 - a. *Notice Required.* The City shall provide notice of the hearing a minimum of fifteen (15) days prior to the hearing. The hearing shall not proceed unless proof is shown that the vegetation owner received notice of the hearing as provided herein:
 - i. Notice shall be given by certified mail, return receipt requested, to the owner of the tree or other obstructing vegetation and to the complainant;
 - ii. 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 or parties, the name of the property owner against whom the complaint is filed, a brief description of the tree(s) or other vegetation at issue, 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 hearings. At the hearing, the Committee shall consider all written and oral testimony and evidence presented in connection with the complaint. If during the course of the proceedings it is discovered that information submitted in a complaint is inaccurate or incomplete such that it could be misleading, or a significant change has occurred impacting either the pre-existing view or the obstruction, an applicant may be directed to amend the

complaint 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.

- d. *Findings.* The Committee shall be guided by the provisions of this Chapter, including the evaluation criteria set forth in Section 17.26.050, and the hierarchy of restorative actions set forth in Section 17.26.060, respectively, in attempting to resolve the view impairment complaint. Based on the evidence received and considered, the Committee shall make any of the following findings and adopt an advisory resolution in support of the foregoing determination:
- i. That no view exists within the meaning of this chapter;
 - ii. That a view exists within the meaning of this chapter, but that the view is not significantly impaired; or
 - iii. That a view exists within the meaning of this chapter and that it is significantly impaired.

The Committee shall make specific written findings in support of the foregoing determinations.

- e. *Recommendation.* If the Committee finds that a pre-existing view exists within the meaning of this chapter and that it is impaired pursuant to the conditions outlined in Section 17.26.050, it shall recommend such restorative action as is necessary to abate the view impairment, pursuant to section 17.26.060 of this Chapter. The Committee may recommend conditions as are necessary to prevent future view impairments.
- f. If the parties agree with the Committee's advisory resolution, they must notify the City in writing within fifteen (15) days of adoption. As described in Section 17.26.060(B), the complainant may bear the cost of the initial restorative action, unless the parties agree to share the costs in some other manner. The City shall not be responsible for enforcement of the Committee's advisory resolution. Within sixty (60) days of the date of the advisory resolution, if either or both parties disagree with the advisory resolution and wish to pursue arbitration, the disagreeing party must notify the City in writing that they wish to proceed with arbitration.
- D. *Arbitration.* If the vegetation owner does not participate in mediation or mediation is unsuccessful or if either or all of the parties disagree with the Committee's advisory opinion, and the parties voluntarily pursue resolution by binding arbitration. The

-DRAFT -

following provisions establish the procedures required of the parties prior to any City reimbursement related to arbitration.

1. The parties shall have sixty (60) days from delivery of the request for arbitration to either accept or decline arbitration. Failure to respond within sixty (60) days shall be deemed formal refusal of arbitration. If arbitration is accepted, the parties shall agree in writing to the selection of an individual arbitrator within sixty (60) days of such acceptance. If the parties are unable to agree on a specific arbitrator within sixty (60) days, they may jointly request that City staff randomly select an arbitrator.
2. The arbitrator shall be guided by the provisions of this chapter in attempting to resolve the view impairment complaint. The decision of the arbitrator shall be submitted to the parties in writing and shall include the arbitrator's findings with respect to Sections 17.26.050 and 17.26.060 of this Chapter. A copy of the arbitrator's report shall be filed with the City. Any decision of the arbitrator shall be enforceable pursuant to the provisions of Code of Civil Procedure section 1280, *et seq.*
3. The complainant and vegetation owner shall each pay fifty (50) percent of the costs of arbitration (unless the parties agree otherwise or allow the arbitrator discretion in allocating costs); at the conclusion of arbitration, the City shall reimburse the parties up to a predetermined amount established by City Council resolution.

17.26.050 - Considerations for applying the view preservation ordinance.

A. The following nonexclusive factors, for which the parties can prove by a preponderance of the evidence, are to be considered in determining whether a pre-existing view has been obstructed:

1. The viewing point(s) from which the view is observed;
2. The extent of the view obstruction, both currently and at the maximum height the tree/vegetation is likely to reach (as described by the most current edition of the New Sunset Western Garden Book);
3. The quality of the view, including the existence of landmarks, vistas, or other unique view features;
4. The extent to which trees and/or vegetation have grown to obscure the enjoyment of the view from the claimant's property since the claimant acquired his/her property;

-DRAFT -

5. The extent to which the vegetation on the property preserves privacy (visual and auditory), wind screening, energy conservation, and/or climate control; and
 6. The extent to which the vegetation owner can establish the earliest known date when the complained of vegetation was planted or existed on the vegetation owner's real property.
- B. The following applicable, nonexclusive factors, for which the parties can prove by a preponderance of the evidence, may be considered in determining the appropriate restorative action, if any is necessary:
1. The variety of tree, its projected rate of growth (as described by the most current edition of the New Sunset Western Garden Book) and maintenance requirements;
 2. The aesthetic quality of the tree(s), including but not limited to species characteristics, size, growth, form and vigor;
 3. Location with respect to overall appearance, design or use of the tree owner's property, including, but not limited to blending, buffering, or reduction in the scale or mass of a structure;
 4. Soil stability provided by the tree(s), considering soil structure, degree of slope and extent of the tree's root system;
 5. Privacy (visual and auditory) and wind screening provided by the tree(s) to the tree owner and to neighbors;
 6. Energy conservation and/or climate control provided by the trees;
 7. Wildlife habitat provided by the trees; and
 8. The extent to which the vegetation owner can establish the earliest known date when the complained of vegetation was planted or existed on the vegetation owner's real property.

17.26.060 - Restorative Action.

- A. Restorative actions may include, but are not limited to, the following, in order of preference, assuming no countervailing health or safety interest(s) exist:

1. *Lacing*. Lacing is the most preferable pruning technique that removes excess foliage and can improve the structure of the tree.
 2. *Crown Raising*.
 3. *Crown Reduction*. Crown reduction is preferable to tree removal, if it is determined that the impact of crown reduction does not destroy the visual proportions of the tree, adversely affect the tree's growth pattern or health, or otherwise constitute a detriment to the tree(s) in question.
 4. *Heading Back*. Heading back is only to be permitted for trees specifically planted and maintained as a hedge, espalier, bonsai, or in pollard form and if restoration actions in sections (A) through (C) of this section will not accomplish the determined preservation action and the subsequent growth characteristics will not create a future obstruction of greater proportions.
 5. *Topping*.
 6. *Removal*. Removal may be considered when the above-mentioned restoration actions are judged to be ineffective and may be accompanied by replacement plantings or appropriate plant materials to restore the maximum benefits lost due to vegetation removal.
- B. Restorative action shall include written conditions (including ongoing maintenance), directions, and a schedule by which the mandates must be completed, and may be made to run with the land and apply to successors in interest. The complainant may bear the cost of the initial restorative action, unless the parties agree to share the costs in some other manner. Subsequent maintenance of the vegetation in question may be performed at the cost and expense of the owner of the property on which the vegetation is growing, unless otherwise agreed to by the parties or required pursuant to any final arbitration agreement or court order. The vegetation shall be maintained so as not to allow for future view impairments.
- C. In cases where restorative action may affect the health of a tree, such actions should be carried out in accordance with standards established by the International Society of Arboriculture for use in the state of California. Severe pruning should be avoided due to the damage such practice causes to the vegetation's form and health. Where removal is required, replacement by appropriate species should be considered.

17.26.070 - Committee on trees and views.

A Committee on Trees and Views is established for the purpose of administering advisory recommendations pursuant to section 17.26.040(C) 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.

-DRAFT -

17.26.080 - Enforcement and Liability.

- A. Under no circumstances shall the City have any responsibility to enforce or seek any legal redress, civil or criminal, for any decision that any other person or entity makes concerning a view impairment complaint.
- B. The issuance of mediation findings, an arbitration award, or a court decision shall not create any liability of the City with regard to the restorative actions to be performed.
- C. A failure to comply with the provisions of this Chapter is not a violation of this code, and the enforcement of this Chapter shall be only by the affected and interested private parties.

THIS PAGE INTENTIONALLY LEFT BLANK

City of Rolling Hills
Planning Commission
June 26, 2017

RECEIVED

JUN 26 2017

City of Rolling Hills

To Whom It May Concern,

My name is Laura Gregorio and with my husband Joe we reside at 45 Eastfield Drive. We have had multiple homes in the city of Rolling Hills and have had issues with trees blocking views at each one of the homes we have owned.

For the most part, neighbors are kind and are fully able to allow trimming of the trees provided you pay for the trimming. Which for Joe and I is not an issue... we figure we ask, we will pay. However, why is it not something that the person of whose trees you trimmed does not keep up the trimming? Joe and I end up having to ask time and time again to allow us to please trim trees. It is an exercise that we should not have to undertake over and over again. Maybe you can find some way to resolve issues between neighbors once the trees have been trimmed regardless of how old the tree is or type of tree or expanse of view.

Another issue we have is when a tree that did not exist winds up growing from some sort of seedling dropped by a bird or as a stray Eucalyptus tree. Euc's seem to pop up in dense colonies and are nothing more than nuisances whom self-trim if you don't take care of them anyway so why not filter through some of the dense populations and make room for some sunshine.

Currently we have a neighbor (44 Eastfield – Mr. Kunkle) of which has no mailbox, does not answer their phone, has a chain-link fence (how the city allows this to remain is beyond me) and does nothing to respond when you leave a note attached to their chain-link fencing. We have arbitrated, per the city's request, with our neighbor but even the arbitrator had no success with these neighbors. The neighbors have a Euc that is growing up into our view which was not in our view line when we purchased the house. We have asked the best way we can to allow us to please, please trim the tree, not cut it down, but just trim it out of our sightline. The only response we ever got which was not related to us through a tree trimming service who happened to be driving down the street while the neighbor was outside of his chain-link fence, was to get an appraisal and see what the value of our house would be with and without the tree in our view... then he wanted the difference in value given to him then we could trim the tree. Well, we never got that far because they had no further communications with us.

Views are a part of this city whether anyone likes it or not... 50 years ago there were no trees or at least not this many and people had amazing views. Some of the streets in our city have pastoral views and some have coastal or city views or no view at all. Over the years different people move in and out and different people are going to want a different result from their home. Who wants horses, who wants pools, who wants tennis courts.... The list goes on and one.

Where the trees are concerned, everyone is on different pages and everyone has different reasons for buying whatever home that they own and I do not think too many people buy a house specifically for the trees on anyone else's lot but surely because of what is on the lot they are purchasing.

The tree issue is out of control because we voted on a measure that lied to us all. In all honesty the tree situation is ridiculous. Sometimes you get lucky and a new owner cuts or trim trees which open up views to neighbors around them once again. Sometimes neighbors just agree to allow another neighbor to trim a tree. It is not a crime to trim a tree. It is not a crime to allow sunshine to hit the ground around someone's home and it is not a crime to enjoy a gorgeous view. It is also not a crime to have a tree. But, I ask myself: Who really needs an 80' tree?? Who really needs an entire grove of them standing side by side?? Why can't the trees and the view get along?? Why can't Rolling Hills City Council/Planning Commission fix this issue once and for all by allowing you to keep the view you bought regardless how small or how large that view is and IF you are so lucky as to obtain a view in the future then why can't you submit photos or call out the city to take them to help the homeowner preserve that view going forward. And if that home is an old home passed down for generations then you get the view your great-grandpa had... who had the right to take that view from him anyway?? You have a photo then go get your view!! Most of these homes are not like that and that entire argument was silly in my opinion. You may have a few homes that have a generational issue but so be it... good for them. Those homeowners should have special treatment if they can keep a home for all of those years and allow that home to live on with that family.

It is not my intention to ask every homeowner to run around and make all of their trees 10' tall but it is my hope that the Commission will take in to account the amount of money some of us have spent on homes that already had amazing views only to see them shrunk down by first one Euc, then a second, then another and when asked if they could please get that view back by simply maintaining an annual tree trimming, you are faced with negative remarks...told you have too much view or you are just not a nice person or you just hate trees. No one paid for our home but us and no one should be able to disrupt what we paid for by allowing a tree to grow to such a height that the tree interrupts the view and takes a bite out of the value of a property of which we paid and maintain.

Thank you for your time and consideration in reading our letter.

Joe and Laura Gregorio
45 Eastfield Drive

