

**CITY OF SEBASTOPOL  
CITY COUNCIL  
STAFF REPORT**

Meeting Date: June 7, 2016  
To: Honorable Mayor and Honorable City Councilmembers  
From: Joseph Gaffney, City Engineer  
Subject: **Approval of Recordable Encroachment Permit  
775 Gravenstein Hwy South (Round Table)**  
Recommendation: Adopt Resolution authorizing the City Manager to sign the Recordable Encroachment Permit.  
Funding: Currently Budgeted: \_\_\_ \_\_\_ Yes \_\_\_ No X N/A  
Net General Fund Cost: \$ 0.00

**INTRODUCTION:** This item is to request the City Council authorize the City Manager to sign the Recordable Encroachment Permit.

**BACKGROUND:**

The owners of 775 Gravenstein Highway South, Southpoint Avenue Investors LLC, have constructed improvements to the Round Table Pizza store. Included in the improvements is an exterior dining patio that encroaches on the City's Public Utility Easement along the east side of the State right of way.

In the Design Review Board's approval of the project is a requirement that the City execute a Recordable Encroachment Permit to address the exterior patio's encroachment. This permit will establish the City's continuing rights of access to the easement for maintenance and/or repair of the public utilities. By recording the permit, the agreement is made binding on any future owners of the property.

**RECOMMENDATION:** That the City Council adopt a Resolution authorizing the City Manager to execute the Recordable Encroachment permit.

**Attachment(s):**

Recordable Encroachment Permit, 775 Gravenstein Highway South.

RESOLUTION NO. \_\_\_\_\_

RESOLUTION AUTHORIZING CITY MANAGER  
TO EXECUTE RECORDABLE ENCROACHMENT PERMIT  
775 GRAVENSTEIN HIGHWAY SOUTH  
HANDLINE RESTAURANT  
(Round Table Pizza)  
in the City of Sebastopol, Sonoma County, California

WHEREAS, the Design Review Board approved Improvement Plans for the Round Table Pizza Restaurant at 775 Gravenstein Highway South on September 16, 2015; and

WHEREAS, among other work, the plans provide for the construction of an exterior dining patio that encroaches on the City's Public Utility Easement; and

WHEREAS, the attached Recordable Encroachment Permit will preserve the City's rights to the Public Utility Easement, and be binding on the current and future property owners;

NOW, THEREFORE, BE IT RESOLVED that the City Council hereby authorizes the City Manager to execute the attached Recordable Encroachment Permit for the purposes described therein.

IN COUNCIL DULY PASSED AND ADOPTED this 7<sup>th</sup> day of June, 2016, BY THE FOLLOWING VOTE:

APPROVED: \_\_\_\_\_  
Sarah Glade Gurney, Mayor

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST: \_\_\_\_\_  
Mary Gourley, MMC, City Clerk

Recording Requested by and for Benefit of  
the City of Sebastopol

**When Recorded Mail To:**

City of Sebastopol  
Engineering Department  
714 Johnson Street  
Sebastopol, CA 95472

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**ENCROACHMENT PERMIT**

This ENCROACHMENT PERMIT (hereinafter referred to as "Permit") is hereby issued on the 7<sup>th</sup> day of June, 2016, by the CITY OF SEBASTOPOL, A CALIFORNIA MUNICIPAL CORPORATION (hereinafter referred to as "City") to SOUTHPOINT AVENUE INVESTORS, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY (hereinafter referred to as "Owner").

**RECITALS**

- A. Owner owns that certain real property located in the City of Sebastopol, in Sonoma County, California, more particularly described in Exhibit "A" attached hereto (hereinafter referred to as the "Property").
- B. Owner proposes to install certain private improvements within a Public Utilities Easement to the City, depicted in Exhibit "B", attached hereto. City of Sebastopol Ordinance 954 requires that an encroachment permit be obtained for such work. The City is willing to issue this encroachment permit, provided the City of Sebastopol does not thereby incur any additional liability, has adequate assurance that free and clear access will be provided to the public utilities within the easement, and that the existing public utilities will be preserved.

**THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

1. Definitions. The following definitions shall apply throughout this Permit:
  - "Encroaching improvements" shall mean the private restaurant improvements in the area depicted in Exhibit "B".
  - "Property" shall mean that certain real property located in the City of Sebastopol, Sonoma County, California, more particularly described in Exhibit "A", and as depicted on Exhibit "B" attached hereto.
2. Encroachment Permit. The City hereby issues to Owner a permit for encroachment upon the City easement to the extent needed for the encroaching improvements. This permit shall remain valid unless the City determines that any

future City improvement of the utilities to accommodate public use necessitates the relocation of the encroachment placed pursuant thereto. In such case the City shall serve on the Owner a written demand specifying the place of relocation of the encroachment, and specifying a reasonable time within which the work of relocation must be commenced, which shall be performed at the Owner's sole expense. The Owner must commence such relocation within the time specified in such demand and thereafter diligently prosecute the same to completion. (Sec. 12.48.050, Sebastopol Municipal Code)

With the written consent of the Owner, the City may perform any relocation of the encroaching improvements, and shall be entitled to recover its reasonable costs from the Owner.

3. Protection of Facilities. Owner agrees to construct and maintain the encroaching improvements in a workmanlike manner and to protect the City's public improvements from damage as shown on Exhibit "B".
4. Agreement to Indemnify. Owner hereby agrees as a condition of issuance of this Permit to indemnify and hold harmless the City from and against all claims, damages, losses and expenses, including but not limited to reasonable attorney's fees, arising out of or connected with the encroaching improvements, except for any claim or loss that is due to the City's sole or gross negligence or willful misconduct.
5. Binding Effect. This Permit is declared and agreed to be for the direct benefit of the Property. The covenants set forth in paragraph 4 above shall run with the Property and be binding upon Owner's successors and assigns with respect to the Property and upon all persons having or acquiring any right, title or interest in all or any portion of the property. The covenants set forth in paragraph 4 above shall also be enforceable as equitable servitude in the Property.
6. Enforcement Only Against Current Owner. Notwithstanding any other provisions of this Permit, the City shall enforce the provisions of paragraph 4 above against Owner only so long as Owner continues to hold an ownership interest in the Property and against any successor and assign of Owner only so long as such successor or assign holds an ownership interest in the Property.
7. Notices. All notices and demands under this Permit shall either be personally delivered or sent by United States mail, postage prepaid, registered or certified, return receipt requested, addressed to the other party as follows:

City: City of Sebastopol  
714 Johnson Street  
Sebastopol, CA 95472  
Attn: Engineering Department

Owner: Southpoint Avenue Investors LLC  
P.O. Box 1555  
Sebastopol, CA 95473

Either party may change its address for purposes of notice by giving notice to the other party as provided herein.

8. Attorney's Fees. In the event any action is brought with respect to this Permit and Agreement, the prevailing party shall be entitled to reasonable attorney's fees as determined by the court.

IN WITNESS WHEREOF, the parties hereto have executed this Permit as of the day and year first set forth above.

CITY OF SEBASTOPOL  
A California Municipal Corporation

SOUTHPOINT AVENUE INVESTORS  
LLC

BY: \_\_\_\_\_  
Lawrence McLaughlin  
City Manager

\_\_\_\_\_  
\_\_\_\_\_

**ALL SIGNATURES MUST BE NOTARIZED**

EXHIBIT A

LEGAL DESCRIPTION

The land referred to in this Report is described as follows:

TRACT ONE:

All that certain real property situated in the City of Sebastopol, County of Sonoma, State of California, described as follows:

PARCEL ONE:

Being a portion of the Ramondo Tract, in the City of Sebastopol, as described in the Deed recorded in Book 518 of Official Records, page 158, Sonoma County Records, and particularly described as follows:

Beginning at a point on the South line of the Ramondo Tract, which point is North 89 degrees 40' East, 356.5 feet from the Southwest corner of the Ramondo Tract, at the intersection of the South line of the Northeast quarter of Section 2, Township 6 North, Range 9 West, with the centerline of Petaluma Avenue; thence along the South line of the Ramondo Tract, North 89 degrees 40' East, 230.3 feet to a ¾ inch pipe monument; thence North 19 degrees 42' West, parallel to the centerline of Petaluma Avenue, 524.7 feet to a ½ inch pipe; thence South 85 degrees 20' West, 225 feet to a ½ inch pipe; thence South 19 degrees 42' East, 506.7 feet to the point of beginning.

PARCEL TWO:

Being a portion of the Gravenstein Apple Growers Co-operative Association of California Lot in the Ramondo Tract in the City of Sebastopol as described in the Deed recorded in Book 5618 of Official Records, page 46, Sonoma County Records, and particularly described as follows:

Beginning at the Southwest corner of the Gravenstein Apple Growers Co-Operative Association of California Lot at the intersection of the South line of the Northeast quarter of Section 2, Township 6 North, Range 9 West, with the centerline of Petaluma Avenue; thence along the South line of said lot North 89 degrees 40' East, 356.5 feet to the Southeast corner of the said Lot; thence North 19 degrees 42' West, 86.1 feet to a ½ inch pipe; thence South 26 degrees 23' West, 46.2 feet; thence South 89 degrees 40' West, 327.7 feet to the center of Petaluma Avenue; thence South 19 degrees 42' East, 42.4 feet to the point of beginning.

Excepting therefrom that portion conveyed to the City of Sebastopol by Deed recorded March 11, 1986 under Series No. 86016416 and re-recorded April 9, 1986 under Series No. 86024167, Sonoma County Records.

PARCEL THREE:

Lying within Section Two, Township 6, North, Range 8 West, M.D.M., and being a portion of the lands conveyed by Deed to Rocco Poncetta and Loretta P. Poncetta, his wife, recorded in Book 1524 of Official Records, page 49, Sonoma County Records, said portion more particularly described as follows:

Beginning at a ½ inch iron pipe Deed call marking an angle point in the Westerly line of said Poncette Lands, said iron pipe being a Deed call Northeast corner of the lands conveyed to the Sebastopol Cooperative Cannery as described in Deed recorded in Book 2095 of Official Records, page 2, Sonoma County Records; thence from said point of beginning and along the East line of said common property line South 19 degrees 42' East, 524.7 feet to a found ½ inch iron pipe and tag, at the Southeast corner of said Cooperative lands; thence leavings said common line North 12 degrees 45' 44" West, 511.85 feet to a set ½ inch iron pipe and tag; thence South 85 degrees 20' West, 64.00 feet to the point of beginning.

**PARCEL FOUR:**

Being a portion of the Gravenstein Apple Growers Cooperative Lot in the Ramondo Tract on Petaluma Avenue, in the City of Sebastopol, and particularly described as follows:

Beginning at the Southwest corner of said Gravenstein Apple Growers Cooperative Lot at the intersection of the center of Petaluma Avenue with the South line of the Northeast quarter of Section 2, Township 6 North, Range 9 west; thence along the center of Petaluma Avenue, North 19 degrees 42' West, 42.4 feet; thence North 89 degrees 40' East, 206.7 feet to a point for the actual point of commencement of the tract to be herein described; thence from said point of commencement, continuing North 89 degrees 40' East, 98.1 feet to a point; thence North 4 degrees 15' West, 183 feet to the Easterly line of the said Gravenstein Apple Growers Cooperative Association Lot; thence along said Easterly line South 19 degrees 42' East, 235.9 feet to the Southern line of the Northeast quarter of said Section 2; thence along said line South 89 degrees 40' West, 149.8 feet to a point, distant 206.7 feet from the centerline of Petaluma Avenue; thence North 19 degrees 42' West, parallel with said centerline, 42.4 feet, more or less, to the point of commencement.

Excepting therefrom that portion conveyed to the City of Sebastopol by Deed recorded March 11, 1986 under Series No. 86016416 and re-recorded April 9, 1986 under Series No. 86024167, Sonoma County Records.

Excepting therefrom all that portion described in Parcel Two described herein.

**TRACT TWO:**

All that certain real property situated in the City of Sebastopol, County of Sonoma, State of California, described as follows:

Parcel One, as shown upon City of Sebastopol Parcel Map No 107, filed for record April 23, 1986 in Book 383 of Maps, at Pages 35 and 36, in the Office of the County Recorder of said County.

**TRACT THREE:**

Parcel Two, as shown upon City of Sebastopol Parcel Map No 107, filed for record April 23, 1986 in Book 383 of Maps, at Pages 35 and 36, in the Office of the County Recorder of said County.

**APN: 060-120-010 004-111-018 004-111-019 004-111-021**

**EXHIBIT B**

