



# *City of Rolling Hills*

INCORPORATED JANUARY 24, 1957

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**Agenda Item No: 6-A**  
**Mtg. Date: 11-15-12**

**TO: HONORABLE CHAIRMAN AND MEMBERS OF THE PLANNING COMMISSION**

**FROM: ANTON DAHLERBRUCH, CITY MANAGER  
YOLANTA SCHWARTZ, PLANNING DIRECTOR**

**SUBJECT: PUBLIC FORUM REGARDING POTENTIAL CHANGES TO VIEW ORDINANCE, SECTIONS 17.12.220 AND 17.26 OF THE ROLLING HILLS MUNICIPAL CODE**

**DATE: November 9, 2012**

**ATTACHMENTS:**

1. Staff response to public comments at October 4, 2012 public forum
2. Summary of public comments and topics at August 9, 2012 and October 4, 2012 public forums

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**RECOMMENDATION**

At its meeting of June 25, 2012, the City Council directed that the Planning Commission (Commission) review the City's View Ordinance (Municipal Code Sections 17.12.220 and 17.26) and consider whether to recommend changes to it. The Commission subsequently held public forums on August 9, 2012 and October 4, 2012 at which time public comments were received and the Planning Commission set forth the topics it would like to address. At this meeting, it is recommended that the Commission begin discussing the items on its agenda and establish a meeting date to continue the discussion. After completing discussion of the items on the agenda, it would be appropriate for the Commission to formulate its ideas for potential changes to the View Ordinance, have a joint meeting with the City Council to discuss its findings and recommendations and proceed thereafter with a public hearing following direction received from the City Council.

## BACKGROUND

At its meeting of October 4, 2012, the Planning Commission (Commission) identified the following topics for discussion relative to potentially modifying the City's existing View Ordinance:

1. Liability costs and indemnifying the City; reducing the City's risk and litigation costs.
2. The location of the view site(s) and whether it is a "corridor" or "panoramic" view.
3. Having clear and understandable terminology of the ordinance.
4. Defining "or" and "and" relative to the definition of a view.
5. "Creating" versus "restoring" a view and, if there should be a date for designating the existence of a view, what is the date?
6. RHCA regulations pertaining to view restoration.
7. If the City should have a view ordinance. What would it look like not to have a view ordinance? Or, is the existing view ordinance adequate?
8. What is legal and defensible in a view ordinance?
9. Responsibilities of the complainant and the tree owner for long-term maintenance of trees in the view.
10. If a private resolution among the complainant and tree owner should be formalized/memorialized by the City.
11. The appropriate number of trees in the City.
12. Having a "sunset clause" with the ordinance for re-evaluation of it after 5, 10 or 15 years.
13. Resident survey.
14. The involvement of a 3rd party consultant available to the City during the complaint and restoration process.

The November 15 meeting and those thereafter, as necessary, are for the Commission to discuss each one of these topics and formulate recommended changes (if any) to the View Ordinance.

## DISCUSSION

On November 15, Rolling Hills Community Association (RHCA) Manager Kristen Raig is scheduled to provide a brief oral explanation of the RHCA's view regulations (#6) with specific focus on how it has been structured to reduce the RHCA's exposure to risk and cost. She will be followed by Assistant City Attorney Elizabeth Calciano who will discuss the following:

- A. Options for reducing the City's exposure to risk, costs and liability within a View Ordinance and how (where) the City's existing ordinance would change to reflect a different approach to and level of risk, cost and liability (#1); whether a private agreement between property owners can be made formal by City approval and what it would mean if that were part of the process (#10).

Discussion: The greater control that a city wants to exert over view preservation disputes, the greater the costs and risks it will incur from administration and litigation. In considering this issue, the Commission may want to review again the staff report dated August 9, 2012, which explained in general the three types of view ordinance models. They ranged from those ordinances where the city exerted the least control - the Tiburon Model - to those where the city exerted the most control - the Rancho Palos Verdes model. In the Tiburon Model, for example, the City simply creates a privately enforceable right to a view that greatly diminishes the City's administrative role and risk of liability.

Ultimately, the model chosen is a policy decision and not a legal determination. The action that would result in the least litigation would be the repeal of the view ordinance entirely. But in the past, the City Council has preferred to exercise some control over views. And courts have generally upheld a city's right to do so as long as it is done rationally and fairly.

B. What is legal and defensible within a View Ordinance (#8),

Discussion: In general, view ordinances and decisions made pursuant to such ordinances have been upheld against legal challenges in reported case law. However, there are only a few such cases, so this area of the law is still developing. Further, no matter how perfect a view ordinance is, if it is applied arbitrarily or capriciously, the courts will likely invalidate such a decision.

That said, there are certain provisions that can be defined further in the City's view ordinance. As referenced under Topics of Discussion in the August 9, 2012 staff report, some of the points to consider may be whether "restore" or "restorative action" should be defined more specifically, whether "view" should be defined as either a "corridor" or "panoramic" view, whether a provision requiring indemnification by the applicant should be included, whether a procedure to recover administrative costs, and in particular CEQA costs, should be considered, and the correction of the typographical error at Section 17.26.010.

Further, some cities take an approach that provides much more specific guidance in the application of the ordinance. There is less flexibility in such ordinances, but that means there is also less opportunity for ambiguity, which might lead to challenges. The Beverly Hills ordinance, in Attachment #2 to the August 9, 2012 staff report is a good example of this type of ordinance. See, for example, the specific definition of a "Safe Harbor Plane" contained in the Beverly Hills ordinance. Of course, the downside of greater specificity is that the requirements need to be followed correctly, and thus there is more opportunity for error.

Again, whether to include more specificity in the City's view ordinance is a policy decision.

Following Ms. Calciano's presentation, it is recommended that the Commission discuss the information provided and determine how, if at all, it would like to modify the existing ordinance on these topics.

Should the Commission determine that the City should have an ordinance and that the existing ordinance needs to be clarified and amended, time permitting, the Commission may then want to consider the location of the view site(s) and whether it is a "corridor" or "panoramic" view (#2) and, the definition of "or" and "and" relative to the definition of a view (#4).

The Commission is also asked to schedule another meeting to continue discussing items on the agenda and advise staff of what it would like to discuss among those remaining on the list.

### **OTHER MATTERS FOR CONSIDERATION**

A separate question has arisen as to whether the City Council or the Trees and Views Committee can delegate to the City Manager or a third party the permission to decide the amount of cutting necessary to provide a view so that determination is made when the actual trimming is occurring. While private parties who cooperate to create a view often use this process, the view ordinance requires that the Trees and Views Committee, and on appeal, the City Council, make this determination at the time the decision is issued. A decision that does not clearly state how much the trees will be trimmed does not provide sufficient information to enable the parties to determine whether and on what basis they should seek review; such a decision would be vulnerable to challenge for failing to do so. (See, for example, *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 514.

### **NOTIFICATION**

Notice of this meeting to inform the community was included in City newsletter and the agenda was mailed to those residents who previously expressed interest in this topic and who spoke at the October 4, 2012 meeting. The staff report and the agenda is available on the City's website and was provided to the RHCA.

### **CONCLUSION**

When the Planning Commission has identified specific changes it desires to consider as modifications to the existing View ordinance, staff recommends a joint meeting with the City Council to discuss its findings and recommendations. Thereafter, with the City Council's direction, staff will prepare a Resolution for consideration at a public hearing recommending an ordinance modification to the City Council.

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	<b>Public Comment</b>	<b>General information in response</b>
1	Don't copy another municipality's ordinance.	At the City Council's direction, the Planning Commission is evaluating the City's existing View ordinance to determine what, if anything should be modified. Other municipal ordinances have been provided to the Commissioners as reference material to be illustrative of features, provisions and concepts in place in other communities, some of which may be useful and some not in considering changes to the City's ordinance. There is value in not re-inventing the wheel, but the City's laws should be tailored to the City's unique circumstances.
2	The process should be consistent relative to determining whether or not there is a view impairment. It is unfair to be denied a view restored when others are successful in getting a view restored. A view should not be provided for a property that never had one.	Since adoption of the City's ordinance, the determination of whether a view exists and whether it is impaired has been consistent. The ordinance has protected views that would exist from a property but for the existence of obstructing vegetation, regardless of the view that existed when the property was acquired. In other words, the ordinance reflects the guiding principles of the General Plan that place views at the top of the hierarchy of values, and protects property, not the people who happen to inhabit the property at any given time. Each case is evaluated on its own merits.
3	<p>A.E. Hanson and the General Plan talk about scenic views and maintaining views.</p> <p>The character of the community has changed since the book was published and the General Plan was adopted.</p>	<p>In his book, <u>Rolling Hills, the Early Years (1930-1941)</u>, A. E. Hanson describes Rolling Hills as country, private, lots of sunshine and a "view that could never be obscured" and, the City's General Plan is based on this vision. The General Plan prescribes the goal of preserving the rural environment, preserving open space and protecting scenic views.</p> <p>Past and current City Councils have striven to maintain the character of the community through implementation of the General Plan and the Zoning Ordinance. The City has required that lots be no smaller than 1 acre, that houses be single-</p>

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		<p>story, have installed minimal public infrastructure and have created policies that encourage equestrian facilities, open space, and minimized grading. The character has primarily changed with technology, an aging environment (residents, homes and trees) and changing demographics.</p>
4	<p>City should recover costs associated with a complaint and the processing of complaints should not be at taxpayer expense.</p>	<p>How much of the City's costs are recovered is an issue the Planning Commission can consider as part of its recommendations. The current fee schedule reflects the policy of the City Council and the importance it places on the public to maintain the views in the community. The City currently does not recover all of its administrative costs for staff hours that can range from 50 to 100 hours per case or the full cost of mediation.</p> <p>The Schedule of Fees and Charges currently prescribes the following:  <b>Application Fee (includes mediation): \$1,000</b>  <b>Review by Committee on Trees and Views:\$2,000</b>  <b>Initial Study: \$ 200</b>  <b>Negative/Mitigated Negative Declaration: \$1,000</b>  <i>(Plus fee charged by CA Department of Fish and game, if applicable, as adjusted annually)</i></p> <p>In the most recent case, the cost of an arborist's study was paid by complainant, and the cost of a limited study to ascertain a view corridor was paid by the City.</p>
5	<p>Three (3) lawsuits against the City and the litigation costs to the City.</p>	<p>Litigation is a fact of life and it is not uncommon for cities to be sued over land use decisions. Rolling Hills has been fortunate over the years to have very little litigation. This is likely due to the careful consideration given to land use decisions and the overall atmosphere of neighborliness that has historically prevailed in the City. Residents have had a predisposition to work out their problems and live harmoniously. Ultimately, the City Council does what it believes is right, and if litigation ensues, the City is compelled to incur the cost of defending those decisions. The City is currently defending a lawsuit over a view decision</p>

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		(Howard Hall v. City of Rolling Hills) and a lawsuit regarding an initiative petition (Colyear v. City of Rolling Hills). Funds are available in the City's budget to defend against litigation.
6	The City controls utility poles in easement and thus, the City has influence over trees in easement.	<p>The California Public Utilities Commission (CPUC) controls the installation of utility equipment. The City has no control or authority over the installation of utility poles in the easements.</p> <p>However, it is correct that trees located in private easements are subject to the City's view ordinance. The City's view ordinance addresses view impairments caused by vegetation regardless of where it is planted on a property.</p>
7	Rolling Hills Community Association (RHCA) verses City roles.	<p>The RHCA and City are separate and independent agencies. As a public entity, the City must be careful to not unlawfully delegate its police power to a private association. As an agency unrelated to the City, the RHCA can do as it feels is appropriate within its jurisdiction as long as it complies with all applicable laws including the City's Municipal Code.</p> <p>Both organizations provide a process for resolving view impairments. Residents have the ability to address their concerns through one or both agencies. The resolution that is more restrictive between the two agencies will take precedence over the less restrictive solution.</p>
8	Brush is a fire hazard not trees.	The City's view ordinance exclusively addresses the impact of trees on views. It does not address fire hazards. The Fire Department agrees that brush is a significant fire hazard. Dried grasses and dead landscaping in particular are a problem. Fire, however, spreads easily through sparks when tree canopies are ignited; sparks can fly for miles depending on weather conditions. Thus, the Fire Department encourages and often requires "lolly-popping" of trees to separate low brush and grass with the tree canopy. The Fire Department annually inspects property to ensure there is proper brush and tree clearance around residences

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		<p>for structure protection in a fire. The Fire Department's inspection form specifically lists Pine trees and Eucalyptus trees as being known as flammable.</p>
9	<p>Limiting height of trees to ridgeline with Resolution of Approval of new Site Plans as a City policy should be addressed as a community; it has not been a matter of public discussion.</p>	<p>All of the provisions of the zoning ordinance and conditions for new developments, including limiting the height of new trees, are addressed through public hearings before the Planning Commission and the City Council. These public hearings are announced in the Newspaper, City newsletter, which is sent to every residential address in the City and if an application for development a notice is sent to residents within 1,000-foot radius of the subject project site. The limitations placed on the height of new landscaping, in order to avoid view obstructions, is subject to review on a case by case basis at the public hearings for each such case.</p>
10	<p>Existing City ordinance creates clear-cutting of trees.</p>	<p>In the history of the view ordinance, Resolutions have never required the clear-cutting of trees to accommodate the complainant. Remediation includes trimming, crown reduction, lacing, and tree removal. In the 24 years of its existence, property owners have sought the protection of the view ordinance a total of 11 times with the following outcomes:</p> <ul style="list-style-type: none"> <li>○ 3 (and a portion of one other) resolved by mediator</li> <li>○ 2 withdrawn/resolved privately</li> <li>○ 6 resolved after hearings before the Committee and/or the City Council</li> </ul> <p>Among the 6 cases resolved by way of hearings before the Committee and/or the City Council:</p> <ul style="list-style-type: none"> <li>○ 37 trees have been ordered trimmed or crowned (21 recently in one case- out of over 200 trees on property)</li> <li>○ 20 trees have been ordered removed (13 recently in one case- out of over 200 trees on property)</li> </ul>

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		In one case, it was determined by the Committee that the trees did not impair the established view, and no remedial action was ordered. In only one instance has the City's decision been challenged in court, and that case is currently pending.
11	Few people have filed complaints with the City because property owners do not know the view ordinance existed or because they went to the RHCA who has had the bulk of complaints.	The City routinely receives inquiries; often problems are resolved between neighbors so that a complaint becomes unnecessary. Some residents state that they are deterred because the proceedings are public. Also, some complaints do not meet the City's submission requirements. The City has received 11 complaints (cases) since 1988 with the first one in 1989. Since 1998 when the RHCA first adopted a policy with regard to views, the RHCA has received 21 cases.
12	This challenge to, and the changing of, the existing View Ordinance sets a precedent for future changes to other long-established characteristics of the community such as one story and white painted residences.	These discussions certainly do address whether residents want to change the fundamental characteristics of the community.
13	The City's view ordinance is unconstitutional.	View ordinances similar to the City's view ordinance have been addressed in courts and have been found to be an appropriate and legal use of the City's police powers. One example where the ordinance, with similar characteristics to the Rolling Hills ordinance, was upheld is <i>Echevarrieta v. City of Rancho Palos Verdes</i> (2001) 86 Cal.App.4th 472.
14	An anonymous survey would provide City officials and the public with a better understanding of resident's opinions on protecting views.	The view issue is complex; there are many aspects to it. There are many questions that could be asked in a survey about views that in turn, would make it very lengthy and complicated. The longer a survey is the less of a return there is. Thus, structuring and administering a fair and effective survey should be done by a professional. Whether a survey should be conducted or not is a policy decision by the City Council. On the other hand, with "representative government," elected leaders are in a position to

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		make decisions in the best interest of the community. Absent a survey, residents can address their concerns to their elected officials.
15	Don't change the existing view ordinance. It has been effective for many years. Encourage private resolutions to view complaints.	The existing ordinance is structured to fairly balance the right to a view with the tree owner's right to the enjoyment and privacy of his/her property. City process encourages private resolution of a complaint prior to the submittal of an application and then in mediation before commencement of a public process. Cases that are not addressed prior to the application or through mediation are always contentious because one or both parties are not satisfied with the ultimate decision.
16	With the ballot measure, there could be unintended consequences from changes in language that were not fully vetted.	Through the initiative process, voters have the right to place items on a ballot for election. If the language in a successful ballot measure is unclear, the Courts will need to decide how the measure is to be implemented and its meaning.

Summary of Public Comments and Topics  
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With new additional comments received October 4, 2012  
Re: View Ordinance

1. Define in the ordinance whether the complainant can **create** a view that previously did not exist or if the complaint is **preserving** a view that previously existed.
2. The **view protected** by ordinance should be the view existing **when the City was incorporated**.
3. **Create an ordinance from scratch** that specifically pertains to Rolling Hills rather than copy another organization's ordinance that does not fit this community.
4. **Be reasonable in response to view complaints**; be consistent in how each complaint is evaluated and resolved.
5. The protected view is established by the existing view when the property was purchased. **Property owners are entitled to the view that they purchased** with the property. The **ordinance should not provide for the creation of a view** that did not exist when a property was purchased.
6. **Information about the view ordinance** and its implications should be provided to **property owners** and prospective buyers. It is also not clear if the City's view ordinance **provides residents in neighboring cities** (e.g., in the Del Cerro area of Rancho Palos Verdes) the ability to **file a complaint** against a Rolling Hills property owner.
7. **Large trees have environmental benefits** that improve/maintain air quality and are **aesthetically beneficial** to the community. Small trees (small replacement trees) do not have the same qualities. **Honor trees**. The focus of the view ordinance should be to protect trees.
8. The cost of staff time and litigation with regard to resolving view complaints should be eliminated or minimized; as a cost ultimately paid by property owners, it is too much. **The cost and how the City recovers its costs** should be addressed; the allocation of **costs should be balanced**. **Beneficiaries** of the view restoration **should share the expense** of the remediation. **Taxpayer money should not be expended** in a view case and to the question of who covers the costs; there should be a **simple answer**. Everyone should **"have skin in the game."**
  - a. It is the **Real Estate agents** who **benefit** from the ordinance, whether it stays the same or changes because the ordinance supports the removal of trees to provide a view. The **City also benefits** because a property sold with a view would **increase** the assessed value and thus, **property taxes** to the City.
9. **Avoid costly litigation** that challenges the ordinance and City actions. There may be **constitutional challenges** with the City's view ordinance.

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10. Consider if the positives of having and enforcing the ordinance outweigh the negatives of it. Irrespective of the negative cost implications (staff time and litigation) of the view ordinance, recognize that it also puts the City between a neighbor-to-neighbor dispute; this is not a position the City should be in. With the view ordinance, **it is not positive to aggravate residents.**
11. The City should have a view ordinance; **support having a view ordinance.** It should be **strengthened and enforced.** It is surprising that the existing ordinance has never been challenged in court; **once litigation determines its validity, the challenges (litigation) by residents need to stop** challenging the ordinance.
12. It is confusing to have the Rolling Hills Community Association (RHCA) and City both with regulations about views. It appears that there is **duplication and overlap between the RHCA and City regulations.** It is unclear **who regulates trees in easements** that block views.
13. Each **property in the City is unique** and each situation should be addressed as such. Decisions and outcomes should **balance each property owner's interests** and result in a **compromise.**
14. At the conclusion of the remediation effort, it should be decided **who pays for new trees planted in replacement of the trees removed and the on-going maintenance of the trees.** The tree owner should have that responsibility.
15. A.E. Hansen's book "Rolling Hills, The Early Years" and the City's General Plan convey a history and emphasis on having scenic views. Consistent with the character of the community as described by both, **property owners should be entitled to a view.**
  - a. To the contrary, the **character of the community** since A.E. Hansen's book **has changed** because the properties in the City have been subdivided and graded and, homes remodeled. So, the view ordinance as currently written, is not appropriate and should be updated and modified.
16. The City should have a **list of trees that are appropriate for planting in the City** as replacement for trees that are removed by the remediation of a view impairment.
17. A **short, flexible view ordinance is advantageous** and the City's ordinance, as such, should not be changed. **Leave the ordinance alone** because it provides the ability to address a variety of situations. Moreover, **the longer an ordinance is, the more complicated it is and the more opportunity it creates for litigation.**

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- a. The existing ordinance works fine, addresses the various situations that exist and the City Attorney stands behind it. Changing it will have **unintended consequences** that may **result in unnecessary costly lawsuits** that will ultimately align with the City's position.
18. **Review the Palos Verdes Estates (PVE) Homeowners Association view regulations and the City of Malibu's new ordinance** as models/examples of additional means to address views. The Malibu ordinance bifurcates the process for preservation of a view and the restoration of a view.
19. **Limiting the heights of trees to the ridgeline of new homes** approved during Site Plan Review **results in precluding tall trees**. Review if this is a practice that has community support and represents the community character desired by property owners.
20. The existing **ordinance is confusing and vague** without reference a date to establish a view.
21. A view **ordinance can be abused** and it represents **greed**.
22. The view ordinance **should not allow for the removal of mature trees**.
23. **Voters should decide the view ordinance**. As such, the **meaning of the Planning Commission's parallel process** is unclear.
24. With **no standards or limits** on what constitutes a view (no constraints or specifics defining the view) it appears under the existing view ordinance that a view will be obtained by a complainant. Therefore, there is **no reason or motivation** by the tree owner **to participate in mediation** and come to a mediated resolution to a complaint. Parties should be encouraged to **settle the complaint privately**.
25. The view ordinance should provide a **balance between providing view corridors and preserving trees**.
26. Resident's **interests in views may have changed** from the adoption of the existing ordinance. Ask residents to **anonymously** respond to a **survey** that will provide the City and the public with their opinion about what view should be provided (scope of view and date view established), who pays the costs associated with the process and remediation, desirable trees in the community and consistency within the process.
27. **One ordinance does not fit all situations**.

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28. The **top of a tree**, that can't been seen by the property owner, **has no value** to the property owner other than blocking a neighbor's views and, trees do not die when they are reduced in height.

29. On the other hand, **trees die** as a factor in life.