

August 22, 2005

**Honorable Mayor and Members of the
Hermosa Beach City Council**

**Regular Meeting of
September 13, 2005**

SUBJECT: AMENDMENT TO BUILDING CODE CHAPTER 15.04 TO REQUIRE THE EXECUTION OF A WAIVER FOR CONSTRUCTION BELOW GRADE AND AMENDING THE HERMOSA BEACH MUNICIPAL CODE (HBMC).

Recommendation:

To introduce the attached ordinance to amend Chapter 15.04 of the Hermosa Beach Municipal Code.

Summary:

Adoption of the attached amendments will require that property owners and developers desiring to build below grade assume the liability for flooding attendant to such construction. The amendments require the owner to execute a waiver before issuance of a building permit for which any portion of a structure is below street grade.

Analysis:

The City Council directed staff to require a construction waiver for below grade construction. The issue came to light in connection with claim for property damage to a single family dwelling allegedly damaged due to storm flooding. In order to require a waiver for single-family development, the building code must be amended. Currently any new residential project subject to discretionary review must comply with this requirement as a condition of approval and provide a similar waiver. The new ordinance addresses the issue by requiring a waiver prior to issuance of a building permit for any project with below grade construction.

Section 15.04.035 of the HBMC and Section 106.01 of the California Building Code (CBC), Permit Issuance, is amended to read:

The building official shall require execution of a waiver before issuing a permit for construction of buildings or structures of any occupancy any portion of which is below street grade.

Chapter 31, Section 3107.6 of the CBC, Flood Elevations is amended to read:

The building official shall require execution of a waiver before issuing a permit for construction of buildings or structures of any occupancy any portion of which is below grade and/or does not meet the elevation requirements of Section 3107.2

Section 3107.2 refers to construction requirements in flood hazard zones and sets the lowest elevation of structures including basements above the flood elevation.

Sol Blumenfeld, Director
Community Development Department

Rick Morgan, Director
Public Works Department

Concur:

Attachments:

1. Draft Ordinance Amendment
2. Assumption of Risk and Release

Stephen R. Burrell
City Manager

P:/TAAssumptionRisk

ORDINANCE 05-

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
HERMOSA BEACH, CALIFORNIA AMENDING THE BUILDING CODE
(CHAPTER 15.04) TO REQUIRE THE EXECUTION OF A WAIVER FOR
CONSTRUCTION BELOW GRADE AND AMENDING THE HERMOSA
BEACH MUNICIPAL CODE**

The City Council of the City of Hermosa Beach does hereby ordain as follows:

Section 1 - Findings. The City Council hereby finds as follows:

Subterranean construction increases the risk of flooding from storm water, ground water or sewage back-ups. Property owners and developers desire to build below grade in order to maximize development of lots in the City, notwithstanding these risks. The purpose of this Ordinance is to assure that property owners and developers who choose to build below grade acknowledge and assume the risk of flooding attendant to such construction.

Section 2 - The City Council held a duly-noticed public hearing on _____ 2005 to consider the amendment to the California Building Code relative to adoption of this Ordinance requiring assumption of risk for below grade construction at which the Council took testimony from interested persons prior to deliberating and taking action.

Section 3 – Chapter 15.04 of Title 15 of the Hermosa Beach Municipal Code is amended by adding thereto a new Section 15.04.035 to read as follows:

15.04.035. Assumption of Risk for Below Grade Construction.

Notwithstanding the provisions of Section 15.04.010, Section 106.4.1 of the Building Code is amended by adding thereto a new final paragraph to read as follows:

The building official shall require execution of a waiver before issuing a permit for construction of buildings or structures of any occupancy any portion of which is below street grade.

Section 4 -- Chapter 15.04 of Title 15 of the Hermosa Beach Municipal Code is amended by adding thereto a new Section 15.04.130 to read as follows:

15.04.130. Assumption of Risk for Below Grade Construction.

Notwithstanding the provisions of Section 15.04.010, Appendix Chapter 31, Division 1, of the Building Code is amended by adding thereto a new Section 3107.6 to read as follows:

3107.6 Waiver Required for Below Grade Construction. The building official shall require execution of a waiver before issuing a permit for construction of buildings or structures of any occupancy any portion of which is below street grade and/or does not meet the elevation requirements of Section 3107.2.

Section 5 – Adoption of this Ordinance is not a project within the meaning of the California Environmental Quality Act (CEQA) pursuant to Section 15378 of the State CEQA Guidelines.

Section 6 - This ordinance shall become effective and be in full force and effect from and after thirty (30) days of its final passage and adoption.

Section 7 - Prior to the expiration of fifteen (15) days after the date of its adoption, the City Clerk shall cause this ordinance to be published in the "Easy Reader", a weekly newspaper of general circulation published and circulated in the City of Hermosa Beach, in the manner provided by law.

Section 8 - The City Clerk shall certify to the passage and adoption of this ordinance, shall enter the same in the book of original ordinances of said city, and shall make minutes of the passage and adoption thereof in the records of the proceedings of the City Council at which the same is passed and adopted.

PASSED, APPROVED and ADOPTED this _____ day of September, 2005, by the following vote:

- AYES:
- NOES:
- ABSTAIN:
- ABSENT:

PRESIDENT of the City Council and MAYOR of the City of Hermosa Beach, California

ATTEST:

City Clerk

APPROVED AS TO FORM:
City Attorney

WHEN RECORDED, RETURN TO:

City Clerk
City of Hermosa Beach
1315 Valley Drive
Hermosa Beach, CA 90254

SPACE ABOVE FOR RECORDER

ASSUMPTION OF RISK AND RELEASE

REGARDING RECEIPT OF SURFACE WATERS, GROUND WATER AND SEWER LINE BACK-UPS

THIS ASSUMPTION OF RISK AND RELEASE REGARDING RECEIPT OF SURFACE WATERS, GROUND WATER AND SEWER LINE BACK-UPS is made this __ day of , 2005, by _____ and _____ (hereinafter "Property Owner") in favor of the City of Hermosa Beach (hereinafter "City"), a California municipal corporation.

R E C I T A L S

A. Property Owner is the owner in fee title of property located in the City of Hermosa Beach legally described as Lot ___ of Tract ___, or Assessor's parcel: Book ___, Page ___, Parcel ___, together with all improvements, household furnishings and effects, and personal property located therein and thereon, more commonly known as _____, Hermosa Beach, California (hereinafter "the property").

B. Property owner desires to build/rebuild/remodel/rehabilitate a residential structure on the property (hereinafter the "construction") and has applied for a building permit for said work.

C. Property owner's construction plans call for:

- _ the garage or other living space to be located below the street grade;
- _ no curbs or gutters along the street frontage of the property;
- _ the back of the driveway is not a minimum of 6" above the flow line.

D. During periods of heavy rainfall, it is likely that surface waters along the public street fronting the property will enter the property due to construction of the residential structure in accordance with the plans as above described. Further, the risk of inundation of subterranean construction with sewage due to failure of a back-flow device and with ground water due to failure of dewatering system is greater when constructing below grade.

E. Potential inundation of the property can be avoided by changing the method of construction. Property Owner does not want to change the method of construction to protect against the risk of flooding by surface water, sewage and ground water, but instead, desires to assume all risk relating to and arising from the issuance of a building permit for said construction with respect to flooding by surface waters, sewage and ground water, including in particular the risk that the City's issuance of the building permit is negligent in that both the property owner and the City are aware of the potential for such flooding if the structure is built as planned.

F. As an accommodation to Property Owner, City is willing to allow the construction as proposed, and Property Owner desires to limit the City's potential liability arising from any claim that the City acted negligently or improperly in issuing a building permit to Property Owner under the above-described circumstances.

G. City will not issue a building permit for the proposed below grade construction absent execution of this waiver.

NOW, THEREFORE, as inducement for City to grant a building permit, Property Owner agrees as follows:

1. Assumption of Risk.

Property Owner hereby assumes all risk of damages to the property, and loss or impairment of the use and enjoyment thereof, including improvements, household furnishings and effects and personal property located therein and thereon, and including all risk of personal injury, and including loss of any and all expenditures in any manner arising out of or attributable to the City issuing a building permit for the proposed construction, notwithstanding that the property will be susceptible to flooding by surface waters, sewage and ground water by virtue of Property Owner's chosen method of construction.

Property Owners' Initials _____

2. Release.

Property Owner hereby releases and discharges City, its officers, employees and agents, past and present, from any and all claims, losses, damages or liabilities of or to the property of the undersigned Property Owner (whether for damages to (a) the property, (b) improvements, household furnishings and effects and personal property located therein or thereon, or (c) personal injury), including but not limited to attorney's fees and costs of suit, arising out of or attributable to the City issuing the building permit for the proposed construction, notwithstanding that the property will be

susceptible to flooding by surface waters, sewage and ground water by virtue of Property Owner's chosen method of construction.

This release includes, but is not limited to, any claims arising from the City's negligence in issuing the permit. **Property Owner hereby expressly agrees to forego the right to assert any claim or bring any action of any nature whatever against City, its officers, employees and agents for any damages or losses of any kind attributable to surface water, sewage and ground water flooding of the property due to the issuance of a building permit and the work performed pursuant thereto.**

Property Owners' Initials _____

3. Indemnification.

Property Owner hereby agrees to defend, indemnify and hold harmless City, its officers, employees and agents from claims, actions damages and liabilities asserted by third parties who suffer injuries or damages (whether personal injury or damage to personal property) by virtue of flooding of the property by surface waters, sewage or ground water.

Property Owners' Initials _____

4. Voluntary Agreement.

Property Owner has obtained the advice of legal counsel and has been advised of the nature and legal effect of the execution of this instrument, or expressly declines to secure the advice of legal counsel, nonetheless has read this instrument carefully, understands the contents hereof and knowingly forgoes the opportunity to seek legal counsel. Property Owner executes this instrument voluntarily with knowledge of its significance in consideration for issuance of a building permit to perform certain construction using a method that Property Owner is aware may result in damage from surface waters, sewage or ground water.

Property Owners' Initials _____

5. Binding Effect.

Property Owner agrees and acknowledges this instrument shall be recorded against the title of the property in the official records of the Los Angeles County Recorder.

Property Owners' Initials _____

This instrument shall run with the land and shall be binding on all parties having or acquiring any right, title or interest in or to the property or any portion thereof,

and shall constitute notice of the hazard of surface water, sewage and ground water flooding that affects the property.

This instrument shall be terminated or modified only upon the express written consent of City.

In the event Property Owner sells, transfers, leases or otherwise conveys any interest or right of possession in the property, Property Owner shall provide any such purchaser, lessee or transferee a copy of this instrument.

I UNDERSTAND THAT BY SIGNING THIS INSTRUMENT, I AM FOREGOING MY LEGAL RIGHTS.

I UNDERSTAND THAT MY CHOICE TO CONSTRUCT A STRUCTURE ON MY PROPERTY IN A WAY THAT MAKES IT VULNERABLE TO FLOODING IS PURELY VOLUNTARY AND THAT I COULD CONSTRUCT THE STRUCTURE IN A DIFFERENT WAY TO PROTECT IT FROM SUCH FLOODING.

I UNDERSTAND THAT THE CITY HAS AGREED TO ISSUE A BUILDING PERMIT BECAUSE I HAVE RELEASED THE CITY FROM ANY LIABILITY FOR PROPERTY DAMAGE, PERSONAL PROPERTY DAMAGE AND PERSONAL INJURY, INCLUDING LIABILITY ARISING FROM ITS OWN NEGLIGENCE IN ISSUING THE PERMIT.

I UNDERSTAND THAT AS A RESULT OF SIGNING THIS INSTRUMENT I DO NOT HAVE THE RIGHT TO SUE THE CITY IN CONNECTION WITH THE BUILDING PERMIT OR THE CONSTRUCTION IT AUTHORIZES, IN THE EVENT MY PROPERTY IS FLOODED.

I UNDERSTAND THAT I AM RESPONSIBLE FOR PROTECTING THE CITY AGAINST PERSONAL INJURIES TO MY GUESTS AND INVITEES AND DAMAGES TO THEIR PERSONAL PROPERTY.

Property Owners' Initials _____

IN WITNESS WHEREOF, Property Owner has executed this assumption of risk and release and indemnity on the date first written above.

Property Owner

Property Owner

Signature(s) must be acknowledged before a Notary Public:

STATE OF CALIFORNIA)
)
) ss
)
COUNTY OF LOS ANGELES)

On _____ before me, the undersigned, a Notary Public in and for
said State, personally appeared
_____, known to me to be the
person ___ whose name ___ was/were subscribed to the within instrument and acknowledged that
_____ executed the same.

Witness my hand and official seal.

Signature _____