



PLANNING DEPARTMENT

STAFF REPORT

TO: PLANNING & TRANSPORTATION COMMISSION

FROM: Melissa Tronquet **DEPARTMENT:** City Attorney's Office
Deputy City Attorney

AGENDA DATE: April 26, 2006

SUBJECT: Subdivision Ordinance Amendment for an Addition of Chapter 18.90 to the Palo Alto Municipal Code (PAMC) to Allow the Creation of Easements through the Execution and Recordation of Covenants.

RECOMMENDATION:

Staff recommends that the Planning and Transportation Commission (P&TC) review and recommend to the City Council approval of the proposed Chapter 18.90 of the Municipal Code, allowing creation of easements through the execution and recordation of covenants.

BACKGROUND:

Under California law, property owners cannot create enforceable easements against their own property because restrictions a property owner places on his or her own property are not binding against subsequent owners. This creates problems for single owner developments where safety requires emergency exiting across property lines or where ordinary access and egress requires use of an adjacent parcel. It is very difficult to satisfy City and practical requirements to ensure that these easements are permanent. The problem is created because "Black Letter Law" states that one cannot grant an easement to ones own property.

Government Code sections 65870-65875 create an exception to this general rule and allow creation of easements on properties held by a common owner, when necessary to serve the limited purposes of parking, ingress, egress, emergency access, light and air access, light and air access, landscaping, or open space purposes. However, before the City can require such an easement, the Government Code requires the City to pass a local enabling ordinance that allows creation of easements for properties held in common ownership.

Passage of this ordinance will solve a number of City and developer problems. Historically, many properties in Palo Alto were divided but have been held in common ownership. In many

cases today, owners want to subdivide or otherwise redevelop these properties while continuing to hold them under the same ownership. This ordinance will help eliminate delay in development projects by simplifying the legal requirements for property owners in this situation and enabling the City and property owners to ensure that necessary easements exist in perpetuity.

DISCUSSION:

Staff has drafted an enabling ordinance that meets the requirements of Government Code sections 65870-65875. The draft ordinance meets the statutory requirements for covenants of easements by providing for the following elements:

1. **Purpose.** An easement created under this ordinance may only be for parking, ingress, egress, emergency access, light and air access, landscaping, or open space purposes.
2. **Common ownership.** All of the real property affected by a covenant of easement must be held by a common owner at the time the covenant is recorded.
3. **Binding upon successors.** A covenant created pursuant to this ordinance will be binding on and enforceable by future owners of an affected parcel, whether or not the parcels continue to be held in common ownership or have separate owners.
4. **Contents and execution of the covenant.** The covenant must describe the easement and identify the source that required it, such as City permits or conditions of approval, and must be recorded in the Santa Clara county recorder's office.
5. **Release of Covenant.** The Government Code requires that the ordinance provide a procedure for release of the covenant when the governing body determines that the covenant is no longer necessary. Thus, if site conditions changed such that the restrictions in the covenant were no longer necessary, an owner could request release. The Council would then hold a public hearing on the matter and could record a release if it determines that the restrictions created by the covenant of easement are no longer necessary to achieve the purpose for which it was originally required.

The City will be able to use this provision for projects involving subdivisions or multiple parcels when conditions such as parking and emergency access are required. In those cases, an easement could satisfy an applicant's need to meet important project requirements such as access and parking, as well as satisfy the City's need to ensure that those requirements would continue to be met even if a change of ownership occurred in one or all of the parcels involved.

CONCLUSION AND NEXT STEPS:

Upon recommendation of the PT&C, the draft ordinance will be presented to the City Council on May 8, 2006, for public hearing, review, and adoption.

ENVIRONMENTAL REVIEW:

No environmental impacts.

ATTACHMENTS:

A. Draft Ordinance

Prepared by: Melissa Tronquet, Deputy City Attorney

Department/Division Head Approval: _____

Steve Emslie, Director
Planning and Community Environment