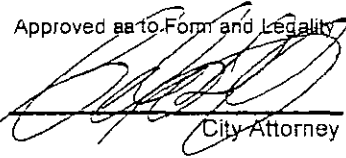


Approved as to Form and Legality  
  
City Attorney

RECEIVED  
**OAKLAND CITY COUNCIL**  
OFFICE OF THE CITY CLERK  
OAKLAND

**RESOLUTION No. \_\_\_\_\_ C.M.S.**  
2012 SEP -5 AM 9:18

Introduced by Councilmember \_\_\_\_\_

**RESOLUTION DENYING THE APPEAL FILED BY ERNEST AND OKHOO HANES AND MARY MCCALLISTER, AGAINST THE DECISION OF THE PUBLIC WORKS AGENCY APPROVING THE REMOVAL OF FIFTEEN TREES, TO REMOVE THE TOPS OF TWENTY ONE (21) TREES AND TO PRESERVE 42 TREES ON CITY LOTS ADJACENT TO 6807 WILTON DRIVE, TO RESOLVE A VIEW CLAIM FROM PHYLLIS BISHOP**

WHEREAS, trees growing on two City-owned, undeveloped lots zoned RH-4/S-10 ("City lots") adjacent to 6807 Wilton Drive are substantially obstructing the panoramic views of San Francisco Bay and other landmarks from the home of Mrs. Phyllis Bishop ("View Claimant"); and

WHEREAS, on March 20, 2009 the Public Works Agency issued a View Claim Decision that that allowed the View Claimant to remove trees on the City lots; and

WHEREAS, on March 24, 2009 Okhoo Hanes challenged the View Claim Decision and requested the matter be held in abeyance pending further discussion and additional notification; and

WHEREAS, on March 24, 2009 the *Bishop v. Hanes* case was initiated through the Alameda County Superior Court as a private dispute between two property owners regarding the View Preservation Ordinance; and

WHEREAS, on October 27, 2011 the Court of Appeal of the State of California affirmed the lower court's ruling in *Bishop v. Hanes* and affirmed the View Claimant's right to restore their view; and

WHEREAS, in January 2012 the Hanes removed trees on their property and on March 29, 2012 the Public Works Agency issued a View Claim Decision and authorized the View Claimant to remove fifteen (15) trees, to remove the tops of twenty one (21) trees and to preserve 42 trees on City lots; and

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WHEREAS, on April 16, 2012, the Hanes and Mary McCallister ("Appellants") filed an appeal with the City Council against the March 29, 2012 View Claim Decision of the Public Works Agency; and

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WHEREAS, the appeal came before the City Council at a duly noticed hearing on September 18, 2012 and the appellants and interested parties were given ample opportunity to participate in the public hearing and were given a fair opportunity to submit relevant evidence to the City Council; and

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THE OAKLAND CITY COUNCIL  
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WHEREAS, the public hearing on the appeal was closed by the City Council; Now, Therefore be it

**RESOLVED**, that the City Council, having heard, considered and weighed all the evidence presented on behalf of all parties and being fully informed of the View Claim, hereby finds that the View Claim Decision of the Public Works Agency approving the removal of fifteen (15) trees, to remove the tops of twenty one (21) trees and to preserve 42 trees on City lots is affirmed and thus the appeal filed by Ernest and Okhoo Hanes, and Mary McCallister against the decision of the Public Works Agency is hereby denied, subject to the conditions of approval and additional conditions of approval contained in City attachments 5-7 to the September 18, 2012 City Council Agenda Report, hereby incorporated by reference as if fully set forth herein; and be it

**FURTHER RESOLVED**, that the Oakland City Council finds there was no error or abuse of discretion by the Public Works Agency, that such decision is supported by substantial evidence in the record and the proposed view restoration work is consistent with the View Preservation Ordinance and arboricultural standards for all the reasons stated in this resolution, the City Council Agenda Report and the March 29, 2012 Public Works Agency View Claim Decision, all of which is hereby incorporated by reference as if fully set forth herein; and be it

**FURTHER RESOLVED**, that the record relating to this view claim and appeal includes, without limitation the following:

1. all staff reports, decision letters and other documentation and information produced by or on behalf of the City, and all notices in relation to the application and attendant hearings;
2. all oral and written evidence received by the City staff, and City Council before and during the public hearings on the application and appeals;
3. all matters of common knowledge and all official enactment's and acts of the City, such as (a) Oakland Municipal Code, (b) other applicable City policies and regulations; and (c) all applicable state and federal laws, rules and regulations; and be it

**FURTHER RESOLVED**, that the City Council hereby adopts the CEQA findings contained in the City Council Agenda Report and directs that the Review Officer prepare a Notice of Exemption for filing at the County Recorder; and be it

**FURTHER RESOLVED**, that the Office of the City Attorney has approved this resolution and a copy will be on file in the Office of the City Clerk; and be it

**FURTHER RESOLVED**, that the recitals contained in this resolution are true and correct and is an integral part of the City Council's decision.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, BRUNNER, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, SCHAAF and PRESIDENT REID

NOES -

ABSENT -

ABSTENTION -

ATTEST: \_\_\_\_\_  
LaTonda Simmons  
City Clerk and Clerk of the Council  
of the City of Oakland, California

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Date of Attestation: ~~OCT 2 2012~~

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SPECIAL MEETING OF SEP 18 2012  
THE OAKLAND CITY COUNCIL

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