

**MOORPARK CITY COUNCIL
AGENDA REPORT**

TO: Honorable City Council

FROM: Barry K. Hogan, Community Development Director *BKH*

DATE: October 26, 2006 (CC Meeting of 11/15/06)

SUBJECT: Consider an Ordinance Amending Title 16 of the Moorpark Municipal Code (Subdivisions) by Adding Chapter 16.50: Covenants for Easement

DISCUSSION

This ordinance amendment would be used in the situation where a property is subdivided, all parcels are owned by the same owner, and access or other easements are necessary across one parcel for the benefit of another. State law prohibits an owner from granting himself an easement across his own property, even for the benefit of another property he owns. This usually occurs in small subdivisions. With larger subdivisions, cross lot access, parking etc. is usually taken care of via roads, etc. recorded on the Final Map.

For example, assume an owner wants to subdivide a parcel into two parcels, one of which does not have street access. Without a covenant of easement, if the owner sells the rear parcel, it could be landlocked. Granted, this may not likely happen--but it could. More likely is the situation where one of the parcels is sold but the sold parcel needs parking rights on the retained parcel. This ordinance amendment would ensure that parking remains available to the sold parcel (in the event of a sale) with a covenant of easement.

Implementation of the requirement for a covenant of easement would be made at the time of approval of the tentative map and would be recorded in connection with the Final Map, or on the Final Map. The City Attorney has recommended and reviewed this ordinance.

ENVIRONMENTAL DETERMINATION

In accordance with the City's environmental review procedures adopted by resolution, the Community Development Director determines the level of review necessary for a

project to comply with the California Environmental Quality Act (CEQA). Some projects may be exempt from review based upon a specific category listed in CEQA. Other projects may be exempt under a general rule that environmental review is not necessary where it can be determined that there would be no possibility of significant effect upon the environment. A project which does not qualify for an exemption requires the preparation of an Initial Study to assess the level of potential environmental impacts.

The Director has reviewed this project and found it to qualify for a General Rule Exemption in accordance with Section 15061 of California Code of Regulations (CEQA Guidelines). No further environmental documentation is required.

STAFF RECOMMENDATION

Introduce Ordinance No. _____ for first reading, waive full reading, and schedule second reading and adoption for December 6, 2006.

ATTACHMENT:

Ordinance No. _____.

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MOORPARK, CALIFORNIA, AMENDING TITLE 16 (SUBDIVISIONS) OF THE MOORPARK MUNICIPAL CODE BY ADDING CHAPTER 16.50, COVENANTS FOR EASEMENT

WHEREAS, at its meeting of November 15, 2006, the City Council considered this ordinance to add Chapter 16.50, Covenants for Easement, to Title 16 of the Moorpark Municipal Code, Subdivisions, reached a decision; and

WHEREAS, the City Council concurs with the Community Development Director's determination that this project is exempt from the provisions of the California Environmental Quality Act by the general rule that CEQA only applies to projects that may have a significant effect on the environment.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MOORPARK DOES ORDAIN AS FOLLOWS:

SECTION 1. Chapter 16.50, Covenants for Easement, is added to Title 16 of the Moorpark Municipal Code as shown in Exhibit A.

SECTION 2. If any section, subsection, sentence, clause, phrase, part or portion of this ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase, part or portion thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses, phrases, parts or portions be declared invalid or unconstitutional.

SECTION 3. This ordinance shall become effective thirty (30) days after its passage and adoption.

SECTION 4. The City Clerk shall certify to the passage and adoption of this ordinance; shall enter the same in the book of original ordinances of said City; shall make a minute of the passage and adoption thereof in the records of the proceedings of the City Council at which the same is passed and adopted; and shall, within fifteen (15) days after the passage and adoption thereof, cause the same to be published once in the Moorpark Star a newspaper of general circulation, as defined in Section 6008 of the Government Code, for the City of Moorpark, and which is hereby designated for that purpose.

Ordinance No. _____

Page 2

PASSED AND ADOPTED this ____ day of _____, 2006.

Patrick Hunter, Mayor

ATTEST:

Deborah S. Traffenstedt, City Clerk

Exhibit A: Chapter 16.50: Covenants for Easement

EXHIBIT A

Chapter 16.50

COVENANTS FOR EASEMENT

Sections:

- 16.50.010 General.**
- 16.50.020 Procedures.**
- 16.50.030 Content of covenant.**
- 16.50.040 Release of covenant--procedure.**

16.50.010 General.

A. This chapter is adopted for the imposition of covenants pursuant to Government Code Sections 65870 et seq.

B. This chapter shall apply to all development projects approved by the City's decision making authority, and acts independently from any other authority or method for the City to require an easement. The provisions of this chapter shall only apply when:

1. The covenant of easement is for:
 - a. Parking;
 - b. Ingress, egress, or emergency access;
 - c. Light and/or air access;
 - d. Landscaping; and/or
 - e. Open space purposes.
2. At the time of recording the covenant of easement, all the real property benefited or burdened by said covenant is in common ownership.

16.50.020 Procedures.

A. Whenever the Planning Commission or City Council determines, independently or based upon the recommendation of City staff, that a covenant of easement is needed for one or more of the purposes identified in Section 16.50.010, the approval, permit, or designation shall not become effective unless or until said covenant of easement is recorded.

B. Whenever a covenant of easement is required herein, the covenant shall either:

1. Be in a form and manner approved by the City Attorney based upon the advice of the City Engineer and Community Development Director; or,
2. Be prepared by the City Attorney. Whenever the City Attorney prepares a covenant of easement, the City shall be entitled to reimbursement from the applicant for the costs associated therewith.

16.50.030 Content of covenant.

Any covenant of easement prepared pursuant to this chapter shall contain, at a minimum, the following elements:

A. Identification of the owner and/or owners of the real property to be burdened, including a statement that both the burdened and benefited parcels are under common ownership;

B. A consent to said covenant of easement and the recording thereof by the record owner and/or owners to the covenant;

C. Identification of the real property to be benefited and to be burdened by said covenant including a legal description of the same;

D. A statement that said covenant shall act as an easement pursuant to Chapter 3 (commencing with Section 801) of Title 2 of Part 2 of Division 2 of the California Civil Code, including an express statement that said easement and covenant of easement shall not merge into any other interest in real property pursuant to California Government Code Section 65871(b);

E. A statement that said covenant of easement shall run with the land, be binding upon all successors in interest to the burdened real property, inure to all successors in interest to the real property benefited, and shall be subject to California Civil Code Section 1104;

F. A statement identifying the approval, permit, or condition granted which required the covenant;

G. A statement identifying the Moorpark Municipal Code section which sets forth the procedure for release of the covenant;

H. Identification of the City as a third party beneficiary;

I. Provisions concerning maintenance and the scope of use of the easement;

J. An appropriate section for execution of said covenant of easement by the record owner or owners of the subject real property, as well as a signature block to be executed by the City Engineer on behalf of the City.

16.50.040 Release of covenant--procedure.

A. Any person may request that the City make a determination as to whether or not the restriction imposed by the covenant of easement is still necessary to achieve the City's land use goals. The determination of the need for the covenant of easement shall be made by the City's decision making authority that took final action on the original application. A person shall be entitled to only one (1) such determination in any twelve (12) month period for each specific covenant.

B. To obtain a determination mentioned above, a "request for determination" application shall be made and filed with the City Clerk. Said application shall include a fee as set by resolution of the City Council.

C. Upon receipt of a completed application, the City Clerk shall set the matter for public hearing before the Planning Commission or City Council, as appropriate, and cause notice thereof to be given pursuant to Government Code Section 65090, and a copy of the notice shall be mailed to the record property owner or owners as shown on the Tax Assessor's latest equalized roll if other than the applicant and to all record property owners within one thousand feet (1,000') of the property.

D. At the conclusion of the public hearing, the City's decision making authority, shall determine and make a finding, based upon substantial evidence in the record, whether or not the restriction imposed by the covenant of easement is still necessary to achieve the land use

goals of the City. If the City's decision making authority determines that the covenant of easement is still required, the City's decision making authority shall by resolution determine that the need still exists.

E. If the City's decision making authority finds that the covenant of easement is no longer necessary, the City's decision making authority shall by resolution make the determination and finding and direct the City Attorney to prepare a release thereof to be executed by the City Engineer and transmit the same to the City Clerk for recording.

F. Planning Commission action on the continuing need for the covenant of easement is subject to appeal in accordance with Section 17.44.090 et seq. of this Code.

G. The City Council's determination in subsections (D) and (E) above shall be final and conclusive.