

**CITY MANAGER'S REPORT
AUGUST 12, 2019 CITY COUNCIL REGULAR MEETING**

ITEM: **PUBLIC HEARING (PUBLISHED NOTICE) TO
CONSIDER MUNICIPAL CODE TEXT AMENDMENT NO.
TA-19-78**

RECOMMENDATION: **Council to Consider the Following:**

- 1. Hold a Public Hearing; and**
- 2. First Reading and Introduction of an Ordinance to Amend Title 17 of the Lathrop Municipal Code (LMC) by Adding Chapter 17.13 to Allow the Creation of Easements by Covenant.**

SUMMARY:

The proposed text amendment is a staff-initiated proposal to add a new Chapter, 17.13 to the Lathrop Municipal Code (LMC) to allow the creation of easements by covenants. Government Code sections 65870-65875 creates an exception that allows creation of easements on properties held by a common owner, when necessary to serve the limited purpose of parking, ingress, egress, emergency access, etc. However, before the City can enter into or establish such an easement, the Government Code requires the City to pass a local enabling ordinance.

Staff recommends that the City Council consider all information presented at the public hearing, consider all public testimony, and if determined to be appropriate, adopt an Ordinance to add a new Chapter 17.13 to the LMC to allow the creation of easements by covenants.

BACKGROUND:

In certain situations, such as sharing of parking or access, subdividing or merging of parcels of land, or the vacation of streets where a parcel may be landlocked, an easement is necessary to maintain access. In these situations, an easement can protect the rights of property owners. However, when the properties in question are owned by the same person or entity, an easement cannot be created because any restrictions placed by the current owner on himself or herself are not binding against any future owner of that property. Therefore, access to the property or other enjoyment of the property could be inhibited by a future owner of one of the separated properties in question.

Government Code sections 65870-65875 creates 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, 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. The covenant of easement document would describe the parcel to be subject to the easement and the parcel to be benefited.

At their regular meeting of July 17, 2019, the Planning Commission voted unanimously (4-0), one absent, to recommend the City Council adopt an Ordinance regarding the proposed amendment to the Lathrop Municipal Code. Attached is the Planning Commission Resolution No. 19-8 for reference. (Attachment #3).

ANALYSIS:

Staff is recommending a new chapter (17.13) under Title 17 of the LMC that would provide a solution to situations associated with creating easements over properties held in common ownership. The new Chapter 17.13 would allow for the recordation of covenants of easement. Although this situation is infrequent in the City, passage of this ordinance will solve a significant City and developer problem of trying to satisfy requirements to ensure that these easements are permanent. This ordinance will help eliminate delay in development projects by simplifying the legal requirements for property owners in this situation and enable the City and property owners to ensure that necessary easements exist in perpetuity.

For example, the Planning Commission recently approved the Tru by Hilton Hotel project on Louise Avenue. In order for the project to meet the minimum parking requirement, it was required to share parking and access with the adjacent Hampton Inn & Suites Hotel which had excess parking spaces. Since the owner for both properties are the same, a covenant involving the City as the third party is necessary to ensure that the easement is binding and in perpetuity in the event of future ownership change. These covenants would act as easements while the properties are held by a common owner and revert to easements when the properties become owned by separate entities.

The fee for processing a Covenant of Easement document is \$150, which is the current fee established for easement review. The applicants would be required to take the document for recordation and pay the associated fee at the San Joaquin County Clerk/Recorder's office.

Municipal Code Amendments

According to the Lathrop Municipal Code, amendments to the Zoning Ordinance must be reviewed by the Planning Commission with a recommendation forwarded to the City Council for approval. Before any recommendation to approve by the Planning Commission, or final approval by the City Council, the following finding must be made:

"That the proposed amendment will be consistent with applicable provisions of the General Plan".

Staff has determined that the proposed code amendments conforms to the General Plan. The attached resolution includes the above required finding.

Public Notice

A Notice of Public Hearing was advertised in the Manteca Bulletin on August 1, 2019 and the meeting agenda was posted at our designated posting locations in the City. As of the writing of this report, no comments were received in favor or against the proposed amendments.

CEQA REVIEW:

The proposed Municipal Code Text Amendment is exempt according to the California Environmental Quality Act (CEQA) Article 5 §15061 (b) (3) by the "General Rule" that CEQA applies only to projects that have a potential for causing a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. The amendment does not change the zoning designation on any individual property and does not affect existing land use or density. The purpose of the amendment is primarily procedural in nature. It also does not propose or require any specific development project, any specific development project undertaken in the future pursuant to the amended zoning code would be required to comply with CEQA at that time.

RECOMMENDATION:

The Planning Commission and staff recommend that the City Council consider all information provided and submitted, take and consider all public testimony and, if determined to be appropriate, take the following action:

Introduce an Ordinance to amend Title 17 of the Lathrop Municipal Code (LMC) by adding Chapter 17.13 to allow the creation of easements by covenant.

FISCAL IMPACT:

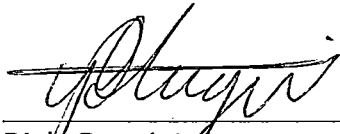
There is no fiscal impact to the City of Lathrop, only staff time to prepare the report. Applicants will be required to pay the Covenant of Easement processing fee of \$150, which is the current fee established for easement review.

ATTACHMENTS:

1. Ordinance Approving Municipal Code Text Amendment TA-19-78
2. New Chapter 17.13 Covenants for Easements
3. Planning Commission Resolution No. 19-8

**CITY MANAGERS REPORT
AUGUST 12, 2019 CITY COUNCIL REGULAR MEETING
EASEMENTS BY COVENANT**


APPROVALS:



Rick Caguiat
Principal Planner

7-29-19

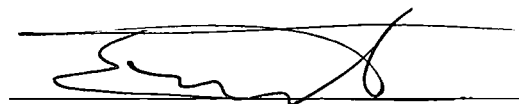
Date



Mark Meissner
Community Development Director

7-30-19

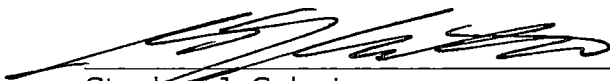
Date



Salvador Navarrete
City Attorney

7-30-19

Date



Stephen J. Salvatore
City Manager

8-2-19

Date

ORDINANCE NO. 19-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LATHROP TO AMEND TITLE 17 OF THE LATHROP MUNICIPAL CODE BY ADDING A NEW CHAPTER 17.13 TO ALLOW THE CREATION OF EASEMENTS BY COVENANT

WHEREAS, the City of Lathrop Planning Commission held a duly noticed public hearing at a regular meeting on July 17, 2019, at which they adopted PC Resolution No. 19-8 recommending the City Council adopt Municipal Code Text Amendment No. TA-19-78 pursuant to the Lathrop Municipal Code; and

WHEREAS, the City of Lathrop City Council held a duly noticed public hearing at a regular meeting on August 12, 2019 to review and consider the Municipal Code Amendment; and

WHEREAS, the proposed code amendment is Citywide and affects all applicable properties in the City; and

WHEREAS, the City of Lathrop desires to protect the interest of future property owners by requiring easements, when necessary to provide for access, parking (ingress, egress, or emergency access), light and/or air access, signage, landscaping, and/or open space purposes; and

WHEREAS, Government Code sections 65870-65875 allow for the creation of easements on properties held by a common owner whenever the local agency passes a local enabling ordinance that allows creation of easements for properties held in common ownership by covenant; and

WHEREAS, Chapter 17.124 of the Lathrop Municipal Code mandates the transmittal of a Planning Commission recommendation to the City Council by resolution; and

WHEREAS, the proposed code amendment is exempt according to the California Environmental Quality Act (CEQA) Article 5 §15061 by the "General Rule" that CEQA applies only to projects that have a potential for causing a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment; and

WHEREAS, the City Council finds that the proposed code amendment is consistent with applicable provisions of the Lathrop General Plan and will implement the City's Economic Development goals by providing streamline procedures and incorporate updated policies; and

WHEREAS, proper notice of this public hearing was given in all respects as required by law; and

WHEREAS, the City Council has reviewed all written evidence and oral testimony presented to date.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Lathrop based on substantial evidence in the administrative record of proceedings and pursuant to its independent review and consideration, does hereby approve Municipal Code Amendment as shown on Attachment "2", incorporated by reference herein.

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

Section 1. The Lathrop Municipal Code is hereby amended as shown in Attachment "2", incorporated by reference herein.

Section 2. This ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the city or any officer or employee thereof a mandatory duty of care toward persons and property within or without the city so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

Section 3. Severability. If any section, subsequent subdivision, paragraph, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or otherwise invalid, such a decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance irrespective of the unconstitutionality or invalidity of any section, subsection, subdivision, paragraph, sentence, clause or phrase.

Section 4. Effective Date. This Ordinance shall take legal effect 30 days from and after the date of its passage.

Section 5. Publication. Within fifteen days of the adoption of this Ordinance, the City Clerk shall cause a copy of this Ordinance to be published in full accordance with Section 36933 of the Government Code.

THIS ORDINANCE was introduced at a regular meeting of the City Council of the City of Lathrop on the 12th day of August 2019, and was PASSED AND ADOPTED at a regular meeting of the City Council of the City of Lathrop on 9th day of September 2019, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

SONNY DHALIWAL, MAYOR

ATTEST:

APPROVED AS TO FORM:

Teresa Vargas, City Clerk



Salvador Navarrete, City Attorney

Chapter 17.13 - COVENANTS FOR EASEMENT**17.13.010 - Purpose.**

This chapter provides procedures for the creation of easements through the execution and recordation of covenants, pursuant to California Government Code Sections 65870 to 65875.

17.13.020 - Applicability.

- A. This chapter shall apply to all development projects approved by the city, and acts independently from any other authority or method for the city to require an easement.
- B. The provisions of this chapter shall only apply when the covenant for easement is for:
 1. Parking;
 2. Ingress, egress;
 3. Emergency access;
 4. Light or air access;
 5. Landscaping;
 6. Open space purposes.
- C. At the time of recording the covenant of easement, all the real property benefited or burdened by said covenant shall be in common ownership.

17.13.030 – Preparation of covenant.

- A. Whenever a covenant of easement is required, the covenant shall be either:
 1. In a form and manner approved by the City Attorney based upon the advice of the City Engineer and Community Development Director; or,
 2. Whenever the City Attorney prepares a covenant of easement, the city shall be entitled to reimbursement from the applicant for all associated costs.

17.13.040 - Content of covenant.

A covenant of easement required by this chapter shall contain, at a minimum, the following elements:

- A. Identification of the owner 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 the covenant of easement and its recording by the record owner or owners to the covenant.
- C. Identification and legal description of the real property to be benefited and to be burdened by the covenant.
- 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 the 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 the 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 be subject to California Civil Code Section 1104.
- F. A statement of the purpose of the easement (i.e. for access, parking, etc.).

- G. Identification of the approval, permit, or designation granted which required the covenant.
- H. A statement identifying the Lathrop Municipal Code section which sets forth the procedure for release of the covenant.

17.13.050 – Reviewing authority.

- A. The Community Development Director or the City Manager’s designee may accept an easement on behalf of the City when such an easement is required as a condition of a land use approval, permit or designation pursuant to this title.

17.13.060 - Release of covenant.

- A. Pursuant to and in accordance with the provisions hereinafter set forth in this part, the Planning Commission and the City Council, on appeal from a decision of the Planning Commission, may approve and authorize recordation of a release of a covenant of easement.

17.13.070 - Petition of release.

- A. Any person may request that the city make a determination as to whether 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 Planning Commission. A person shall be entitled to only one such determination in any twelve (12) month period.
- B. The petition for release of a covenant of easement shall be filed in writing with the Community Development Department. The application shall include a fee as set by City Council resolution.

17.13.080 – Hearing by the Planning Commission.

- A. Upon receipt of a completed application, the Community Development Director shall set the matter for public hearing before the Planning Commission, in a manner consistent with Chapter 17.124.040 (Notice of Public Hearing).
- B. At the conclusion of the public hearing, the Planning Commission 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 Planning Commission determines that the covenant for easement is still required, the Planning Commission shall, by resolution, determine that the need still exists.
- C. If the Planning Commission finds that the covenant of easement is no longer necessary, the City shall record a release of the covenant of easement in the office of the San Joaquin County Recorder’s Office.

17.13.090 – Appeal to City Council.

- A. The Planning Commission action on the continuing need for the covenant of easement is subject to appeal to the City Council by following the procedure set forth in Chapter 17.125 (Appeals).
- B. The City Council's determination shall be final and conclusive.

**CITY OF LATHROP
PLANNING COMMISSION RESOLUTION NO. 19-8**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF LATHROP
RECOMMENDING THE CITY COUNCIL AMEND TITLE 17 OF THE LATHROP
MUNICIPAL CODE BY ADDING CHAPTER 17.13 TO ALLOW THE CREATION OF
EASEMENTS BY COVENANT (TA-19-78)**

WHEREAS, the City of Lathrop Planning Commission held a duly noticed public meeting to consider the text amendment pursuant to the Lathrop Municipal Code; and

WHEREAS, the proposed text amendment is Citywide and affects all applicable properties in the City; and

WHEREAS, the City of Lathrop desires to protect the interest of future property owners by requiring easements, when necessary to provide for access, parking (ingress, egress, or emergency access), light and/or air access, signage, landscaping, and/or open space purposes; and

WHEREAS, Government Code sections 65870-65875 allow for the creation of easements on properties held by a common owner whenever the local agency passes a local enabling ordinance that allows creation of easements for properties held in common ownership by covenant; and

WHEREAS, chapter 17.124 of the Lathrop Municipal Code mandates the transmittal of a recommendation to the City Council by resolution; and

WHEREAS, the proposed text amendment is exempt according to the California Environmental Quality Act (CEQA) Article 5 §15061 by the "General Rule" that CEQA applies only to projects that have a potential for causing a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment; and

WHEREAS, the Planning Commission finds that the proposed text amendment is consistent with applicable provisions of the Lathrop General Plan and will implement the City's Economic Development goals by providing streamline procedure and policies that aid development; and

WHEREAS, proper notice of this public hearing was given in all respects as required by law; and

WHEREAS, the Planning Commission has reviewed all written evidence and oral testimony presented to date.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Lathrop based on substantial evidence in the administrative record of proceedings and pursuant to its independent review and consideration, does hereby recommend the City Council adopt Zoning Text Amendment No. TA-19-78 as shown in Attachment 2 of the Staff Report, incorporated by reference herein.

PASSED AND ADOPTED by the Planning Commission of the City of Lathrop at a regular meeting on the 17th day of July, 2019 by the following vote:

AYES: Gatto, Ralmilay, Ishihara, Rhodes

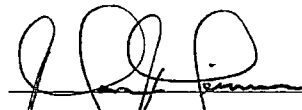
NOES: None

ABSTAIN: None


ABSENT: Dresser


Bennie Gatto, Chair

ATTEST:


Mark Meissner, Secretary

APPROVED AS TO FORM:


Salvador Navarrete, City Attorney

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