

Chapter 18.66

CREATION OF EASEMENTS THROUGH THE EXECUTION AND RECORDATION OF COVENANTS

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18.66.010 Purpose and Authority

The purpose of this chapter is to implement California Government Code Sections 65870 – 65875, inclusive, regarding the creation of easements through the execution and recordation of covenants.

(Ord. 4904 § 2 (part), 2006)

18.66.020 Creation

In addition to any other method for the creation of an easement, an easement may be created by a recorded covenant of easement made by an owner of real property to the city, in accordance with the procedures set forth in this chapter.

(Ord. 4904 § 2 (part), 2006)

18.66.030 Purposes of Easement

An easement may be created pursuant to this chapter for one or more of the following purposes: Parking, ingress, egress, emergency access, light and air access, landscaping, or open space purposes.

(Ord. 4904 § 2 (part), 2006)

18.66.040 Common Ownership

At the time of recording of the covenant of easement, all the real property benefited or burdened thereunder shall be in common ownership. The covenant shall be effective when recorded and shall act as an easement pursuant to Chapter 3 (commencing with Section 801) of Title 2 of Part 2 of Division 2 of the Civil Code, except that it shall not merge any other interest in real property. Section 1104 of the Civil Code, *Easements Passing with Property*, shall be applicable to the conveyance of the affected real property.

(Ord. 4904 § 2 (part), 2006)

18.66.050 Enforcement

A covenant executed pursuant to this chapter shall be enforceable by the successors in interest to the real property benefited by the covenant.

(Ord. 4904 § 2 (part), 2006)

18.66.060 Contents

A covenant of easement recorded pursuant to this chapter shall include the following:

- (a) Legal descriptions of the real property subject to the easement and the real property benefited by the easement; and
- (b) An identification of the approval, permit, or designation granted which relied upon or required the covenant; and
- (c) A maintenance provision for the easement; and
- (d) A provision providing that the burdens of the covenant of easement shall be binding upon, and the benefits of the covenant shall inure to, all successors in interest of the real property.

(Ord. 4904 § 2 (part), 2006)

18.66.070 Execution

The covenant of easement shall be executed and acknowledged by the record owner[s] of the real property subject to, and benefited by, the easement.

(Ord. 4904 § 2 (part), 2006)

18.66.080 Recordation and Effect

The covenant of easement shall be recorded with the Santa Clara County recorder's office. The recorded covenant of easement shall impart notice thereof to all persons to the extent afforded by the recording laws of the state of California. Upon recordation, the burdens of the covenant shall be binding upon, and the benefits of the covenant shall inure to, all successors in interest to the real property.

(Ord. 4904 § 2 (part), 2006)

18.66.090 Release of Covenant

- (a) The covenant of easement may be released in accordance with the procedure set forth in this section.
- (b) Any person, whether or not that person has title to the real property burdened or benefited by the easement, may file a written request for a public hearing on the release of the covenant of easement. The request for hearing shall be filed with

the city clerk and shall include the following: (1) A conformed copy of the recorded easement; (2) legal descriptions of the real property benefited and burdened by the easement; (3) a statement that the request for hearing is being filed pursuant to the provisions of this chapter; and (4) a fee prescribed by the municipal fee schedule.

- (c) Upon notification and receipt of the request for release of covenant, the city council shall hold a public hearing regarding a release of covenant of easement recorded pursuant to this chapter. At the conclusion of the public hearing, the city council shall determine and make a finding by resolution, based upon substantial evidence contained in the request and/or presented at the public hearing, whether the restriction imposed by the covenant of easement is still necessary to achieve the land use goals of the city. If the council determines that the covenant may be released, the city shall cause to be recorded with the Santa Clara County recorder's office a release of the covenant of easement.

(Ord. 4904 § 2 (part), 2006)

18.66.100 Fees

The city council may adopt by resolution a fee to recover the reasonable cost of processing the release of the covenant from those persons requesting the release pursuant to Section 18.66.090 of this chapter.

(Ord. 4904 § 2 (part), 2006)

18.66.110 Standing to enforce or challenge

Nothing in this chapter shall create in any person other than the city and the owner of the real property burdened or benefited by the covenant of easement standing to enforce or to challenge the covenant or any amendment thereto or release therefrom. The city shall have the right, but not the obligation, to enforce the covenant.

(Ord. 4904 § 2 (part), 2006)

