

MEMORANDUM OF LAW

DATE: July 15, 1985

TO: Dave Grim, Property Department

FROM: City Attorney

SUBJECT: Easement for Construction and Repair of Water

Main - Right of Reasonable Access Across

Adjacent Property

By memorandum dated June 17, 1985, you described a situation where the City received "an easement for right of way to locate, relocate, construct, reconstruct, maintain, operate, and repair a water main or water mains, together with any or all fittings, structures, and appurtenances thereto, through, over, under, along and across" a specified portion of a lot.

Your memorandum further stated, "The deed conveying the water easement in 1955 did not express a conveyance of access. Is access to maintain the waterline implied? Is any specific expression of conveying the access necessary?"

Your memorandum further indicated that, if the City does not presently have necessary rights of access, you propose to have the two applicable private ownerships grant such access and you asked whether the proposed form of deed granting such access is acceptable.

With regard to the law applicable to easements, the general rule is that while the grantee cannot make use of an easement in excess of the grant, the grantee receives by implication the right to do all things reasonably necessary in order to utilize the easement, including the right to enter upon the adjacent property of the grantor to the extent necessary to repair and maintain the easement. *Pasadena v. California-Michigan Land & Water Co.*, 17 Cal.2d 576, 110 P2d 983, 133 ALR 1186 (1941); *Los Angeles v. Howard*, 244 Cal.App.2d 538, 53 Cal.Rptr. 274 (1966); *Ames v. Prodon*, 252 Cal.App.2d 94, 60 Cal.Rptr. 183 (1967). See also *Miller & Starr* 3 Cal. RE Rev. Secs. 18:21-18:31, Sec. 18:55.

Therefore, it appears that as a matter of law the City has a right to access over the grantor's adjacent property in order to maintain or reconstruct our water mains. However, assuming that the adjacent property owners are willing to grant our desired access rights by the attached deed, it is clearly desirable to obtain such specific access rights in order to preclude any

potential future disputes as to the extent of our implied  
reasonable rights of access. Your proposed deed form looks fine  
with the minor modifications shown.

JOHN W. WITT, City Attorney

By

Harold O. Valderhaug

Deputy City Attorney

HOV:ps:740(x043.2)

Attachment

ML-85-37