



# **VIEW PRESERVATION HANDOUT**

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## **PROCESS FOR VIEW PRESERVATION / RESTORATION FROM VEGETATION ON NEIGHBORING PRIVATE PROPERTY**

For detailed information, please refer to Chapter 17.55 (Ordinance 661) of the Rolling Hills Estates Municipal Code.

### **PURPOSE AND OVERVIEW**

This is a process to restore or preserve a view that has become obstructed by neighboring private property vegetation from the date of property acquisition, or 15 years prior to the effective date of Ordinance No. 661, whichever is later.

Qualifying vegetation must be located within 500' from the View Seeker's real property boundaries and a claim can not have already been initiated against that real property by the View Seeker or any other real property owner in the City within the last two years.

A View Seeker may only seek to preserve or restore a view from one common interior or exterior space. Properties which have more than one unique or different view may apply for preservation or restoration of one additional view.

It is not the intent of the City to encourage clear-cutting or substantial denuding of any property of its vegetation.

It is not the intent or purpose of the City to create either a covenant running with the land (for example, CC&R's or deed restriction) or an equitable servitude (for example, easement or license); however, the City will keep a record of agreements and decisions reached and provide them as part of the pre-purchase inspection report provided to prospective purchasers of property in the City who request such a report.

It is the City's intent that Staff will assist both the View Seeker and the Vegetation Owner through the view restoration/preservation process in providing information and guidance with the aim of avoiding litigation between neighboring property owners.

### **STEP 1 - INITIAL DISCUSSION**

- A. A View Seeker must first notify the Vegetation Owner of such concerns. The notification must request personal discussions to enable the View Seeker and Vegetation Owner to attempt to reach a mutually agreeable solution, and must be followed-up in writing.
- B. The notification must include a copy of the View Preservation Ordinance (Chapter 17.55 of this Code), available from the City or online on the City's website.
- C. The View Seeker must invite the Vegetation Owner to view the alleged obstruction from the View Seeker's property, and the Vegetation Owner is urged to invite the View Seeker to view the situation from his/her property.
- D. Failure of the Vegetation Owner to respond to the written request for Initial Discussion within 45 days from the date of delivery will be deemed formal refusal by the Vegetation Owner to participate in the Initial Discussion.

- E. If the Initial Discussion is refused, or if the parties do not agree to the existence and nature of the obstruction and appropriate preservation action, the View Seeker may proceed with the next step.
- F. During the Initial Discussion phase, the View Seeker and/or Vegetation Owner may request assistance from the city to explain the process and consequences of non-participation to both sides. The planning director or staff may, but is not required to, assist the parties in resolving the view equity dispute. It is the goal of this early involvement by the City to educate both parties concerning the process and encourage them to resolve the dispute amicably and informally.

## **STEP 2 - MEDIATION**

- A. The View Seeker files a View Equity Claim application with the City requesting Mediation (form available on the City's website or at City Hall).
- B. Upon receiving a completed View Equity Claim application and processing fee of \$800, City staff will prepare and send by certified mail to the Vegetation Owner, a copy of the claim and a notice requesting that the Vegetation Owner agree to participate in a Mediation process to attempt to resolve the View Equity Claim. This notice will inform the Vegetation Owner that the city's view preservation ordinance provides that failure to participate in the Initial Discussion, Mediation, or Arbitration processes set forth in the ordinance will impact their right to recover attorney's fees if they are the prevailing party in civil litigation involving a view equity dispute.
- C. In addition, City staff will notify all Rolling Hills Estates property owners within 500 feet of the Vegetation Owner's property of the pending View Equity Claim, their right to file a View Equity Claim on their own behalfs, and the proviso that the Vegetation Owner is only subject to a View Equity Claim once every two years.
- D. If a surrounding property owner wishes to submit a View Equity Claim he/she must do so within 45 days of being given notice of the pending View Equity Claim and, to the extent possible, that claim will be combined with the existing one for purposes of Mediation and Arbitration only.
- E. The Vegetation Owner shall have 45 days to accept or decline Mediation. The notice sent to the Vegetation Owner will state that failure to respond to the request for Mediation within 45 days from the date of delivery of the notice will be deemed formal refusal of the Mediation process by the Vegetation Owner.
- F. If Vegetation Owner agrees to participate in a Mediation process, the View Seeker must then pay the fee for the Mediation process, including review by the City's Certified Arborist (\$1,000 deposit required at time of application for these services). This cost must be paid initially by the View Seeker, however, the ultimate responsibility for such cost may subsequently be modified by mutual agreement of the parties.
- G. The Mediator will be chosen by the parties from a list maintained by the City (*see Mediator List link*). In the event that the parties are unable to choose a Mediator from the approved list within 30 days, City staff will randomly select a Mediator from the list.
- H. City staff, in consultation with the Mediator, will establish a date for Mediation, and a written notice of the Mediation hearing date will be sent to each party by certified mail. The meeting place may take place at City Hall or at another location agreed to by all parties.
- I. The role of the Mediator is advisory in nature and is not binding in establishing the preservation or restoration of view equity.

- J. Any agreement reached between the two parties as a result of the Mediation process described herein will be reduced to writing and signed by the Mediator and all of the parties, and a copy submitted to the City Clerk.

### **STEP 3 – ARBITRATION**

- A. If Steps 1 and 2 above fail, the View Seeker may send to the Vegetation Owner a request to participate in a binding Arbitration process, which the View Seeker shall have 45 days to accept.
- B. The notice sent to the Vegetation Owner will state that failure to respond to the request for Arbitration within 45 days from the date of delivery of the notice will be deemed formal refusal of the Arbitration process by the Vegetation Owner.
- C. If accepted, the parties must agree in writing to the selection of an individual Arbitrator, who will be chosen from a list of professional arbitrators available from the City (*see Arbitrator List link*), within 30 days of such acceptance. If the parties do not agree on a specific Arbitrator within 30 days, they may jointly request that city staff randomly select an arbitrator from the list maintained by the city, or either party may petition a court of competent jurisdiction to appoint an Arbitrator from the list maintained by the City.
- D. Any decision of the Arbitrator is enforceable pursuant to the provisions of California Code of Civil Procedure Section 1285 et seq., and a copy of the decision must be submitted to the City Clerk.
- E. The costs of Arbitration must be paid initially by the View Seeker, however, the ultimate responsibility for such costs may subsequently be modified either by mutual agreement of the parties or by a determination of the Arbitrator as to a just and reasonable allocation of responsibility.
- F. The City will develop a sample form that may, but need not, be used to request arbitration, and will make that form available to members of the public.

### **STEP 4 - ADVISORY OPINION**

If Steps 1, 2, and 3 fail to result in a resolution or agreement, the View Seeker may request that the City's Planning Director assess and issue an advisory opinion on the View Equity Claim. Such requests must be made to the Planning Director in writing within 30 days after Arbitration is refused or deemed refused. The Planning Director, may, but is not required to, assist the parties in resolving the view equity dispute. It is the intention that the advisory opinion be admissible as evidence in any civil action.

### **STEP 5 - LITIGATION**

If Steps 1, 2, 3 and 4 fail to result in a resolution or agreement, a View Seeker may initiate civil action in a court of competent jurisdiction for resolution.

In the event of civil litigation, the View Seeker must provide a copy of the filed complaint to the City Clerk.

The prevailing party in this civil action is entitled to recover its reasonable costs and attorneys' fees incurred in the litigation, subject to the following exception: a Vegetation Owner who prevails in litigation shall not be entitled to recover attorneys' fees and costs if they have declined to participate in the Initial Discussion, Mediation, or Arbitration processes. The notice of the View Equity Claim and request for Mediation provided by the City will inform the Vegetation Owner of this provision and the consequences of non-participation in the Initial Discussion, Mediation, and/or Arbitration processes.