



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.: 5-C(1)
Mtg. Date: 01/11/16

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: YOLANTA SCHWARTZ, PLANNING DIRECTOR *yp*

THROUGH: RAY CRUZ, CITY MANAGER *rc*

**SUBJECT: PUBLIC HEARING AND CONSIDERATION OF AN ORDINANCE
NO. 346 OF THE CITY OF ROLLING HILLS AMENDING SECTION
17.12.220 AND CHAPTER 17.26 RELATING TO VIEW
PRESERVATION OF TITLE 17 OF THE ROLLING HILLS MUNICIPAL
CODE.**

ATTACHMENTS:

- A. Current Ordinance Chapter 17.26 View Preservation; Definitions Section 17.12.220 of the RHMC (pages 9-18).
- B. Resolution No. 2015-20 of the Planning Commission recommending amendments to the View Preservation Ordinance (pages 19-28).
- C. Comparison Chart of the existing ordinance and proposed amendments (pages 29-44).
- D. Draft City Council Ordinance No. 346 Amending Title 17 of the RHMC relating to View Preservation (pages 45-54).
- E. Minutes from Planning Commission public hearings (pages 55-76).
- F. Residents Correspondence (pages 77-144).
- G. Other Cities' ordinances and Matrix on how certain provisions are implemented (pages 145-217).

RECOMMENDATION

1. It is recommended that the City Council waive full reading and introduce the proposed ordinance for first reading; open the public hearing and take public testimony. Following public input and Council's discussion, it is recommended that the City Council direct staff to bring the ordinance for second reading and adoption at a future date.

BACKGROUND

2. In June 1988, the City adopted the View Preservation Ordinance ("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 a view obstruction caused by vegetation on a neighboring property. In November 2003, the ordinance was modified relative to the composition of the Committee on Trees and Views ("CTV"), the body designated to consider view applications.

3. The City has been considering updating its View Preservation Ordinance for some time. In 2012, following several controversial view complaint cases, the Planning Commission found that there are certain provisions in the City's ordinance that may be weak and/or not clear. Following a court ruling on one of the cases, the City Council found ambiguities in the ordinance and at its meeting of June 25, 2012, 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 the provisions. The Commission subsequently held public forums on August 9, 2012, October 4, 2012 and November 15, 2015 at which time extensive public comments were received and the Planning Commission set forth the topics it would like to address based on its understanding of the ordinance and based on the input from the residents and started to formulate potential changes.

The Planning Commission identified the following topics relative to potentially modifying the City's 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 should that date be?
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.
4. In the fall of 2012, the residents prepared a Ballot Measure to change a few of the provisions of the City's view preservation ordinance.
5. Due to the activities surrounding the proposed ballot measure, and not wanting to adopt provisions that could be in conflict with those proposed by Measure B; in the winter of 2012, the Planning Commission suspended its review of the View Preservation Ordinance.
6. In March 2013, the residents of Rolling Hills passed Measure B, an initiative that amended the 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; 3) specified that the purpose of the Ordinance is to create "view corridors" and views through trees, rather than unobstructed views; and 4) Measure B specified that its provisions apply retroactively.
7. Following several post Measure B view preservation cases, it became obvious that Measure B contains ambiguities that have resulted in uncertainty in its application. Additionally, Measure B did not address several potential modifications to the Ordinance discussed by the Planning Commission in 2012.
8. In July 2014, the City Council established an *Ad Hoc* Committee to review the provision of the View Preservation Ordinance and Measure B and to help provide focus as to what changes should be of particular importance during the Planning Commission's review. Councilmembers Pieper and Dieringer were appointed to the Committee. The *Ad Hoc* Committee met on August 4, October 27, November 10, November 24, 2014, and January 12, 2015. The Committee members reviewed and discussed potential amendments to the Ordinance and discussed interpretation of Measure B.
9. The *Ad Hoc* Committee's recommendations were forwarded to the Planning Commission for their review and analysis with direction to commence the process necessary to amend the Zoning Ordinance. (The View Preservation Ordinance is part of Title 17 -ZONING of the Rolling Hills Municipal Code -RHMC, therefore, public hearings before the Planning Commission following by public hearings before the City Council are required).
10. In addition to correcting various typographical errors in the Ordinance, the *Ad Hoc* Committee reached consensus on which provisions should be amended, which the Planning Commission reviewed, considered, held public hearings on and mostly agreed upon as well.

In their review of the View Preservation Ordinance, there were two items that the Ad Hoc Committee agreed that should be included in the ordinance, but did not agree on the language, and referred them to the Planning Commission for resolution.

(In addition, there were two provisions in Measure B that the Ad Hoc Committee did not agree on its interpretation, which will be reviewed under item #5C-(2) on the Agenda).

The two items not agreed upon by the Ad Hoc Committee are listed below; and the Assistant City Attorney expanded on those issues as follows:

1. Should the City be indemnified for its costs and expenses related to litigation arising from view restoration orders? The Ordinance is silent on this issue.
 - o **The Issue:** The Ordinance grants residents a right to obtain a City order resolving a view dispute. View impairment decisions are adjudicatory City actions and therefore may be challenged in Superior Court by way of a writ of mandamus. The City could incur significant expenses in defending a lawsuit challenging a view impairment decision. Currently, the Ordinance is silent as to whether the City or the person seeking view restoration should bear the costs of defending litigation challenging a City order resolving a view dispute. In the few cases that have been filed, the City has defended the litigation at City expense.
 - o **Option A:** If complainants are required to indemnify the City and reimburse its administrative and legal costs incurred in defending litigation challenging a City order resolving a view dispute, the primary benefit would be conserving the City's limited resources. The primary challenge is that the additional financial risk could create a hardship for some applicants, particularly those on fixed incomes.
 - o **Option B:** The City shall bear its own costs in defending litigation challenging a view restoration order. Since its adoption, the Ordinance has not required indemnification of the City's legal costs, and the City has not been faced with an excessive number of lawsuits challenging its view orders.

During the Planning Commission proceedings several residents addressed the Commission on this item, with different view points. Members of the Commission were also conflicted. However, in the proposed Ordinance, the Planning Commission recommends to the City Council that the applicant (complainant) indemnify the City - Section 17.26.100.

2. Who should bear the cost of maintenance of the trees following the initial restorative action?

Section 17.26.060(C) of the Rolling Hills Municipal Code currently provides a general rule that the owner of view obstructing vegetation shall bear the cost and

expense of subsequent maintenance of the vegetation required to comply with a view restoration order. However, Section 17.26.060(D) provides that the implementation method may be modified if grounds exist. The two provisions create some uncertainty as to whether subsequent maintenance costs may be allocated in part to a person seeking to restore a view. The *Ad Hoc* Committee members disagreed as to whether subsequent maintenance costs should be borne by the owner of the obstructing vegetation in all cases, or whether the CTV should have discretion to require an alternate allocation of subsequent maintenance costs.

In the proposed Ordinance, the Planning Commission recommends to the City Council that the CTV should have discretion to require alternate allocation of cost for maintenance of the vegetation, following the initial restorative action, provided it makes written finding justifying such order - Section 17.16.060 (C).

PLANNING COMMISSION ACTION AND RECOMMENDATIONS

11. Following the Ad Hoc Committee's conclusion of their review of the view ordinance and Measure B, the Planning Commission held public forums and public hearings over a period of seven months, (between February 2015-August 2015) and heard and considered much public testimony. The Commission reviewed other cities' ordinances, and discussed pros and cons of some of the major issues, such as should the City be in the "business" of view disputes at all, should the City have a minor role in view disputes and only act as a facilitator to the disputes; to what extent should the current ordinance be amended; how many times and against how many neighbors should one be able to file an application; how far from ones property should one be able to claim tree obstruction; how should the City require indemnification; who should be responsible for maintenance of trees; who should pay for additional information should the Committee on Trees and Views (CTV) require it to aid them in the decision and other issues.

12. Although the Planning Commission adopted a Resolution recommending to the City Council to amend Chapter 17.26 of the Zoning Ordinance regarding views, some of the Commissioners are not convinced that the City should have a view/trees ordinance and would like to place the burden on the residents to work out disputes over views and trees amongst themselves.

COMMENTS (WRITTEN AND ORAL) RECEIVED AT PLANNING COMMISSION MEETINGS

13. Below is a summary of the most common comments received during the Planning Commission public hearings regarding the ordinance amendment.

(Comments made regarding administrative interpretation of Measure B are included in the staff report for that topic).

Marcia Schoettle, 24 Eastfield Drive suggested that the City should not be involved financially and should be indemnified. She further suggested that the Committee on Trees and Views be re-named the View Preservation Committee, as she feels they're very strongly pro-views; and that the City create a Tree Preservation Committee.

Lynn Gill, 31 Chuckwagon Road suggested, based on his research on how several other Cities handle view issues, that the City act as an ombudsman to reduce the City's legal costs. He feels that Rolling Hills should model its View Preservation Ordinance on the one recently adopted by the City of Rolling Hills Estates. He has prepared a draft ordinance to that effect, (Attachment F, p. 111-132).

He further stated that the City should be involved in view issues and that the City needs a well crafted view ordinance that balances the property rights of the tree owner as well as the view.

Tina Greenberg, 32 Portuguese Bend Road suggested that the City should not be responsible financially for legal issues.

Mike Schoettle, 32 Portuguese Bend Road suggested that the City should have a view ordinance and be its enforcer.

Jim Aichele, 14 Crest Road West stated that the City should not be responsible for legal costs. He further commented that the City should not be involved in view disputes at all and that all view issues should be handled by the Rolling Hills Community Association through the CC&Rs.

Ralph Black, 36 Saddleback Road suggested that the ordinance should protect the taxpayers and vagueness in the ordinance or Measure B should be eliminated. He further stated that he likes trees but he is in favor of a strong View Ordinance.

Arvel Witte, 5 Quail Ridge Road South stated that the tree owner be required to pay the maintenance costs and that volunteer trees be kept under control.

John Nunn, 1 Crest Road West urged the Planning Commission to add a distance limitation on how far from ones property one may claim a view obstruction.

Spencer Karpf, 8 Maverick Lane stated that he feels that Measure B prohibits the Commission from adding a distance limitation on how far down ones property one may claim tree obstruction of a view. (Assistant City Attorney explained why Measure B does not place such a restriction.)

Arun Bhumitra, 13 Buggy Whip Drive urged the Planning Commission to strictly enforce the View Preservation Ordinance.

CONCLUSION

14. The attached draft Ordinance reflects the recommendations of the Planning Commission based on the Ad Hoc Committee's review and recommendation of the current View Preservation Ordinance, public input and the Commissions' first hand knowledge of the language in the current ordinance that needs to be strengthen and clarified and other provision added to aid them in administering the Ordinance.

15. It is recommended that the City Council convene the public hearing, receive public testimony, and commence deliberations on the proposed View Ordinance amendments. (Staff recommends that the comparison chart of the current ordinance vs. proposed ordinance - attachment C be used as a reviewing tool).

NOTIFICATION

16. Notice of this public hearing was published in the Palos Verdes Peninsula News on December 31, 2015 and a notice to inform the community was included in the City 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.

THIS PAGE INTENTIONALLY LEFT BLANK