



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Ordinance No. 1775 Entitled, "An Ordinance of the City Council of the City of Lodi Amending Title 15 – Buildings and Construction – of the Lodi Municipal Code by Adding Chapter 15.72 Relating to Eminent Domain"

MEETING DATE: April 19, 2006

PREPARED BY: City Clerk

RECOMMENDED ACTION: Motion waiving reading in full and (following reading by title) adopting the attached Ordinance No. 1775.

BACKGROUND INFORMATION: Ordinance No. 1775 entitled, "An Ordinance of the City Council of the City of Lodi Amending Title 15 – Buildings and Construction – of the Lodi Municipal Code by Adding Chapter 15.72 Relating to Eminent Domain" was introduced at the Special Joint Meeting of the City Council and the Redevelopment Agency of the City of Lodi meeting of March 29, 2006.

ADOPTION: With the exception of urgency ordinances, no ordinance may be passed within five days of its introduction. Two readings are therefore required – one to introduce and a second to adopt the ordinance. Ordinances may only be passed at a regular meeting or at an adjourned regular meeting; except for urgency ordinances, ordinances may not be passed at a special meeting. Id. All ordinances must be read in full either at the time of introduction or at the time of passage, unless a regular motion waiving further reading is adopted by a majority of all council persons present. **Cal. Gov't Code § 36934.**

Ordinances take effect 30 days after their final passage. **Cal. Gov't Code § 36937.**

This ordinance has been approved as to form by the City Attorney.

FISCAL IMPACT: None.

FUNDING AVAILABLE: None required.


Susan J. Blackston
Susan J. Blackston
City Clerk

SJB/JMP
Attachments

APPROVED: 
Blair King, City Manager

ORDINANCE NO. 1775

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LODI
AMENDING TITLE 15 - BUILDINGS AND CONSTRUCTION - OF THE
LODI MUNICIPAL CODE BY ADDING CHAPTER 15.72
RELATING TO EMINENT DOMAIN

BE IT ORDAINED BY THE LODI CITY COUNCIL AS FOLLOWS:

SECTION 1. Title 15 - Buildings and Construction - of the Lodi Municipal Code is hereby amended by adding thereto Chapter 15.72 relating to eminent domain and shall read as follows:

WHEREAS, this Ordinance shall be known as 'The Homeowner and Property Protection Ordinance'; and

WHEREAS, eminent domain has been subject to abuse in California, whereby local governmental entities have condemned property and transferred it, by sale, lease, or otherwise, to the control, management, or exploitation of private entities for private use and profit on the theory that generalized public benefits will flow therefrom; and

WHEREAS, the United States Supreme Court, in Kelo v. City of New London, ___ U.S. ___ (2005), has held that the United States Constitution does not prevent the transfer of property, seized through eminent domain, to private entities for private profit; and

WHEREAS, it is the intent of the Lodi City Council that private property shall not be taken or damaged for the use, exploitation, or management of any private party, including, but not limited to, the use, exploitation, or management of property taken or damaged by a corporation or other business entity for private profit, as is currently permitted under the United States Constitution under Kelo v. City of New London, ___ U.S. ___ (2005); and

WHEREAS, it is not the intent of this Ordinance to prevent the rental of space in a government building or any other government-owned property for incidental commercial enterprises, including, but not limited to, gift shops, newsstands, and private nonprofit entities such as churches and other religious and civic organizations; and

WHEREAS, this Ordinance shall apply only to condemnation actions that are completed after this Ordinance goes into effect.

(a) Property taken by eminent domain by the City of Lodi shall be owned and occupied by the condemnor or another governmental agency utilizing the property for the stated public use by agreement with the condemnor, or may be leased only to entities that are regulated by the Public Utilities Commission or to private nonprofit entities. All property that is taken by eminent domain shall be used only for a public use or as set forth above.

(b) If any property taken through eminent domain after the effective date of this Ordinance ceases to be used for the stated public use, within ten years of its original acquisition, the former owner of the property or a beneficiary or an heir, if a beneficiary or heir has been designated for this purpose, shall have the right to reacquire the property at the original purchase price or fair market value of the property, whichever is lesser, before the property may be otherwise sold or transferred.

SECTION 2 - No Mandatory Duty of Care. This ordinance is not intended to and shall not be construed or given effect in a manner which imposes upon the City, or any officer or employee thereof, a mandatory duty of care towards persons or property within the City or outside of the City so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

SECTION 3. All ordinances and parts of ordinances in conflict herewith are repealed insofar as such conflict may exist.

SECTION 4. This ordinance shall be published one time in the "Lodi News Sentinel," a daily newspaper of general circulation printed and published in the City of Lodi, and shall be in force and take effect 30 days from and after its passage and approval.

Approved this 19th day of April, 2006.



SUSAN HITCHCOCK
Mayor

Attest:



SUSAN J. BLACKSTON
City Clerk

State of California
County of San Joaquin, ss.

I, Susan J. Blackston, City Clerk of the City of Lodi, do hereby certify that Ordinance No. 1775 was introduced at a Special Joint meeting of the Lodi City Council and Redevelopment Agency of the City of Lodi held March 29, 2006, and was thereafter passed, adopted, and ordered to print at a Special Joint meeting of the Lodi City Council and Redevelopment Agency of the City of Lodi held April 19, 2006, by the following vote:

AYES: COUNCIL MEMBERS – Beckman, Hansen, and Mounce

NOES: COUNCIL MEMBERS – Johnson and Mayor Hitchcock

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None

I further certify that Ordinance No. 1775 was approved and signed by the Mayor on the date of its passage and the same has been published pursuant to law.



SUSAN J. BLACKSTON
City Clerk

Approved as to Form:



D. STEPHEN SCHWABAUER
City Attorney