

Chapter 20.76 - COVENANTS FOR EASEMENTS

Sections:

20.76.010 Purpose

20.76.020 Applicability

20.76.030 Procedures

20.76.040 Content of Covenant

20.76.050 Release of Covenant

20.76.010 Purpose

This chapter provides procedures for obtaining a covenant for an easement, pursuant to California Government Code Sections 65870 to 65875.

20.76.020 Applicability

A. General. 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. Limitations.

1. The provisions of this chapter shall only apply when the covenant for easement is for:
 - a. Parking; or,
 - b. Ingress, egress, or emergency access; or,
 - c. Light or air access; or,
 - d. Landscaping; or,
 - e. Open space purposes.
2. At the time of recording the covenant of easement, all the real property benefited or burdened by said covenant shall be in common ownership.



20.76.030 Procedures

A. Record of Covenant. Whenever the Planning Commission, Director of Development Services, or City Council determines that a covenant of easement is needed for one or more of the purposes identified in Section 20.76.020 (Applicability), the approval shall not become effective unless or until said covenant of easement is recorded and applicable City fees are submitted.



B. Preparation of Covenant. 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 Director of Development Services; or,

2. Prepared by the City Attorney. Whenever the City Attorney prepares a covenant of easement, the City shall be entitled to reimbursement from the applicant for all associated costs.

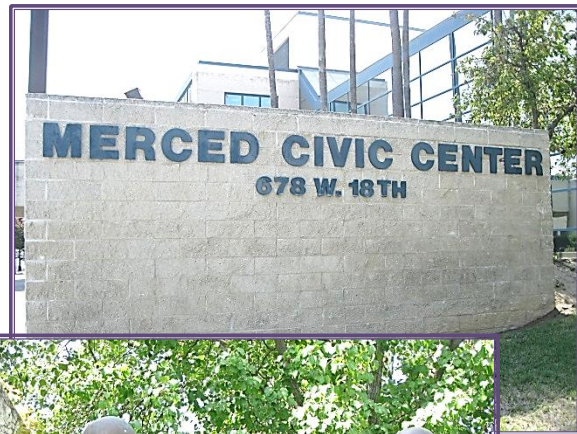
20.76.040 Content of Covenant

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

A. Identification of Owner. 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. Consent. A consent to the covenant of easement and its recording by the record owner or owners to the covenant.

C. Identification of Property. Identification and legal description of the real property to be benefited and to be burdened by the covenant.



D. Covenant as Easement.

1. 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).
2. 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.
3. A statement of the purpose of the easement (i.e. for access, parking, etc.).

E. Identification of Approval. Identification of the approval, permit, or designation granted which required the covenant.

F. Release Statement. A statement identifying the Merced Municipal Code section which sets forth the procedure for release of the covenant.

G. Execution. An appropriate section for execution of the covenant of easement by the record owner of the subject property.

20.76.050 Release of Covenant

A. Applicability. 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 review authority that took final action on the original application. A person shall be entitled to only one such determination in any twelve month period.

B. Request for Determination. To obtain a determination as mentioned above, a "Request for Determination" application shall be made and filed with the Planning Division or City Clerk. The application shall include a fee as set by City Council resolution.

C. Public Hearing and Notice. Upon receipt of a completed application, the Planning Division or City Clerk shall set the matter for public hearing before the Planning Commission or City Council, as appropriate, in a manner consistent with Chapter 20.70 (Public Notice and Hearings).



- D. Decision.** At the conclusion of the public hearing, the review authority 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 review authority determines that the covenant for easement is still required, the review authority shall by resolution determine that the need still exists.
- E. Approval of Release.** If the review authority finds that the covenant of easement is no longer necessary, the review authority shall by resolution make the determination and finding and direct the City Attorney to prepare a release thereof and transmit the same to the City Clerk for recording.
- F. Appeal of Planning Commission Decision.** Planning Commission action on the continuing need for the covenant of easement is subject to appeal by following the procedure set forth in Chapter 20.74 (Appeals).
- G. Finality.** The City Council's determination shall be final and conclusive.

