



CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Authorize City Manager to Execute Hold Harmless Agreements Required for Issuance of Encroachment Permits for Structural or Long-Term Encroachments

MEETING DATE: November 4, 1998

PREPARED BY: Public Works Director

RECOMMENDED ACTION: That the City Council authorize the City Manager to execute the hold harmless agreements required in conjunction with the issuance of encroachment permits for structural or long-term encroachments.

BACKGROUND INFORMATION: Current City policy and ordinances (LMC §12.04) provide that the Public Works Director may approve encroachment permits for privately owned and maintained structural or long-term improvements which encroach on the public right-of-way (street or public utility easements). These "structural" encroachments usually involve the installation of signs, the construction of masonry fences along property lines, or other structural improvements which are integral to site development and will remain in place for a long period of time. Staff reviews the proposed encroachments with respect to proximity to existing public facilities, sight distance if located adjacent to street right-of-way, and other conditions which might adversely affect the City's use of the public right-of-way. In addition, the owner is also required to provide written authorization for the encroachment from other public utilities (PG&E, Pacific Bell and MediaOne) that may have existing facilities, or the right to place future facilities, within the public right-of-way. If a building permit is required for the encroaching structures, the encroachment permit conditions will require adherence to the plans approved by the Community Development Department.

City policy also requires that the property owner execute a hold harmless agreement in conjunction with the issuance of "structural" encroachment permits. A "standard" hold harmless agreement has been developed for this purpose and is attached as Exhibit A. Past practice has been that each hold harmless agreement is individually approved by the Council prior to issuance of an encroachment permit. The agreements are recorded in the office of the San Joaquin County Recorder after execution by the City.

The number of "structural" encroachment permits which require hold harmless agreements has been increasing, along with the required staff time to prepare the Council report. In order to streamline the process and save staff time, it is recommended that approval of such hold harmless agreements be delegated to the City Manager. The review process outlined above for the issuance of the encroachment permit will remain unchanged. The hold harmless agreement will be forwarded to the City Manager for signature only after all the required documentation for issuance of the permit has been received.

FUNDING: Recording fees for the hold harmless agreements will be paid by the applicants.

Richard C. Prima, Jr.
Public Works Director

Prepared by Sharon A. Welch, Senior Civil Engineer
RCP/SAW/lm
Attachment

cc: Senior Civil Engineer - Development Services
Senior Engineering Technician - Development Services

APPROVED: _____

H. Dixon Flynn -- City Manager

EXHIBIT A

WHEN RECORDED, RETURN TO:

City Clerk
City of Lodi
221 West Pine Street
Lodi, CA 95240

HOLD HARMLESS AGREEMENT

THIS AGREEMENT is made and entered into by and between the CITY OF LODI, hereinafter referred to as "City" and _____, hereinafter referred to as "Owner".

RECITALS:

Owner is the owner of that certain real property situated in the City of Lodi, County of San Joaquin, known as _____ (APN _____) and described as follows:

(INSERT LEGAL DESCRIPTION)

A construction permit application (# _____) has been submitted for construction of _____ on the subject parcel. Owner has requested that a structural encroachment permit be issued to allow construction of _____ which encroaches on an existing ___-foot public utility easement shown on the map for _____.

NOW THEREFORE, in exchange for the issuance of a structural encroachment permit to allow the construction of _____, Owners do hereby agree as follows:

1. Owner agrees to save, defend, indemnify and hold harmless the City of Lodi, its' officers, agents and employees, from liability of any nature whatsoever arising from Owner's use or occupation of the Public Utility Easement referenced above.
2. Owner further agrees to save, defend, indemnify and hold harmless the City of Lodi, its' officers, agents and employees from damage of any sort occasioned by the City's necessary entry upon or excavation of the public facilities located in the Public Utility Easement referenced above for the purpose of emergency work on those facilities.
3. Owner specifically waives consequential damages, damages for inverse condemnation or for any reduction to the value of the subject property based on the existence of the structural encroachment permit, waiver, or hold harmless executed in connection therewith.
4. Owner further agrees, that for non-emergency work in the Public Utility Easement, Owner at his sole expense, will give prompt access to the City of Lodi for the purpose of non-emergency work on the utilities thereon. Further, if required, Owner will move at Owner's cost and expense the necessary structures required to permit the City of Lodi to perform their non-emergency work.
5. This agreement shall run with the land and be binding on the Owner, its heirs, successors or assigns.
6. The terms of the Hold Harmless Agreement are acceptable to the City of Lodi.

7. A copy of the Agreement shall be recorded in the office of the San Joaquin County Recorder, P. O. Box 1968, Stockton, California 95201-1968.

IN WITNESS WHEREOF, the parties hereto have set their hands the day, month and year appearing opposite their names.

CITY OF LODI, a Municipal Corporation

Dated: _____ 199_

By: _____
H. Dixon Flynn, City Manager

Attest: _____
Alice M. Reimche, City Clerk

OWNER(S)

Dated: _____ 199_ _____

Approved as to form: _____
Randall A. Hays
City Attorney

Dated: _____ 199_