



*City of Rolling Hills*

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City of Rolling Hills  
By FROM MAYOR PRO TEM DIERINGER Agenda Item No: 7-B  
Mtg. Date: 10-22-12

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

**FROM: MICHAEL JENKINS, CITY ATTORNEY**

**SUBJECT: TRANSMITTAL OF ANALYSIS OF THE INITIATIVE MEASURE  
PROPOSING CHANGES TO THE VIEW ORDINANCE**

**DATE: OCTOBER 22, 2012**

**ATTACHMENTS:**

**Analysis of initiative measure proposing changes to the view ordinance  
State of California Elections Code Section 9212**

**RECOMMENDATION**

It is recommended that the City Council "receive and file" the attached analysis of the initiative measure proposing changes to the view ordinance.

**BACKGROUND**

Pursuant to California Elections Code Section 9212, an analysis of the initiative measure proposing changes to the view ordinance has been prepared at Council direction. It addresses the effect of the proposed initiative ordinance on the community and the current law within the historical context of view regulation.

**DISCUSSION**

When the City Council received the Certificate of Sufficiency for the view initiative petition and directed that the measure be placed on the March 5, 2013 ballot, it directed staff to prepare an analysis of the measure pursuant to the California Elections Code 9212. Section 9212 allows the Council to receive this analysis at any time; in that the Council has already directed that the initiative be placed before the voters, the analysis presented herein is simply for informational purposes. The analysis is public information and will be available to the public from the City Clerk's Office and posted

on the City's website. Residents will also be advised of the availability of this and other election-related information in upcoming City newsletters.

### FISCAL IMPACT

There is no fiscal impact associated with the action to "receive and file" the analysis.

### NOTIFICATION

The proponent of the initiative measure was sent a copy of this staff report and attachments. This matter was also listed on the agenda published in the City newsletter.

### CONCLUSION

Staff recommends that the City Council "receive and file" the attached analysis.

MJ:hl

*Analyses staff rpt.docx*

## ANALYSIS OF BALLOT MEASURE PERTAINING TO VIEW ORDINANCE

### Introduction

On the March 5, 2013 ballot, the Rolling Hills voters will be asked whether to adopt an initiative measure that would modify the City's view ordinance to narrow the circumstances under which a property owner could seek abatement of a view obstruction. The proposed ordinance does this by amending the current view ordinance as follows: (i) protecting only a view that existed when the current property owner acquired ownership of the property, (ii) limiting the protection of the ordinance to views obstructed by "maturing" vegetation, thereby excluding views obstructed by trees that were "mature" at the time of property acquisition, and (iii) limiting restoration of views to "view corridors," rather than panoramic views. The principal effect of the proposed ordinance is to shift the protection of the view ordinance from views that are *capable* of being enjoyed from a property to views that were *actually* enjoyed from a property when the current owner attained ownership. Under the proposed ordinance, the owner and the occupant are not necessarily synonymous; hence, the key date is when ownership was conveyed to the person or entity on title, not the date that the occupant took occupancy.

This analysis is prepared and submitted to the City Council pursuant to California Elections Code Section 9212 and will address the effect of the proposed ordinance on the community and the current law within the historical context of view regulation.

An initiative is a mechanism by which California law allows any person to propose a law for direct consideration by the electorate. This analysis is City staff's best effort to summarize and interpret the proposed view initiative and its effect on current law. As discussed below, the initiative is vulnerable to different interpretations. Only a court can resolve a dispute over the correct interpretation of a law.

### Current Regulation of Views in Rolling Hills

The City's current view ordinance was adopted in June, 1988 following consideration at nine meetings of the Planning Commission and five meetings of the City Council. Ninety-three people testified before the Commission and twenty-two at the City Council. The ordinance established preservation of views as a primary value of the community and created a process by which a property owner could seek to abate an obstructed view. In November 2003 the ordinance was modified relative to the composition of the Committee on Views and Trees, the body designated to consider view applications.<sup>1</sup>

Recognizing that the City sits atop the peninsula and that its location affords views of the surrounding area, the existing ordinance reflects the guiding principles of the General Plan that place views at the top of the hierarchy of community values.<sup>2</sup> The intent of the ordinance is described in Section 17.26.010 as follows: "The City recognizes the contribution of views to the overall character and beauty of the City. Panoramic views of the Pacific Ocean, Catalina Island, City lights and Los Angeles Harbor are a special quality of property ownership for many

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<sup>1</sup> The Planning Commission is currently holding workshops to consider whether to further modify the ordinance.

<sup>2</sup> The General Plan sets forth the fundamental land use principles that guide development of the community; it establishes the community vision, and sets forth the policies and goals that are designed to achieve that vision.

## ANALYSIS OF BALLOT MEASURE PERTAINING TO VIEW ORDINANCE

residential lots in the City. These views have the potential to be diminished or eliminated by maturing landscaping located on private property. The purpose of this chapter is to protect this important community asset by establishing procedures for the protection and abatement of view obstructions created by landscaping, while at the same time protecting natural vegetation from indiscriminate removal.”

The Rolling Hills Municipal Code (“RHMC”) defines a “view” and “view impairment” as follows:

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

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

Any property owner may file an application with the City to eliminate a view obstruction caused by vegetation on another person’s property if the property owner has been unable to resolve the issue privately. The ordinance requires that the parties engage in mediation conducted by a third party neutral selected and compensated by the City. If mediation fails, the application is considered by the Committee on Trees and Views, which is composed of three members of the Planning Commission. A decision by the Committee is appealable to the City Council. The City Council’s decision is final and subject to judicial review in state court by way of a petition for writ of mandamus.

### The Changes to View Regulations Proposed by the Initiative Measure

The full text of the initiative measure is attached to this report as Exhibit A. The measure proposes to add one new section, consisting of five parts, to the existing chapter on view protection that modify the existing law as follows:

1. The first part would change the methodology of determining whether a protectable “view” exists from a property.

As noted above, the view protection ordinance currently protects 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.

The initiative proposes to protect the view existing from the property on the date that the current owner acquired the property. Hence, a property owner could not seek to protect a view any different or more expansive than existed at the time the owner acquired the property. The burden would be on the complainant to prove – with photographs and other evidence – the view that existed at the time he or she purchased the property.

## ANALYSIS OF BALLOT MEASURE PERTAINING TO VIEW ORDINANCE

2. The second part would preclude alterations to vegetation that was “mature” at the time a property owner whose view is obstructed purchased his or her property.

Under the current ordinance, any vegetation that obstructs a view is susceptible of remedial action.

The initiative proposes to exempt “mature” trees from any remedial action. Only vegetation that was still “maturing” at the time a property owner acquired a property would be subject to remediation. The proposal does not define the words “mature” or “maturing” but leaves the definition to “industry standards predominantly accepted by arborists.” This means that a property owner seeking view restoration would have to demonstrate that the offending vegetation was not “mature” at the time he or she acquired the property from which a view is sought in order to obtain remediation of that vegetation.

The word “mature” does not have a universally accepted definition in the arborist community and does not necessarily mean “fully grown.” An arborist with whom the City has worked defines a mature tree to be one that has reached a desirable size or age or a tree with a well-developed canopy. Here is another definition acquired from Wikipedia:

“The definition of maturity in trees is as broad as it is in humans. Trees are certainly not considered mature until they’re old enough to reproduce and bear seed, but many will continue to grow taller and wider after that point is reached. Yes, different species do mature at different ages; dwarf fruit trees may bear fruit at 4-5 years, but oaks and evergreens may take 10-15 years.”

A “mature” tree could continue to grow and further obscure a view, but under the initiative would be exempt from remediation. Further, a mature tree would be exempt from remediation regardless of its health. If a mature tree dies from natural causes and is removed from the property, it is not clear from the language proposed in the initiative whether it may be replaced by a tree that may reasonably be expected to eventually equally impair the view. Defining and demonstrating that vegetation is “mature” within the meaning of the ordinance would be resolved case-by-case and be a matter of factual and legal interpretation.

3. The third part establishes a new standard for determining whether a view is impaired.

Under the current ordinance, the existence of a view impairment is determined by whether substantial evidence of the impairment exists. Substantial evidence exists if upon reviewing the evidence, a reasonable decisionmaker would conclude that a view is impaired. This is the usual standard applicable to land use decisionmaking in California.

The initiative proposes to replace the existing standard with a requirement that the impairment be proven by “clear and convincing” evidence. The initiative establishes a priority ranking of proof of clear and convincing evidence, with photographs ranked first, expert testimony ranked second and “other evidence” ranked last. The standard “clear and convincing evidence” is not defined in the measure, but is generally defined in the law to mean “a finding of high probability based on

## ANALYSIS OF BALLOT MEASURE PERTAINING TO VIEW ORDINANCE

evidence so clear as to leave no substantial doubt." This legal standard is comparable to the standard utilized in criminal cases; if employed here, for view restoration to be ordered, the decisionmaker must have virtually no doubt that the complainant had a view at the time he or she acquired the property and that the vegetation now obscuring the view was not "mature" at that time. Given the uncertainty of the meaning of "mature" (see above discussion), it may be impossible to satisfy this standard.

4. The fourth part is intended to clarify that the ordinance does not require unobstructed views but merely "view corridors" and "a view through trees."

Currently, the City ordinance is silent on this point. Remediation has been determined on a case-by-case basis, dependent on the unique facts of the case.

The initiative would appear to bar the City from requiring an unobstructed panoramic view, even if the complainant proves that he or she possessed a panoramic view when the property was acquired. The phrase "view corridor" is not defined, nor does the ordinance provide guidance as to what percentage of view constitutes a "corridor."

5. The fifth part asserts that the initiative is intended to have retroactive application to 1988, the date that the existing ordinance was adopted.

A law has retroactive effect when it substantially changes the legal consequences of past events. This means that if a law is retroactive, a past event that may have had certain legal consequences under the preexisting law will have different legal consequences under the new, retroactive law.

If a view impairment proceeding is pending at the time the initiative takes effect, the initiative ordinance would apply to that proceeding. It is unclear how else the retroactivity clause in the initiative would apply. In particular, it is uncertain what effect it would have on prior adjudications of view disputes and remedial measures that have been implemented over time.

### Impacts of the Proposed Initiative Measure

Under the proposed measure, the conveyance of property extinguishes any right to a previously existing view. If a long-time owner sells his or her property, the buyer is limited to the view that exists on the acquisition date. Thereafter, if over time "maturing" (but not yet mature) trees obstruct the view, the owner may seek remediation of the view that existed as of the acquisition date, but the remediation may affect only the maturing vegetation.

Hence, if the measure is adopted, it creates an incentive for an existing long-time owner of a view property who may consider selling the property at some point in the future to initiate a view remediation application now because he or she may obtain a view protection order to which a prospective buyer would not be entitled. Realtors would have an incentive to encourage such applications among existing property owners. If such applications become routine, this could

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result in a substantial increase in the number of applications that must be processed and evaluated by the City.

It is uncertain how the measure would apply to property that is conveyed by inheritance to an heir of an existing owner or transferred to a trust. A persuasive argument can be made that a devisee or heir is not the "current owner" and that his or her view would be determined from the date of inheritance. Similarly, if a beneficiary of a trust resides in a home owned by the trust and ownership is conveyed to the occupant, the view would be determined from the date of the conveyance, not the date the occupant took occupancy.

### Legal Effect of Proposed Initiative Measure

Under State law, an initiative measure enacted by the electorate may not be modified in any way or repealed except by another vote of the electorate. This means that if enacted, the measure would be permanent unless modified by a future ballot measure or nullified by a court judgment.

Several aspects of the initiative measure are sufficiently uncertain that their application may have to be determined by a court. These include the definition of "mature" vegetation, the exact effect of requiring "clear and convincing" evidence of a view impairment, and the effect of making the ordinance retroactive. The date that the current owner "acquired ownership" could also be uncertain in cases where property is owned by a trust or is conveyed via inheritance.

Adoption of the measure requires a majority vote of those voting on the measure.

### Summary of View Cases Filed With the City Since Adoption of the Current Ordinance

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:

- 3 (and a portion of one other) resolved by mediator
- 2 withdrawn/resolved privately
- 6 resolved after hearings before the Committee and/or the City Council

Among the 6 cases resolved by way of hearings before the Committee and/or the City Council:

- 37 trees have been ordered trimmed or crowned (21 of those in the most recent Reis/Greenberg decision)
- 20 trees have been ordered removed (13 of those in the Reis/Greenberg decision)

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.

**ANALYSIS OF BALLOT MEASURE  
PERTAINING TO VIEW ORDINANCE**

Below are thumbnail case histories in chronological order of all of the view impairment cases that have come before the City:

**Arnold (2 Spur Lane) – McNabb (11 Quail Ridge Road)**

Complaint: filed May 9, 1989 by Arnold.

Requested relief: restore coastline view.

View Preservation Committee (March 22, 1991): Following a field trip and public hearing, the Committee adopted Resolution No. VPC-97-1 finding that there is a view that is significantly impaired, orders trimming or topping to the level of specific telephone poles that are visible in Arnold's view.

City Council appeal (January 13 and February 24, 1992): City Council adopted Resolution No. 668 requiring trimming of two trees.

In order to resolve a dispute over implementation of the Council order, the Committee and the Council conduct public hearings in 1997 and 1998 and Council adopted Resolution No. 834 affirming the original decision and clarifying the view that must be maintained.

**State (1 Reata Lane) – Rosenberg (4 Reata Lane)**

Complaint: filed December 6, 1991 by State.

Requested relief: removal of three pine trees and trimming of four other pine, two eucalyptus, and three olive trees.

View Preservation Committee (Oct 5, 1992): Over the course of a year, the parties resolve the matter privately and no Committee action is taken.

**Tyndall (65 Eastfield Drive) – Juge (61 Eastfield Drive)**

Complaint: filed August 7, 2003 by Tyndall.

Requested relief: Specifically mentions up to 14 pine trees – initially thought to be on Calhoun's property; some turned out to be on his own, and some on Juge's property.

Tyndall and Calhoun resolve issues through mediation.

Committee on Trees and Views: July 20, 2004 Committee opened hearing After four public hearings, on October 19, 2004 CTV adopted 2004-1-CTV requiring removal of two trees and trimming/lacing of four others.

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**City Council:** City Council opened hearing on Tyndall's appeal on November 22, 2004. After four meetings, on May 23, 2005 City Council approved Resolution No. 975 unanimously, requiring trimming/lacing/topping of four trees.

**Mitchell (70 Portuguese Bend Road) – Lademan (1 Pinto Road)**

**Complaint:** filed Apr 18, 2005 by Mitchell.

**Requested relief:** trimming of several trees on Lademan's property.

**Case resolved in mediation.**

**Black (36 Saddleback Road), Dunford (48 Saddleback Road), Kausen (42 Saddleback Road), McGrath (38 Saddleback Road) -- Cumming (34 Saddleback Road)**

**Complaint:** filed June 24, 2008 by McGrath, Black, Dunford, Kausen.

**Relief requested:** trimming, lacing and in some cases removal of roughly twenty trees.

**Case resolved in mediation.**

**Bellis (3 Quail Ridge Road) and Witte (5 Quail Ridge Road) – Shoemaker (7 Quail Ridge Road)**

**Complaint:** filed April 28, 2008 by Bellis and Witte.

**Requested relief:** removal of two eucalyptus trees, trimming/topping of thirteen other trees and 100 feet of hedges

**Committee on Trees and Views:** Beginning on March 17, 2009 and extending over six meetings, the committee conducted field trip and public hearings and adopted Resolution No. 2009-1-CTV on a 2-1 vote, requiring removal of three trees, trimming/lacing/maintaining or replacing of nine, and no action for three.

**City Council appeal:** City Council opened hearing on July 27, 2009, conducted field trip on July 30, 2009 and on August 24, 2009 resumed hearing and adopted Resolution 1066 by a 4-0 vote incorporating most of 2009-1-CTV, with two changes - one tree that was to be removed will instead be trimmed, and some trees that were to be trimmed 3-5 feet are now to be trimmed a minimum of 5 feet.

**Subsequent action:** after the parties enter into a settlement, the City Council on Nov 11, 2009 adopted Resolution 1078, replacing and superseding Resolution 1066 incorporating the terms of the settlement.

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**Shoemaker (9 Maverick Lane), Scarboro (9 Caballeros Road), Mirsaidi (1 Maverick Lane), Makita (5701 Crestridge Road), Howroyd (7 Maverick Lane), Brogdan (5 Maverick Lane) – Grubs (1 Hackamore Road) and Meyer (53 Eastfield Drive).**

Complaint: filed September 9, 2009 by Shoemaker; Scarboro, Mirsaidi, Makita, Howroyd and Brogdan join complaint.

Relief requested: Trim or remove 13 trees on the Grubs property and 6 on the Meyer property

Committee on Trees and Views: Over the course of five public hearings, the Committee found there to be views at all six complainant locations, but that views from the complainant properties were not significantly impaired, and therefore no action was required. On May 18, 2010, the Committee adopted Resolution No. 2010-1-CTV by a 3-0 vote, determining that no action was required.

No appeal filed.

**Kennedy (2862 Palos Verdes Drive North) – Calhoun (2860 Palos Verdes Drive North)**

Complaint: filed November 25, 2009 by Kennedy.

Relief requested: Trim and top numerous trees on Calhoun property.

Matter is resolved privately.

**Bihun (49 Saddleback Road) – Hall (48 Saddleback Road)**

Complaint: filed July 8, 2011 by Bihun

Requested relief: removal of 7 pine trees

Committee on Trees and Views: Committee opened hearing on November 15, 2011. Bihun added an eighth tree to complaint. On December 20, 2011, Committee asked for staff to return with a resolution ordering removal of five of the trees and to give Hall the option to replace them with smaller trees at Bihun's expense (up to \$2,000), and to take no action on the other three. On January 17, 2012, Committee adopted Resolution No. 2012-01-CTV by a 3-0 vote over Bihun's objection to the exclusion of the three trees.

City Council appeal: City Council opened hearing on Hall's appeal on Feb 13, 2012. Council held hearings on February 27 and March 12, 2012. On March 12, Council adopted Resolution No. 1118 on a 5-0 vote, ordering removal of five trees, no action on other three.

Lawsuit: Hall filed lawsuit in Superior Court challenging decision. Case is pending.

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**Jow/ Kuwata (8 Cinchring Road), Baur (7 Cinchring Road) – Zimmerman (12 Cinchring Road)**

**Complaint:** filed Feb 15, 2012 by Jow, Kuwata and Bauer.

**Relief requested:** top three trees.

**Case is resolved in mediation.**

**Reis (1 Wagon Lane) – Greenberg (32 Portuguese Bend Road)**

**Complaint:** filed April 1, 2011 by Reis.

**Relief requested:** combination of thinning, crowning, reduction and removal of a substantial number of trees.

**Committee on Trees and Views:** Committee conducted public hearings over the course of eight meetings and two field trips to the properties. On June 19, 2012, the Committee adopted Resolution No. 2012-03-CTV ordering the removal of 22 trees and the trimming/topping of 55 trees of the 108 trees in the view corridors.

**City Council appeal:** City Council opened hearing on Greenberg's appeal on July 23, 2012 and held hearings including a field trip on August 20, August 27, September 24 and October 8. On October 8, Council adopted Resolution 1127 on a 3-1 vote ordering the removal of 13 trees; crown reduction, thinning and shaping of 21 trees and no action on 74 trees.

**State of California  
Elections Code**

9212. (a) During the circulation of the petition, or before taking either action described in subdivisions (a) and (b) of Section 9214, or Section 9215, the legislative body may refer the proposed initiative measure to any city agency or agencies for a report on any or all of the following:

(1) Its fiscal impact.

(2) Its effect on the internal consistency of the city's general and specific plans, including the housing element, the consistency between planning and zoning, and the limitations on city actions under Section 65008 of the Government Code and Chapters 4.2 (commencing with Section 65913) and 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the Government Code.

(3) Its effect on the use of land, the impact on the availability and location of housing, and the ability of the city to meet its regional housing needs.

(4) Its impact on funding for infrastructure of all types, including, but not limited to, transportation, schools, parks, and open space. The report may also discuss whether the measure would be likely to result in increased infrastructure costs or savings, including the costs of infrastructure maintenance, to current residents and businesses.

(5) Its impact on the community's ability to attract and retain business and employment.

(6) Its impact on the uses of vacant parcels of land.

(7) Its impact on agricultural lands, open space, traffic congestion, existing business districts, and developed areas designated for revitalization.

(8) Any other matters the legislative body requests to be in the report.

(b) The report shall be presented to the legislative body within the time prescribed by the legislative body, but no later than 30 days after the elections official certifies to the legislative body the sufficiency of the petition.

RECEIVED

TITLE AND SUMMARY  
PREPARED BY THE CITY ATTORNEY

City of  
Department of Public Works  
By \_\_\_\_\_

**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.

## Impartial Analysis Prepared by the City Attorney

Ballot Measure B proposes to adopt an ordinance that would change the City's current view preservation regulations. The proposed ordinance would change the definition of a protected "view" by limiting the protection of views to those views that existed when the current property owner acquired the property. Further, 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 regulations protect visually impressive 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 significantly impaired by vegetation.

The proposed ordinance would change current law by establishing a baseline view each time the property is acquired. Under the proposed ordinance, a property owner would only be entitled to seek restoration of a view that existed at the time of acquisition of title to the property. Under the proposed ordinance, vegetation that was already "mature" at the time of property acquisition would be exempt from any restorative actions. The meaning of "mature" is undefined in the ordinance. 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 to 1988, but does not explain how this provision would apply to past decisions made under the current view regulations. If the proposed ordinance is adopted, the changes take effect immediately; if the proposed ordinance is not adopted, the current view regulations remain in effect, unless amended by the City Council.

A full copy of the proposed ordinance is printed in this pamphlet.

A "yes" vote is in favor of adoption of the ordinance; a "no" vote is against adoption. A majority vote is required for the measure to pass. If approved, the ordinance can only be modified or repealed by the electorate.

Michael Jenkins  
City Attorney

**Argument in favor of Measure "B"**

The *View Ordinance* does not define when the "view" in question existed. *Measure B* surgically defines "view", and preserves the remainder of the 6-page *Ordinance* which works well, i.e., requiring that neighbors first try to work things out, establishing a View Committee, and so forth.

The current *Ordinance* has been interpreted to allow someone to buy a house with no view, priced accordingly, and then force neighbors to cut their trees in order to give the desired view. This is grossly unfair. It adds value to the complainant's property while reducing the value of the neighbor's property. Also, the City pays for most of the legal fees related to the complaint, and other costs such as surveys, expert witnesses, and photographs while the neighbor is responsible for their own legal fees and other expenses.

*Measure B* will change the current ordinance to state that a resident is only entitled to the view that existed when that resident bought the house.

Because the *Ordinance* now encourages an inherently unfair transfer of property values, it triggers expensive and unnecessary litigation that we all must pay for with our property taxes. There are currently four view-related lawsuits filed against the City, and more pending.

Before circulating the petition, the proponents of the measure urged the City Council on several occasions to start a revision process. The process only began after more than 250 Rolling Hills voters signed the petition to qualify *Measure B* for the election ballot. Let's pin down this small change that fairly defines a view as what an owner bought and paid for when they purchased their property.

Please vote "YES" on Measure B

~~Richard Coty~~

Lynn E. Gill

~~Norman LaCasse~~

Marcia Schoettle

Marion Scharffenberger

**RECEIVED**

NOV 05 2012

City of Rolling Hills

By \_\_\_\_\_

## Argument Against Measure B

Rolling Hills has always been governed by a City Council working for our residents' benefit. The conservative land-use policies that make Rolling Hills special are updated as needed, with citizen input at public hearings. Now this proven process is under attack by two initiatives that would paralyze your city government's ability to respond to future needs.

If passed, every detail of these initiatives would become binding law that could not be changed by any future City Council, only by future initiatives. Both have negative consequences and should be rejected at the polls.

The "view" initiative will spawn lawsuits regarding ambiguity of the terms "mature and maturing", vaguely defined standard of proof, vesting of view rights on the date of ownership (not residency), and the retroactivity clause that challenges long-settled view cases.

The present view ordinance was adopted in 1988 when the Planning Commission held 9 meetings hearing from 93 residents – then the City Council held 5 meetings hearing from 22 residents. The ordinance employs a sequence of steps to arrive at a fair result -- neighbor discussions, mediation, hearings by 3 Planning Commission members and, if appealed, hearings by the City Council.

In 24 years, residents have used this process 11 times – 3 cases (and portion of another) resolved by mediation, 2 resolved privately, 6 resolved by the committee or City Council.

The Planning Commission is now conducting hearings to modernize the view ordinance. Let them and the City Council do its work for you.

- Please Vote NO.

James Black, M.D., Mayor  
Frank Hill, Mayor Pro Tem  
B. Allen Lay, Councilmember  
Godfrey Pernell, Councilmember  
Tom Heinsheimer, Councilmember

RECEIVED

JAN 11 2016

City of Rolling Hills

By \_\_\_\_\_

**Subject:** oppose ordinance 346

**Date:** Saturday, January 9, 2016 9:19:09 AM Pacific Standard Time

**From:** Laurence Bellagamba <bellagamba@me.com>

**To:** Yolanta Schwartz <ys@cityofrh.net>

Ordinance 346 should not be adopted as written because it completely ignores the intent and stipulations of Measure B which was passed by a majority vote.

For all intent and purposes the draft ordinance is the existing ordinance which motivated Measure B in the first place.

Passage of this Ordinance will simply re-ignite the original debate and force further legal actions against the City.

The majority of people who voted for Measure B want and expect existing trees to be maintained. Any view ordinance adopted by the City must explicitly acknowledge this requirement.

The draft ordinance continues to adopt the assumption that views predominate over the existing of vegetation. The majority of residents who voted for Measure B want the reverse assumption - vegetation predominate over views.

Unfortunately this is clearly a contentious issue for the City residents, split almost equally between those wanting to preserve trees and those wanting to preserve views. It appears no policy can possible be acceptable to both parties until or if a substantial number shift preference.

The suggestion is for the City to purposefully not engage in view disputes between residents and therefore have no ordinance on the subject. In the vast majority of the cases residents will reach some compromise condition. A few residents, be they tree lovers or view lovers, will never be satisfied until get their way. Those residents can undertake whatever legal remedies they seek.

The City can and should require the removal of dead tress and can and should stipulate requirements on allowable vegetation that can be planted. Over time this will mitigate view issues.

Sincerely,

Larry and Julie Bellagamba  
3 Flying Mane Road

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JAN 11 2016

City of Rolling Hills

By \_\_\_\_\_

**Subject:** View Ordinance  
**Date:** Saturday, January 9, 2016 8:18 PM  
**From:** Daniel Nguyen <nguyen@aresmgt.com>  
**To:** "hluce@cityofrh.net" <hluce@cityofrh.net>, "Raymond R. Cruz" <rcruz@cityofrh.net>

Dear Rolling Hills City Council,

Our family supports the proposed changes to the View Ordinance as well as the Planning Commission's interpretation of Measure B.

We feel that it is a balanced and reasonable approach to the issue of tree preservation and homeowner's right to a view.

Thank You,

The Nguyen Family  
5 Buggy Whip Drive

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1/17

COMMENTS RECEIVED AS OF 4:45 PM

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JAN 11 2016

City of Rolling Hills

By \_\_\_\_\_

**Subject: View Ordinance**

**Date:** Sunday, January 10, 2016 10:42 AM

**From:** ADouglass@traceww.com

**To:** "Raymond R. Cruz" <rcruz@cityofrh.net>, "hluce@cityofrh.net" <hluce@cityofrh.net>

Dear Rolling Hills City Council,

Our family supports the proposed changes to the View Ordinance as well as the Planning Commission's interpretation of Measure B.

We feel that it is a balanced and reasonable approach to the issue of tree preservation and homeowner's right to a view.

Thank You,

Abby and John Douglass

51 Crest Road E

Dear Rolling Hills City Council,

We will not be able to attend the City Council meeting on the 11th however, we want to make you aware of our support for the proposed changes to the View Ordinance as well as the Planning Commission's interpretation of Measure B. We believe that it brings additional clarity, balance and a more reasonable approach to the issue of tree preservation and homeowner's right to a view.

Regards,

The Ruzic Family  
5 Lower Blackwater Canyon Rd  
Rolling Hills, CA

**RECEIVED**

**JAN 11 2016**

**City of Rolling Hills**

By \_\_\_\_\_



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JAN 11 2016

City of Rolling Hills  
By \_\_\_\_\_

**Subject:** Measure B Discussion  
**Date:** Sunday, January 10, 2016 7:42 PM  
**From:** Robert Hammond <rhammond@greekbill.com>  
**To:** "hluce@cityofrh.net" <hluce@cityofrh.net>, "Raymond R. Cruz" <rcruz@cityofrh.net>

Dear Rolling Hills City Council,

Our family supports the proposed changes to the View Ordinance as well as the Planning Commission's interpretation of Measure B.  
We feel that it is a balanced and reasonable approach to the issue of tree preservation and homeowner's right to a view.

Thank You,

Rob Hammond  
23 Middleridge lane North

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JAN 11 2016

City of Rolling Hills

By \_\_\_\_\_

**Subject: Measure B**

**Date:** Sunday, January 10, 2016 8:12 PM

**From:** George Moussalli <george@southbayrestaurantgroup.com>

**To:** "hluce@cityofrh.net" <hluce@cityofrh.net>, "Raymond R. Cruz" <rcruz@cityofrh.net>

Dear Rolling Hills City Council,

Our family supports the proposed changes to the View Ordinance as well as the Planning Commission's interpretation of Measure B.

We feel that it is a balanced and reasonable approach to the issue of tree preservation and homeowner's right to a view.

Thank You,

The Moussalli Family  
11 Outrider rd.

**GEORGE MOUSSALLI**  
**SAMBA GROUP.**

**Where Food and Fun become One**  
**609 Deep Valley Drive suite 200**  
**Rolling Hills Estates, CA 90274**

george@sambarestaurants.com <mailto:george@sambarestaurants.com>

www.sambarestaurants.com <http://www.sambarestaurants.com>

**Subject:** Monday City Council Meeting  
**Date:** Sunday, January 10, 2016 8:17 PM  
**From:** Kyle Clinton <KClinton@pcmcus.com>  
**To:** "hluce@cityofrh.net" <hluce@cityofrh.net>, "Raymond R. Cruz" <rcruz@cityofrh.net>

**RECEIVED**

**JAN 11 2016**

**City of Rolling Hills**

**By \_\_\_\_\_**

Dear Rolling Hills City Council,

Our family supports the proposed changes to the View Ordinance as well as the Planning Commission's interpretation of Measure B. We feel that it is a balanced and reasonable approach to the issue of tree preservation and homeowner's right to a view.

Thank You,  
The Clinton Family  
26 Eastfield Drive

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6/17

RECEIVED

JAN 11 2016

Monday, January 11, 2016 7:32 AM

**Subject:** View ordinance/Measure B

**Date:** Sunday, January 10, 2016 9:02 PM

**From:** Aaron DeLaTorre <adelatorre@juanitasfoods.com>

**To:** "hluce@cityofrh.net" <hluce@cityofrh.net>, "Raymond R. Cruz" <rcruz@cityofrh.net>, Jeff Peiper <Jeff.Pieper@pieper.com>

City of Rolling Hills

By

Dear Rolling Hills City Council,

Our family supports the proposed changes to the View Ordinance as well as the Planning Commission's interpretation of Measure B.

We feel that it is a balanced and reasonable approach to the issue of tree preservation and homeowner's right to a view.

Thank You,

The De La Torre Family  
16 Eastfield Drive

Sent from my iPhone

RECEIVED

JAN 11 2016

Monday, January 11, 2016 7:33 AM

**Subject:** Measure B

**Date:** Sunday, January 10, 2016 9:25 PM

**From:** Raghumendu <raghumendu@ventureast.net>

**To:** "hluce@cityofrh.net" <hluce@cityofrh.net>, "Raymond R. Cruz" <rcruz@cityofrh.net>, "jpieper@cityofrh.net" <jpieper@cityofrh.net>, Jeff Pieper <jeff@pieper.com>

**Priority:** Highest

City of Rolling Hills

By

Dear Rolling Hills City Council,

We are unable to attend the upcoming meeting on Measure B. Hence this mail to indicate our position. Our family supports the proposed changes to the View Ordinance as well as the Planning Commission's interpretation of Measure B.

We feel that it is a balanced and reasonable approach to the issue of tree preservation and homeowner's right to a view.

Views and trees are a big part of the values of homes in our City and we feel this is a good balance.

Thank You,

Sincerely

Raghu Mendu

RECEIVED

Monday, January 11, 2016 8:06 AM

**Subject:** View Ordinance

**Date:** Monday, January 11, 2016 8:05 AM

**From:** Laura Gregorio <lktg2000@gmail.com>

**To:** "hluce@cityofrh.net" <hluce@cityofrh.net>, <rcurz@cityofrh.net>

**Cc:** Jeff Pieper <jeff@pieper.com>, Jeff Pieper <jeff.pieper@pieper.com>

JAN 11 2016

City of Rolling Hills

By \_\_\_\_\_

Dear Rolling Hills City Council,

Our family supports the proposed changes to the View Ordinance as well as the Planning Commission's interpretation of Measure B.

We feel that it is a balanced and reasonable approach to the issue of tree preservation and homeowner's right to a view.

Thank You,  
Joe Gregorio  
45 Eastfield

RECEIVED

JAN 11 2016

Monday, January 11, 2016 8:31 AM

**Subject:** Measure B

**Date:** Monday, January 11, 2016 8:30 AM

**From:** Matt Seaburn <mseaburn@rentawheel.com>

**To:** "hluce@cityofrh.net" <hluce@cityofrh.net>, "Raymond R. Cruz" <rcruz@cityofrh.net>

**Cc:** "Jeff Pieper (Jeff.Pieper@pieper.com)" <Jeff.Pieper@pieper.com>

City of Rolling Hills  
By \_\_\_\_\_

Dear Rolling Hills City Council,

Our family supports the proposed changes to the View Ordinance as well as the Planning Commission's interpretation of Measure B.

We feel that it is a balanced and reasonable approach to the issue of tree preservation and homeowner's right to a view.

Thank You,

The Seaburn Family

14 Portuguese Bend Road

RECEIVED

Monday, January 11, 2016 10:34 AM

**Subject:** View Ordinance  
**Date:** Monday, January 11, 2016 10:32 AM  
**From:** Goodman, Scott <Scott.Goodman@Mattel.com>  
**To:** "hluce@cityofrh.net" <hluce@cityofrh.net>

JAN 11 2016

City of Rolling Hills

By \_\_\_\_\_

Dear Rolling Hills City Council,

I just wanted to let you know that our family supports the proposed changes to the View Ordinance as well as the Planning Commission's interpretation of Measure B.

We feel that it is a balanced and reasonable approach to the issue of tree preservation and homeowner's right to a view.

Thank You,  
The Goodman Family  
64 Saddleback Road

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**Subject:** View Ordinance

**Date:** Monday, January 11, 2016 10:47 AM

**From:** Joshua Carvalho <jamcar33@hotmail.com>

**To:** "hluce@cityofrh.net" <hluce@cityofrh.net>, "Raymond R. Cruz" <rcruz@cityofrh.net>

**Cc:** Jeff Pieper <jeff.pieper@pieper.com>

RECEIVED

JAN 11 2016

City of Rolling Hills  
By \_\_\_\_\_

Dear Rolling Hills City Council,

Our family supports the proposed changes to the View Ordinance as well as the Planning Commission's interpretation of Measure B.

We feel that it is a balanced and reasonable approach to the issue of tree preservation and homeowner's right to a view.

Thank You,

The Carvalho Family  
88 Crest Road east

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JAN 11 2016

City of Rolling Hills

By \_\_\_\_\_

**Subject:** For Your Consideration  
**Date:** Monday, January 11, 2016 11:05 AM  
**From:** Michael Brandmeyer (US - Assurance) <michael.l.brandmeyer@pwc.com>  
**To:** "Raymond R. Cruz" <rcruz@cityofrh.net>, "hluce@cityofrh.net" <hluce@cityofrh.net>

Dear Rolling Hills City Council,

I am writing to express my family's support in relation to the changes to the View Ordinance and the Planning Commission's interpretation of Measure B. It is always difficult when evaluating change in our great community, but there comes a time when it is essential to keep up with what makes sense and practical for today. Consequently, we believe the current considerations are balanced and represent a reasonable approach to the issue of environmental preservation and homeowners' right to a view.

Thanks for your service and consideration.  
The Brandmeyer Family  
67 Eastfield Drive

**Michael Brandmeyer**  
PwC | Partner

Direct: (213) 356 6535 | Mobile: (213) 248-9671

Email: [michael.l.brandmeyer@pwc.com](mailto:michael.l.brandmeyer@pwc.com) <<mailto:robert.l.gumm@pwc.com>>

PricewaterhouseCoopers LLP

601 South Figueroa Street, 11th Floor

Los Angeles, CA 90017

<http://www.pwc.com/us>

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JAN 11 2016

City of Rolling Hills

By \_\_\_\_\_

**Subject:** View  
**Date:** Monday, January 11, 2016 12:13 PM  
**From:** Speed Fry <speedsmithfry@gmail.com>  
**To:** "hluce@cityofrh.net" <hluce@cityofrh.net>, <rcruz@cityofrh.net>  
**Cc:** Jeff Pieper <Jeff.Pieper@pieper.com>

Dear Rolling Hills City Council,

Our family supports the proposed changes to the View Ordinance as well as the Planning Commission's interpretation of Measure B.

We feel that it is a balanced and reasonable approach to the issue of tree preservation and homeowner's right to a view.

Thank You,

The Fry Family 6 Williamsburg Lane

**Subject:** View ordinance  
**Date:** Monday, January 11, 2016 12:13 PM  
**From:** mike\_patel <mike\_patel@cox.net>  
**To:** "hluce@cityofrh.net" <hluce@cityofrh.net>, "Raymond R. Cruz" <rcruz@cityofrh.net>

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**JAN 11 2016**

**City of Rolling Hills**  
**By** \_\_\_\_\_

Dear Rolling Hills City Council,

Our family supports the proposed changes to the View Ordinance as well as the Planning Commission's interpretation of Measure B.

We feel that it is a balanced and reasonable approach to the issue of tree preservation and homeowner's right to a view.

Thank You,  
Mike and Nina Patel  
12 Southfield Dr.

Sent from my Sprint Samsung Galaxy S® 6.

**Subject:** FW: View Ordinance  
**Date:** Monday, January 11, 2016 4:08 PM  
**From:** Raymond R. Cruz <rcruz@cityofrh.net>  
**To:** "hluce@cityofrh.net" <hluce@cityofrh.net>  
**Cc:** Ewa Nikodem <enikodem@cityofrh.net>

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JAN 11 2016

City of Rolling Hills

By \_\_\_\_\_

FYI

Raymond R. Cruz

City Manager  
City of Rolling Hills  
2 Portuguese Bend Road, Rolling Hills, CA 90274  
310 377-1521 F: 310-377-7288

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**From:** Scott Holt <sholt@cox.net>  
**Date:** Monday, January 11, 2016 at 1:04 PM  
**To:** Raymond Cruz <rcruz@cityofrh.net>  
**Cc:** 'Jeff Pieper' <jeff@pieper.com>  
**Subject:** View Ordinance

Dear City of Rolling Hills City Council,

Both Tracy and I support the proposed changes to the view ordinance as well as the planning commissions interpretation of measure B. We feel it is the best approach to tree preservation and the homeowners right to a view.

Thank you ,

Scott and Tracy Holt  
5 Williamsburg Lane

**Subject: View Ordinance**  
**Date:** Monday, January 11, 2016 2:00 PM  
**From:** Joseph Rich <joerich@richdevelopment.com>  
**To:** "hluce@cityofrh.net" <hluce@cityofrh.net>  
**Cc:** "rcruz@cityofrh.net" <rcruz@cityofrh.net>

**RECEIVED**

**JAN 11 2016**

**City of Rolling Hills**

By \_\_\_\_\_

Dear Rolling Hills City Council,

Our family supports the proposed changes to the View Ordinance as well as the Planning Commission's interpretation of Measure B. We feel that it is a balanced and reasonable approach to the issue of tree preservation and homeowner's right to a view.

Thank You,  
Joseph Rich | Manager  
Rich Development Enterprises, LLC  
1000 N. Western Avenue, Suite 200 | San Pedro, CA 90732  
T 310 547 3326 | F 310 547 1177

[Joe@Richdevelopment.com](mailto:Joe@Richdevelopment.com) <mailto:Joe@Richdevelopment.com>  
[WWW.Richdevelopment.com](http://WWW.Richdevelopment.com) <http://WWW.Richdevelopment.com>

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**JAN 11 2016**

City of Rolling Hills  
By @MEETING

**From: Steere, Martin**  
**To: 'Judith Hassoldt' ; hallight@hjlaw.com**  
**Sent: Monday, January 11, 2016 12:16 PM**  
**Subject: RE: Fw: Letter to City Council re: Mature Tree Definition**

The proposed definition of “maturity” is inconsistent with the law and common sense. Worse, it represents an effort to thwart the will of the voters. And it’s being presented in a fairly disingenuous way.

In an attempt to rationalize the need for this definition, the planning commission points to the four “conflicting” reports in a pending view case. What doesn’t appear anywhere in the staff report, though, is how those reports came to be conflicting. The fact is that the view complainants hired an “expert” to give an “opinion” that corresponded to what the complainants needed in their case – that the trees were not mature. This so-called expert gave such an opinion without even going on to the property and inspecting the trees. (You pay somebody enough money, they’ll tell you what you want to hear.) Of course, this opinion conflicted with the determination that the tree owners had gotten from their arborist, and I suppose one could argue that the gate swings both ways. Though, in fairness, that arborist had actually inspected the trees in question.

The committee on trees and views recognized the absurdity of relying on potentially biased “experts,” and opted to hire its own neutral arborist, who determined that the trees are, in fact, mature. That then led the complainants to double down by bringing in a second “expert” who not only didn’t inspect the trees, but didn’t even set foot in California, basing his entire “opinion” on a video feed from the iPhone of the complainants’ attorney. He also, in a bit of irony, tried to discredit the neutral arborist by taking him to task for using the Sunset

Western Garden Book (a source even the planning commission acknowledges is authoritative). It was remarkably facile and dishonest.

But the commission has apparently decided it can bamboozle the public by touting the notion that, unless we completely define away the necessity for distinguishing between maturing and mature trees, as the law requires, there could be “conflicting” opinions regarding maturity. It does so without bothering to point out the obvious: It’s possible to hire “experts” who will say up is down and water is not wet. That doesn’t make it so. And it doesn’t validate this exercise.

And that’s before we even get to the actual “definition” that the planning commission now want to shove down the throats of the citizens in Rolling Hills.

Let’s take them one at a time.

1. A tree can only be mature if it has stopped growing. Really? If that were the case, why would it be necessary to protect mature trees that grow into a view? That’s what Measure B said. That’s what the voters voted for. The commission now wants to ignore that part of the law? As if it doesn’t exist? Why else would it be there?

2. If a tree has been previously trimmed, it can never reach maturity. Who pulled that out of thin air? Proper tree maintenance, particularly in a residential environment, contemplates trimming, shaping, lacing out. Anything else is unsightly. And unsafe.

This is a truly cynical exercise. According to the planning commission, the law doesn’t mean what it says, only what five individuals want it to say. And to get it to what they want it to say, they advocate ignoring a whole section of the law, ignoring sound tree maintenance principles, and ignoring common sense.

The council should not be fooled. In a democracy, a city government does not have the right to ignore or define away laws. Only the courts have that authority. But if the city council adopts this definition, that's where this will wind up. And the city will be on the wrong side.

**Martin Steere**  
Partner

---

**Manatt, Phelps & Phillips, LLP**  
11355 W. Olympic Blvd  
Los Angeles, CA 90064  
**D (310) 312-4110 F (310) 914-5785**

[msteere@manatt.com](mailto:msteere@manatt.com)  
[manatt.com](http://manatt.com)



International Society of **Arboriculture**  
2101 West Park Court • Champaign, IL • 61821 • USA  
p. 217-355-9411 • t. 888-472-8733 • f. 217-355-9516 • www.isa-arbor.com

January 5, 2016

City Council City of Rolling Hills  
2 Portuguese Bend Road  
Rolling Hills, CA 90274

RECEIVED

JAN 11 2016

City of Rolling Hills  
By MEETING

Council Chair and Members:

I have been asked to provide some background information about the *ISA Glossary of Terms*, published by the International Society of Arboriculture (ISA). First I should clarify that ISA is the largest professional association for arborists in the world. With more than 24,000 members and more than 35,000 ISA professional credential holders, ISA represents commercial, municipal, and utility arborists, as well as educators, researchers, and students in the field of arboriculture.

The *ISA Glossary of Terms* has been published semiannually since 2005. The glossary was developed and refined by a team of respected, subject-matter experts from around the English-speaking world. Many other established dictionaries and other sources have been consulted in the development of the definitions of terms. Dozens of professionals, representing various facets of the arboriculture and related professions have reviewed and revised the terms and their definitions over the last decade.

I believe it is fair to say that the *ISA Glossary of Terms* is a highly respected resource, consulted, utilized, and quoted by authors and professionals in text books, national standards, and courts of law.

I believe that the term in question is “mature height.” According to the 2015 edition of the glossary, the definition is:

**mature height:** maximum height that a plant is likely to reach if the conditions of the planting site are favorable

I hope that you find this definition and explanation of the glossary to be helpful.

Best regards,

Sharon Lilly  
ISA Director of Educational Goods and Services  
Project Leader, ISA Glossary of Arboricultural Terms