



City of Rolling Hills

INCORPORATED JANUARY 24, 1957

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**PLANNING COMMISSION
PUBLIC FORUM ON VIEW PRESERVATION**

STAFF REPORT ATTACHMENT

**#4
BALLOT MEASURE FOR MARCH 2013**

TITLE AND SUMMARY
PREPARED BY THE CITY ATTORNEY

AN ORDINANCE AMENDING THE VIEW PRESERVATION ORDINANCE BY
LIMITING VIEW RESTORATION TO VIEWS THAT EXISTED AT THE TIME OF
PROPERTY ACQUISITION, PROTECTING MATURE VEGETATION, AND
ESTABLISHING THE VIEW APPLICANT'S BURDEN OF PROOF

The purpose of this initiative is to place on the ballot a proposed ordinance that would make changes to the City's view preservation ordinance. The definition of a protected "view" in the view preservation ordinance would be limited to the view that existed when the property was acquired by the current property owner. Under the proposed ordinance, already mature vegetation would be exempt from alteration to protect a view and the view applicant's burden of proof would be specifically defined.

The City's current view preservation ordinance protects views from properties regardless when the properties were acquired or when the view obstructing vegetation was planted or matured. Current law allows a property owner to apply to the City for restoration of a view that would be available from the property but for the existence of vegetation on a neighboring property. Under current law, it is not relevant whether a view existed on the property acquisition date or when the obstructing vegetation was planted or matured to the point where it impaired a view. The City's decision is judged based on whether there is substantial evidence in the record to support the findings that a view exists and is being impaired by vegetation.

The proposed ordinance would change current law by establishing a baseline view at the time of acquisition of the property. Under the proposed ordinance, a property owner would only be entitled to seek restoration of a view that existed at the time of acquisition. Under the proposed ordinance, vegetation that was already "mature" at the time of property acquisition would be exempt from any restorative actions. The burden of proof would be on the current property owner to demonstrate by "clear and convincing" evidence (such as photographs) that the view to be restored existed on the date that the property was acquired. As proposed, restorative action would not be intended to create unobstructed views, but instead would be limited to creating view corridors and views through trees.

The proposed ordinance states that it is to be applied retroactively. This would ordinarily mean that it would apply to any application for view restoration that is pending or is filed after the ordinance takes effect.

A full copy of the proposed ordinance is printed on this petition for review by any prospective signer.

Chapter 17.26 of the Ordinance of the City of rolling Hills, "View Preservation", is amended in the following respect only:

Section 17.26.090 is added, and reads:

"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 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 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.
4. Chapter 17.26.050 E is clarified to add the following two sentences after the first sentence thereof: 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.
5. "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."