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31 Chuckwagon Road
Rolling Hills, CA 90274

JAN 22 2016

January 21, 2016

City of Rolling Hills
By _____

City Council
City of Rolling Hills

**SHOULD THE CITY OF ROLLING HILLS SPEND TAXPAYER DOLLARS
TO RESOLVE VIEW DISPUTES AMONG PROPERTY OWNERS?**

Dear City Councilpersons:

No, taxpayer dollars should not be used to resolve disputes between property owners in Rolling Hills. Resolution of property disputes is best left up to the view-seeker and tree/vegetation owner. If they can't reach an agreement, they can turn to arbitration or the courts—without Rolling Hills being dragged into the fray! Taxpayer dollars would be better used for such improvement projects as undergrounding of utilities, increased sheriff patrols, fire-fuel reduction, needs of seniors, city beautification and so forth.

Factors to consider:

- 1) **The City should remain scrupulously neutral in resolving view disputes.** There is not a presumption that the view seeker is the wronged party. It is entirely possible that a view seeker could file a frivolous view resolution in an attempt to obtain a view that did not exist when they purchased their property. The tree/vegetation owner deserves equal protection under the law from an unscrupulous owner seeking to increase their property value at the expense of a neighbor's property value.
 - City attorney's only role should be solely to interpret the law and provide guidance to the view committee or city counsel
 - View-seeker and/or tree owner should retain legal counsel, at their own expense, if they wish to be represented
 - View-seeker and/or tree owner should retain arborists or other experts if they desire, at their own expense
 - I suggest that the view committee go back to being a citizen committee separate from the Planning Commission. They have plenty of other things to do!

- 2) **The view seeker is seldom financially less able to pursue a view dispute than is the tree/vegetation owners.** That's the argument given for spending taxpayer dollars to help the view-seeker regain/create a view. In Rolling Hills, it would be rare for a property owner to be so destitute that they cannot afford legal and expert representation. In a recent view resolution case, Occhipinti and Fournier

vs. Sherman, my supposition is that the view-seekers were financially much better able to prosecute the view resolution action than was Sherman. They don't need the help of Rolling Hills taxpayers!

3) The City should not become a party to a dispute between property owners and participate financially in expensive litigation.

It is very rare for a city to shoulder the financial risk of becoming a party to a view dispute. Most cities provide view resolution guidelines and definitions in an ordinance, and provide a view committee that acts as a facilitator or ombudsman to assist the view-seeker and tree owner on an advisory basis in resolving a dispute. If the parties cannot agree, they can then turn to arbitration or litigation—without the City being dragged into expensive litigation!

The RH Planning Director provided an analysis of view ordinances in benchmark cities. I have summarized the results below, combined with a similar study I conducted a few years ago (attached).

CITY	PARTY TO DISPUTE	NOT PARTY TO DISPUTE	LIABILITY INDEMINIFICATION
Berkeley		X	X
Beverly Hills		X	X
Laguna Beach		X	X
Malibu		X	X
Oakland		X	X
Palo Alto		X	Tree Protection Ord. only
Palos Verdes Estates		X	X
Rancho Palos Verdes	X		
Rolling Hills	X		
Rolling Hills Estates		X	X
Sausalito		X	
Tiburon		X	X

4) Reimbursement of City's view remediation action costs- loser pays all

Prior to adoption of Measure B, the view seeker could get, with the City's help, a view that did not exist when they purchased their property in Rolling Hills. It was entirely fitting that the view-seeker should reimburse the City for its expenses, as obtaining a view they never had could significantly improve their property value.

After passage of Measure B, not so much! Now, the wronged party is likely to be a property owner who had a view when they purchased their property, and now needs City help to restore the view. The tree-owner could well be the recalcitrant party unwilling to be neighborly and restore his neighbor's view.

Of course, there is also the possibility of a view-seeker attempting to obtain a view that they did not have when they purchased their property, by filing a frivolous view remediation action. Requiring the losing party to pay all of the City's costs ("loser pays all") would discourage such frivolous view applications, and would also encourage uncooperative property owners whose trees have grown to block a neighbor's view to work with their neighbor to restore a view, without getting the City involved.

Most city tree/view ordinances also stipulate that the prevailing party of any civil action between a view seeker and tree/vegetation owner shall be entitled to recover its reasonable attorney fees and costs incurred in the litigation.

Sincerely,

Lynn E. Gill

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JAN 25 2016

City of Rolling Hills
By _____

FAX TO ROLLING HILLS CITY COUNCIL

ATTENTION : PLEASE YOLANTA

310-377-7288

1 -24-2016

FROM: MICHAEL & SANDRA SHERMAN

33 CREST ROAD EAST

ROLLING HILLS, CA. 90274

3 PAGES

Dear Yolanta,

Please duplicate this letter and give each of the R.H. City Council members a copy of it to read et. al. at the meeting on Monday , January 25th, 2016 .

It is very important that the public and the council know and understand what we have negatively experienced as residents of this city.

Thank you.

Sincerely,



Michael and Sandy Sherman

2

33 Crest Road East
Rolling Hills, CA 90274

January 22, 2016
City Council
City of Rolling Hills

Dear City Councilpersons:

My wife and I have written this letter to explain the financial burdens that we had to experience in the past as well as the future regarding the cutting of our trees to enhance views demanded by our neighbors across Crest Road -- the Occhipiniti and Fournier("O & F") families.

Over a period of many months, our total legal defense fees exceeded more than \$ 100,000. O & F families joined forces and used the City and City's attorney at no expense to their families. They optionally hired an independent attorney to jointly represent the both of them , but did not have to.

The View Committee studied the issues at hand , did field trips and determined that over 60 trees on our property should be trimmed and maintained --some annually and the rest biannually . And to paraphrase the committee's findings -- that because the cutting of such trees and hedges was so extensive that the " future cost- burden was onerous", and should be shared between the Shermans and the "O & F " families.

The committee voted 2 to1 on this issue. At least we felt that this would be more fair . However, they appealed this decision to the City Council and the council voted to overturn the committee's decision and now we have to unfairly pay for ALL future costs of maintenance.

This is totally unfair because every year value is lost from our property and 60+ trees are subject to disease from being cut at our expense. Also, our privacy and

enjoyment of our property are being diminished . Trees and park like environment are the very reasons we moved to Rolling Hills in 2007 from RPV.

Now the neighbors across Crest Road from us, can not only claim the wonderful city light views they always had to the north, but can also claim ocean views to the south ---at our total expense. Their property values have been increased and ours decreased. I am a licensed real estate in agent in California and my colleagues have confirmed to me that each neighbor has probably had a \$ 500,000 increase or more in the value of their properties because of the above decisions.

In addition to the tremendous financial burden, there has been the burden of huge stress, and wasted time and energy in defending what is rightfully ours. To be honest, if we had known that we would be heavily involved in such an outrageous situation with the City of Rolling Hills and neighbors like " O & F" ,we would NEVER have purchased our home in Rolling Hills. In fact, a couple of our friends who were considering purchasing here have now decided that they do not wish to live in our community where innocent property owners can be victims of such injustice and discrimination.

The Shermans have gained nothing . Where is the fairness of these decisions and policies of Rolling Hills ?????

Sincerely,



Michael Sherman



Sandy Sherman

Subject: input regarding proposed modifications to ordinance 346
Date: Saturday, January 23, 2016 10:11:51 AM Pacific Standard Time
From: Laurence Bellagamba <bellagamba@me.com>
To: Yolanta Schwartz <ys@cityofrh.net>

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JAN 25 2016

City of Rolling Hills

By _____

1. Recommend again that Rolling Hills should not have a view ordinance.
2. Please note 17.12.220 fails to define what the ordinance is trying to address.

The word "view" is used to define "view". Perhaps the definition is: "View" means what the human eyes can see from a principal residence, but not including.... "

The definition of "view impairment" uses "a significant interference" in its definition without defining significant or interference. A possible relevant definition of significant from Webster's is "noticeably or measurably large amount". Perhaps the definition is: "View impairment" means there are obstructions which prevent more than 90% of a view that otherwise would exist."

A view can be quantified. A view consists of degrees in the horizontal (left and right) and vertical (up and down). The unit of measure is called a steradian. A view obstruction prevents a fraction of potentially visible steradians from being seen. What fraction constitutes an impairment? The draft ordinance fails to define this. Rather, it calls for a mediator to attempt to reach an agreement between the parties, and failing that, for 3 other people to impose one. Certainly if the parties can agree to a remedy, that is an acceptable outcome. But no ordinance is necessary for the parties to utilize mediation. Imposing a decision from 3 people could easily be unacceptable to one party, and if upsetting enough, lead to a lawsuit against the City, which the rest of us don't need to pay to defend.

An ordinance that can not define its subject matter is not going to be useful or enforceable.

3. Recommend that 17.26.030 E be edited as recommended by the input received from Ms Gil on 19 Jan to incorporate modern and effective tree trimming procedures.
4. Recommend 17.26.060 C be deleted. Any future view impairment should be addressed per the ordinance. The seeker of the view should be responsible for cost to obtain it.

Thank you very much for the well composed information package on the city's website.

Sincerely,

Larry and Julie Bellagamba
3 Flying Mane Road

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JAN 25 2016

Chapter 17.26 - VIEW PRESERVATION

Sections:City of Rolling Hills
By @ CC MEETINGS
COUNCIL MEMBER OIERINGER

17.26.010 - Intent and purpose.

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 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.

(Ord. 239 §11(part), 1993).

17.26.020 - Committee on trees and views.

A Committee on Trees and Views is established for the purpose of administering the provisions of this chapter. The Committee shall be composed of three members of the Planning Commission appointed by the Commission annually at the same time as the Commission selects its officers, or whenever a vacancy occurs. Committee meetings shall be scheduled as adjourned or special meetings of the Commission. The Committee is authorized to consult with City officials and with specialists such as landscape architects and arborists as required, but shall not incur any expense on behalf of the City without prior approval of the City Council.

(Ord. 292 §4, 2003; Ord. 239 §11(part), 1993).

17.26.030 - Desirable and undesirable trees.

The Committee is authorized and directed to prepare lists of types of desirable and undesirable trees for planting within the City. The list shall be based upon tree size and shape, rate of growth, depth of roots, fall rate of leaves or bark or fruit or branches, and other factors related to safety, maintenance and appearance. The purpose of this provision is to make information available to property owners which may serve to avoid future occasion for permits, complaints, and other proceedings authorized by this chapter.

(Ord. 239 §11(part), 1993).

17.26.040 - Abatement of view impairment—Procedure.

Any person who owns or has lawful possession of a residence from which view is impaired by vegetation growing on property other than their own may seek abatement of the view impairment under the following procedure:

- A. Application Required. The complainant shall submit a complete application for abatement of view impairment on a form provided by the City. The application shall be accompanied by a fee as provided for in Section 17.30.030 of this title. The complainant shall describe in the application what efforts have been made by the complainant to resolve the view impairment

prior to filing the complaint. A complaint shall not be accepted for filing unless the complainant can demonstrate that the owner of the view-impairing vegetation has been given notice of the impairment and a reasonable opportunity to abate it, but has refused to do so.

- B. Mediation. Upon receipt and acceptance of an application as complete, the City Manager shall refer the matter to a mediator for conduct of a mediation session to abate the view impairment. The mediator shall be responsible for notifying the property owner of the view-impairing vegetation of the application and for scheduling and managing the mediation process. If agreement is reached through mediation, it shall be implemented in accordance with Section 17.26.060.
- C. Public Hearing. In the event mediation fails to achieve agreement, the matter shall be returned to the City Manager, who shall schedule the matter for a public hearing before the Committee on Trees and Views.

(Ord. 292 §5, 2003; Ord. 239 §11(part), 1993).

17.26.050 - Hearing procedure and findings.

- A. Notice Required. Public notice of the hearing shall be given a minimum of fifteen days prior to the hearing. The hearing shall not proceed unless proof is shown that the owner of the tree or other obstructing vegetation received notice of the hearing as provided herein:
1. Notice shall be given by certified mail, return receipt requested, to the owner of the tree or other obstructing vegetation and to the complainant;
 2. Notice shall be given by first class mail to all property owners within one thousand feet of the exterior boundary of the property on which the tree or other obstructing vegetation are located and to other persons who, in the Committee's judgment, might be affected.
- B. Content of Notice. The notice shall state the name of the complaining party, the name of the property owner against whom the complaint is filed, the location of the tree or other vegetation, and the time and place of hearing. The notice shall invite written comments to be submitted prior to or at the hearing.
- C. Conduct of Hearing. The Committee shall adopt rules for the conduct of required hearings. At the hearing, the Committee shall consider all written and oral testimony and evidence presented in connection with the application. In the event the Committee requires expert advice in consideration of the matter, the cost of obtaining such evidence shall be borne by the complainant, pursuant to written agreement with the City. *See additional language attached*
- D. Findings. Based on the evidence received and considered, the Committee may find any of the following:
1. That no view exists within the meaning of this chapter;
 2. That a view exists within the meaning of this chapter, but that the view is not significantly impaired; or
 3. That a view exists within the meaning of this chapter and that it is significantly impaired.
- The Committee shall make specific written findings in support of the foregoing determinations.
- E. Action. If the Committee makes finding subsection (D)(3) of this section, it shall order such restorative action as is necessary to abate the view impairment and to restore the complainant's view, including, but not limited to, removal, pruning, ~~topping~~, thinning or similar alteration of the vegetation. Such order is not intended to create an unobstructed view for applicants. Instead it is

intended to create view corridors and a view through trees. The Committee may impose conditions as are necessary to prevent future view impairments. In no event shall restorative action be required if such action would adversely affect the environment or would unreasonably detract from the privacy or enjoyment of the property on which the objectionable vegetation is located.

- F. Finality of Decision. The Committee's decision shall be final twenty days after adoption of its written findings, unless it is appealed to the City Council pursuant to the provisions of Chapter 17.54.

(Ord. 295 §7 (Exh. B (part)), 2004; Ord. 239 §11(part), 1993)

(Ord. No. 333 (Measure B), 3-18-2013)

17.26.060 - Implementation of restorative action.

- A. Within thirty days of a final decision ordering restorative action, the complainant shall obtain and present to the owner of the obstructing vegetation three bids from licensed and qualified contractors for performance of the work, as well as a cash deposit in the amount of the lowest bid. In order to qualify, the contractors must provide insurance which protects and indemnifies the City and the complainant from damages attributable to negligent or wrongful performance of the work. Any such insurance shall be subject to the approval of the City.
- B. The owner of the obstructing vegetation may select any licensed and qualified contractor to perform the restorative action (as long as the insurance requirements of subsection A of this section are satisfied), but shall be responsible for any cost above the amount of the cash deposit. The work shall be completed no more than thirty days from receipt of the cash deposit.
- C. Subsequent maintenance of the vegetation in question shall be performed as prescribed by the Committee's final decision at the cost and expense of the owner of the property on which the vegetation is growing. The vegetation shall be maintained in accordance with the final decision so as not to allow for future view impairments. A notice of the decision shall be recorded against the title of the property and shall run with the land, thereby giving notice of this obligation to all future owners.
- D. The implementation method provided for in this section may be modified by the parties or in any final decision if grounds exist to justify such a modification. In particular, the Committee may allocate the cost of restorative action as follows:
1. If the Committee finds that the tree or other vegetation constitutes a safety hazard to the complainant or his property, and is being maintained by the owner in disregard of the safety of others, the owner may be required to pay one hundred percent of the cost of correction; or
 2. If the owner is maintaining a hedge fifteen feet or more in height, the Committee may allocate the cost of correction to the property owner, provided that the owner of the land on which the hedge exists shall not be required to pay more than twenty-five percent of the cost of such correction.

(Ord. 239 §11(part), 1993).

17.26.070 - Enforcement.

- A.

Failure or refusal of any person to comply with a final decision under this chapter or to comply with any provision of this chapter shall constitute a misdemeanor and shall be punishable by a fine of one thousand dollars or six months in County Jail, or both. ~~Failure or refusal of any person to comply with a final decision under this chapter shall further constitute a public nuisance which may be abated in accordance with the procedure contained in Chapter 8.24.~~

- B. A final decision rendered under this chapter may be enforced civilly by way of action for injunctive or other appropriate relief, in which event the prevailing party may be awarded attorney's fees and costs as determined by the court.
- C. Nothing in this chapter shall preclude the prosecution of any civil cause of action under the law by any person with respect to the matters covered herein.

(Ord. 239 §11(part), 1993).

17.26.080 - Notification of subsequent owners.

The owner on whose property the offending vegetation exists shall notify all successor owners of the final decision in any proceeding under this chapter, and such decision shall be binding upon all such successors in interest. Within thirty days of the final decision, an informational covenant shall be recorded against the title of the property on a form provided by the City.

(Ord. 239 §11(part), 1993).

17.26.090 - Preservation of views defined.

Notwithstanding any other provision of Chapter 17.26.010 to 17.26.080 inclusive, the following provision shall apply and supersede in priority any other provision.

1. A view is defined in Chapter [Section] 17.12.220 and only applies to that view existing from the date any current owner of a property in the City of Rolling actually acquired the property.
2. Chapter [Section] 17.26.010 provides that the intent of the Ordinance is to protect views from "maturing" vegetation. As such, in addition to the limitations otherwise set forth in Chapter 17.26, including but limited to this Section 17.26.090, any vegetation which is already mature at the time any party claiming a view impairment actually acquired the property shall be exempt from Chapter 17.26. "Mature" versus "Maturing" shall be defined by industry standards predominantly accepted by arborists.
3. The burden of proof to show that any view is impaired shall be upon the party claiming such impairment, and the standard shall be by "clear and convincing evidence". Evidence shall be weighted in the following order of priority:
 - a. Photographs;
 - b. Expert testimony; and lastly
 - c. Other evidence.

(Ord. No. 333 (Measure B), 3-18-2013)

Editor's note— Ord. No. 333 (Measure B) which added the provisions set out herein, was adopted March 18, 2013, as a result of a vote of the electorate and thus cannot be changed except by another vote. Said ordinance states, "This Section 17.26.090 shall be effective retroactively to the date Chapter 17.26 was first made an Ordinance to the City of Rolling Hills."

17.26.050

C (Additional language):

Expert arboricultural advice shall be provided only by consulting arborists who are members in good standing of the American Society of Consulting Arborists and the International Society of Arboriculture and who sign a "Certification of Performance" as set forth in this Chapter.

17.26.075 –Liability

(1) The City shall not be liable for any damages, injuries, costs or expenses which are the result of any agreements or determinations resulting from mediation, arbitration or litigation concerning view preservation claims or a view seeker's assertions pertaining to views granted or conferred herein;

(2) Under no circumstances shall the City have any responsibility or liability to enforce or seek any redress, civil or criminal, for any decision that any person or entity makes concerning a view preservation claim. Enforcement of this chapter shall be only by the affected and interested private parties.

CERTIFICATION OF PERFORMANCE

I, Michael Crane, certify that:

- I have personally inspected the tree(s) and the property referred to in this report and have stated my findings accurately.
- I have no current or prospective interest in the vegetation or the property that is the subject of this report and have no personal interest or bias with respect to the parties involved.
- The analysis, opinions, and conclusions stated herein are my own and are based on current scientific procedures and facts.
- My analysis, opinions, and conclusions were developed and this report has been prepared according to commonly accepted arboricultural practices.
- No one provided significant professional assistance to me, except as indicated within the report.
- My compensation is not contingent upon the reporting of a predetermined conclusion that favors the cause of the client or any other party not upon the results of the assessment, the attainment of stipulated results, or the occurrence of any subsequent events.

I further certify that I am a member in good standing of the American Society of Consulting Arborists and the International Society of Arboriculture. I have been involved in the field of Horticulture in a full-time capacity for a period of more than 15 years.

Signed: _____



Registered Consulting Arborist #440; American Society of Consulting Arborist
Board Certified Master Arborist #WE 6643B; International Society of Arboriculture
Licensed California Agricultural Pest Control Adviser #AA08269

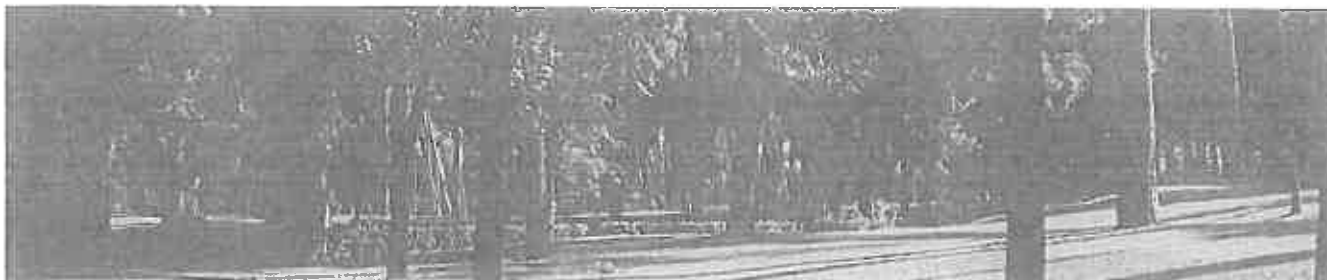
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About

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Settle for nothing less than the best when it comes to trees.

The American Society of Consulting Arborists (ASCA) is the industry's premier professional association focusing solely on arboricultural consulting. Consulting Arborists are authoritative experts on trees, consulting property owners, municipalities, attorneys, insurance professionals and others on tree disease, placement, preservation, and dispute resolution, as well as providing consulting and expert testimony in the legal, insurance, and environmental arenas. The role of the Consulting Arborist is to bring a comprehensive, objective viewpoint to the diagnosis, appraisal, and evaluation of arboricultural issues.

A higher degree of knowledge and stewardship.

ASCA's more than 600 Consulting Arborists separate themselves from other arborists through their commitment to the continual development of their knowledge and skills as industry leaders. To maintain membership status and ensure that their professional training keeps them current on arboricultural issues, ASCA members must meet strenuous continuing education requirements every two years.

To that end, ASCA delivers the best resources for skills development, career enhancement, idea sharing, and training in the profession. Our members are held to the highest standards of professional practice. In addition, we are the only source for achieving the industry's coveted Registered Consulting Arborist® (RCA) designation.

Our efforts ensure that when an industry professional or property owner hires an ASCA member or RCA to consult on tree preservation, hazardous trees, appraisal, other tree health issues, or to serve as an expert witness, they're getting the most authoritative advice the industry has to offer.

ASCA STANDARDS OF PROFESSIONAL PRACTICE

MAY 2011

 AMERICAN SOCIETY *of*
CONSULTING ARBORISTS

FOREWORD

ASCA Members agree to abide by the Standards of Professional Practice as a condition of membership in the American Society of Consulting Arborists. The Standards of Professional Practice provide guidance for members to govern their professional conduct.

ASCA does not warrant that individual members will adhere to these Standards of Professional Practice in any instance, nor does ASCA hold itself out as having a responsibility to govern or review the business practices of members or the quality of related work, services, or goods provided by members.

DEFINITIONS

Arboricultural. Pertaining to the awareness, care, evaluation, identification, growing, maintenance, management, planting, selection, and treatment of trees and other woody plants.

Arboricultural Consultant. An individual engaged in Arboricultural Consulting, also known as a Consulting Arborist.

Arboricultural Consulting. The profession which involves the application of technical knowledge, analytical skills and professional judgment to arboricultural-related facts and circumstances.

ASCA. The American Society of Consulting Arborists.

ASCA's A Consultant's Guide to Writing Effective Reports. A book written and initially published by ASCA in 2004, including subsequent editions or revisions thereof.

Consulting Arborist. An individual engaged in Arboricultural Consulting, also known as an Arboricultural Consultant.

Continuing Education Requirements. Continuing, periodic education required to maintain eligibility for membership in ASCA, as set forth in the ASCA Bylaws.

1. Ethical Principles.

1.1 Competence. Members shall strive to perform Arboricultural Consulting services with competence.

A. Improvement. Members should continuously and assiduously strive to improve their qualifications and proficiency as Consulting Arborists.

B. Minimum Continuing Education. Members shall satisfy ASCA's Continuing Education Requirements.

C. Practice Areas. Members shall strive to attain and maintain competence in the particular areas in which they practice. This may involve study and experience beyond that required for admission to ASCA or to satisfy ASCA's Continuing Education Requirements.

D. Roles. Members shall strive to attain and maintain competence in the particular roles in which they practice. This may involve study and experience beyond that required for admission to ASCA or to satisfy ASCA's Continuing Education Requirements.

E. Assignments. Members shall undertake only those assignments that are reasonably within the member's range of technical competence, unless the member obtains competent assistance and so advises the client.

1.2 Due Care. Members shall strive to perform Arboricultural Consulting services with due care. Due care varies with each assignment, but may be generally defined as the level of care that would be required of a reasonably prudent professional under the same or similar circumstances.

1.3 Impartiality. Members shall strive to perform Arboricultural Consulting services with impartiality whenever they hold themselves out to be acting as disinterested, impartial and unbiased third parties. Members need not act with impartiality when acting in the role of an advocate. Members acting as advocates are not relieved of the duties of independence and objectivity.

1.4 Independence. Members shall strive to perform Arboricultural Consulting services with actual and apparent independence and shall avoid actual and apparent conflicts of interest unless disclosed to and waived by clients.

A. Actual Independence. Members shall remain free of any actual influences on their ability to be objective when reaching conclusions, rendering opinions and providing recommendations.

B. Independence in Appearance. Members shall be mindful of apparent or potential influences on their objectivity and shall exercise careful professional judgment in determining whether to disclose such influences and affirm their objectivity or to decline an assignment.

- 1.5 Integrity.** Members shall strive to provide Arboricultural Consulting services with integrity, that is, with fairness and honesty.
- 1.6 Objectivity.** Members shall strive to provide Arboricultural Consulting services with objectivity, that is, without bias or prejudice and based upon facts and reasonably informed assumptions.

2. General Practice Standards.

2.1 Assignments.

A. Definition of Each Assignment. Members shall communicate clearly with clients and employers to define each assignment. The definition of the assignment should identify factors which include:

- i) the issue(s) to be resolved, and/or the problem(s) to be solved, and/or the question(s) to be answered;
- ii) the agreed upon level of thoroughness;
- iii) the scope of investigation or other work necessary to complete the assignment in a manner which is adequate and appropriate;
- iv) the type(s) of results (such as conclusions, explanations, observations, opinions, recommendations or specifications) desired;
- v) the agreed upon scope and limitations of any report and the intended purpose(s) and use(s) of any such report; and
- vi) the manner and/or amount of compensation to be provided to the member, provided that such compensation is lawful and clearly stated.

B. Independent and Objective Character of the Results of Arboricultural Consulting Assignments. The results of members' Arboricultural Consulting assignments should always be objective, that is, based upon what the member perceives to be relevant facts and reasonable assumptions, and independent of the desires, needs or wishes of the client or employer and of the interests of the member.

C. Methodology. Members shall base conclusions, opinions and recommendations on adequate and appropriate methodology (analyses, investigations, tests and other procedures).

D. Adequate Data. Members shall base conclusions, opinions and recommendations on adequate data unless such data are not available or cannot reasonably be gathered or made available in the context of the assignment, in which case members shall disclose limitations on the adequacy of data and any resulting limitations on the accuracy or reliability of conclusions, opinions or recommendations.

E. Verifiable - Justifiable Results. Results of assignments should generally be verifiable by other professionals using similar methodology. Because

professionals can reach differing results, members shall be prepared to explain and justify their results in the face of divergent opinion.

F. Record Keeping. Members shall maintain copies of their written reports and other records of their assignments for five years after the completion of the assignment, two years after the final disposition of a judicial or other dispute resolution proceeding in which the member has provided services, whichever period expires last, or for such longer period as is required by applicable law.

2.2 Reports and Presentation Standards. Members shall endeavor to report their conclusions, opinions and recommendations in a manner that makes them clear, unambiguous and usable. Members are encouraged to use *A Consultant's Guide to Writing Effective Reports* as a reference when preparing reports.

A. Limiting Conditions. Members shall clearly disclose and explain in their reports any limitations on authority, competence, scope, data, methodology or results, as well as any limitations on the use or application of the report.

B. Preliminary Reports. Members shall clearly identify reports which are intended to be preliminary or to present the results of preliminary investigations.

C. Degrees of Certainty or Reliability. Members shall not misstate the degree of certainty of an opinion, if any.

D. Originality and the Work of Others. Members shall not represent the work of others to be their own, whether by plagiarism, or by failing to obtain permission to use or to cite as a source the work of others.

E. Professional Responsibility. Members shall accept professional responsibility for their own work and the conclusions, opinions or recommendations which they report based on that work.

F. Divergent or Dissenting Opinions. Members should exercise careful professional judgment to determine whether disclosure of a divergent or dissenting opinion, conclusion or recommendation by a collaborator in an assignment is necessary for a client or employer to make an informed decision.

2.3 Advertising, Promotion and Solicitation.

A. Truthfulness. Members shall not make any deceptive, false or misleading claim, promise, representation or statement in verbal or written advertising, promotion or solicitation.

B. Results Offered. Members shall not guarantee, imply, offer or represent that the results of an assignment can or will be tailored or adjusted to any particular conclusion other than one which represents a member's honest and objective opinion.

2.4 Confidentiality. Unless they have been specifically released from this duty by the party to whom it is owed, members shall not reveal information obtained in the conduct of providing Arboricultural Consulting services which they have agreed to maintain in confidence, or which the reasonably prudent member would recognize as likely, if disclosed, to adversely affect the interests of the client or employer.

A. Extraordinary Exceptions. Members may reveal such information to the extent they believe necessary:

- i) To prevent an appreciable risk of significant harm to public safety or the property of others which cannot be reasonably prevented in any other manner.
- ii) To establish claims or defenses on behalf of such members.
- iii) To comply with applicable law or court orders.

B. Specific Roles. Members acting in appraisal, arbitration/mediation or forensic expert roles should inquire to determine whether they have more stringent duties of confidentiality than those set forth herein. Members acting in specific roles shall fulfill any additional duties of confidentiality imposed upon them.

3. Duties to Clients and Employers.

3.1 In General. In their professional relationships with clients and employers, members have a duty to strive to comply with the Ethical Principles and General Practice Standards set forth herein.

4. Duties to ASCA.

- 4.1 Arboricultural Consulting Profession.** Members shall regard Arboricultural Consulting as an honorable and necessary profession.
 - 4.2 General Conduct.** Members shall conduct themselves in a manner which enhances the standing of Arboricultural Consulting and ASCA and shall avoid practices and actions which discredit Arboricultural Consulting or ASCA.
 - 4.3 Specific Conduct.** Members shall strive to provide Arboricultural Consulting services in compliance with these Standards of Professional Practice and shall adhere to the Bylaws of ASCA.
 - 4.4 Professional Courtesy.** Members should strive to further the interests of ASCA by cooperating in the lawful exchange of information and experiences with other members.
-

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- Pruning Objectives
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Heidi Luce
City Clerk
City of Rolling Hills
2 Portuguese Bend Road
Rolling Hills, CA 90274

Re: Ordinance 346 re View Preservation Law

Dear Ms. Luce:

Tonight, January 25, 2016, at the City Council hearing, the Council will consider the adoption of Ordinance 346 regarding amendments to the City's View Preservation Law.

The U.S. Supreme Court, in *Nollan v. California Coastal Comm'n*, 483 U. S. 825 (1987), and *Dolan v. City of Tigard*, 512 U. S. 374 (1994), established an important protection against the misuse of the power of land-use regulation. In those cases, the Supreme Court held that a unit of government may not condition the approval of a land-use permit on the owner's relinquishment of a portion of his property (or payment of a fee) unless there is a "nexus" and "rough proportionality" between the government's demand and the effects of the proposed land use.

Recently, the Supreme Court issued their decision in *Koontz v. St. Johns River Water Management District* (133 U.S. 2586 (2013)). In *Koontz*, the Supreme Court made clear that cities may not impose fees and costs on parties seeking land use entitlements, because those fees and costs violate the *Nollan/Dolan* test regarding improper takings by the government. The Court stated that a City may not create a "monetary obligation [that] burdened petitioner's ownership of a specific parcel of land." If the City tried to make an applicant pay, forever, to maintain the trees on a neighbor's land, the City would unconstitutionally require the applicant to bear a monetary obligation on his or her land, forever.

The View Restoration Law was created to cause the applicant for a view to pay for the restoration of that view. Similarly, it requires that once the City establishes the maximum height and width of trees that must be maintained by the landowner with the offending trees, then that landowner must bear the burden of maintaining those trees. The *Koontz* case makes it clear that each view restoration decision by the City will be subject to the heightened scrutiny under *Nollan/Dolan*. There is a "nexus" and relationship between an applicant that wants to restore its

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Ms. Heidi Luce
January 25, 2016
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view, and the requirement that the applicant pay the cost for the tree remediation work to re-establish that view.

However, the City will not be able to establish a “nexus” between a successful view restoration case, and any requirement that the applicant pay some portion of the tree maintenance costs for their neighbor’s trees. To the contrary, it would be unconstitutional for the City to try and require an applicant to pay any share of the neighbor’s future vegetation maintenance costs. In effect, the City would be imposing a perpetual cost on the applicant to preserve the view to which it is entitled. Moreover, that charge by the City would only arise under a land use case where an applicant is seeking to have a view restored, because of the improper actions of the landowner with the trees. This is precisely the sort of improper fee that *Nollan/Dolan* prohibits.

Attached to this letter are my suggested modifications to the Ordinance text to be considered by the City Council.

Sincerely,

Howard Weinberg

The Weinberg Law Group

C: City Council
Yolanta Schwartz
Michael Jenkins, City Attorney

(D)(3) of this section and orders restorative action, the proposed order shall be reviewed by City staff to determine the appropriate level of environmental review. If the action is determined to be exempt from the California Environmental Quality Act ("CEQA"), a resolution containing the Committee's written findings shall be presented for adoption at the Committee's next meeting. If the action is determined not to be exempt from CEQA, the complainant shall bear the City's reasonable costs of environmental review and CEQA compliance, including consultant fees.

G. Finality of Decision. The Committee's decision shall be final on the date the Committee adopts a resolution setting forth its decision. The decision shall become effective thirty days after adoption of the resolution, unless an appeal has been filed to the City Council pursuant to the provisions of Chapter 17.54. For purposes of such an appeal, references to the Planning Commission in Chapter 17.54 shall be interpreted as inclusive of the Committee on Trees and Views.

E. Amend Section 17.26.060 of the RHMC to read as follows:

17.26.060 Implementation of restorative action.

- A. The complainant shall bear the cost of the initial restorative action. Within thirty days of a final decision ordering restorative action, the complainant shall obtain and present to the owner of the obstructing vegetation three bids from licensed and qualified contractors for performance of the work, as well as cash deposit in the amount of the lowest bid. In order to qualify, the contractors must provide insurance, which protects and indemnifies the City and the complainant from damages attributable to negligent or wrongful performance of the work. Any such insurance shall be subject to the approval of the City.
- B. The owner of the obstructing vegetation may select any licensed and qualified contractor to perform the restorative action (as long as the insurance requirements of subsection A of this section are satisfied), but shall be responsible for any cost above the amount of the cash deposit. The work shall be completed no more than ninety days from receipt of the cash deposit or if additional time is necessary due to weather or unique conditions of the vegetation, at the earliest date recommended by the contractor, but no later than one year, and approved by the City Manager.
- C. Subsequent maintenance of the vegetation in question shall be performed at the cost and expense of the owner of the property on

~~which the vegetation is growing, unless the Committee adopts a final decision providing an alternative cost allocation, which shall be accompanied by written findings justifying the alternative cost allocation. The vegetation shall be maintained in accordance with the final decision so as not to allow for future view impairments.~~ X

F. Amend Section 17.26.080 of the RHMC to read as follows:

17.26.080 Notification of subsequent owners.

Within thirty days of the final decision of the Committee, or the City Council on appeal, an informational covenant shall be recorded against the title of the property on which the offending vegetation exists ~~and the complainant's property~~, on a form provided by the City, which shall run with the land and be binding upon all successors in interest. X

G. Add Section 17.26.100 of the RHMC to read as follows:

17.26.100 Indemnification.

Complainants shall defend, indemnify and hold harmless the City, its agents, officers, attorneys and employees from any claim, action or proceeding against the City or its agents, officers, attorneys or employees to attack, set aside, void or annul a decision of the Committee or City Council on appeal restoring an impaired view or that otherwise challenges, or seeks damages resulting from, the issuance, defense, implementation, or enforcement of a view restoration order (collectively "action"). Nothing in this reimbursement obligation shall provide to the complainant any control over decisions made by the City in connection with an action.

H. Add to list of Sections at the beginning of the Ordinance:

17. 26. 100 Indemnification

PASSED, APPROVED AND ADOPTED this _____ day of _____ 2016.

JEFF PIEPER, MAYOR

ATTEST:

HEIDI LUCE, CITY CLERK