

MISSING ORIGINAL LEGISLATION

Resolution / Ordinance Number: 8 1 6 1 3

City Council Meeting Date October 21, 2008

Agenda Item No. S-10.12-CC

Recorded Vote 7 Ayes, 1 Absent - Brooks

Draft submitted in agenda packet, original never received

Council amended legislation at the meeting

Responsible Contact Information

Department CEDA

Contact Person/Ext. Ray Derania x4780

Notes (if any)

Introduced By

Councilmember

FILED
OFFICE OF THE CITY CLERK
OAKLAND
2008 OCT -2 PM 3:39

Approved For Form And Legality

DRAFT

City Attorney

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

**RESOLUTION GRANTING THE OAKLAND HOUSING AUTHORITY A
REVOCABLE AND CONDITIONAL PERMIT TO ALLOW ENCLOSED LIVING
SPACE FOR APARTMENTS IN A NEW BUILDING AT 1633 HARRISON STREET
TO ENCROACH OVER THE PUBLIC RIGHT-OF-WAY ALONG 17th STREET
AND HARRISON STREET**

WHEREAS, the Housing Authority of the City of Oakland (Permittee) is the owner of three (3) contiguous properties described in two (2) grant deeds, recorded June 16, 1993, series no. 9314443, and October 13, 2006, series no. 2006385780, by the Alameda County Clerk-Recorder, and identified by the Alameda County Assessor as APN 008-0625-020-00, APN 008-0625-021-00, and APN 008-0625-022-00, and identified by the City of Oakland as 1633 Harrison Street and 321 17th Street, and more particularly described in Exhibit A attached hereto, has made an application to the Council of the City of Oakland for a conditional permit (ENMJ 08060) to allow living rooms for twenty-four (24) apartments on the third, fourth, and fifth stories of a new six (6) story senior housing building to cantilever 2' 8" over and 20' 6" above the public sidewalk along 17th Street and Harrison Street; and

WHEREAS, the Planning Commission of the City of Oakland approved a Conditional Use Permit and design review (CDV 08114) for the proposed senior housing project on August 8, 2008; and

WHEREAS, the Planning Commission conditioned the development of said site for said proposed project with various requirements, including the merger of said three (3) parcels into a single parcel in accordance with the provisions of the California Government Code (Subdivision Map Act) and the Municipal Code of the City of Oakland (Title 16); and

WHEREAS, the Planning Commission further conditioned the development of said site for said proposed project with the requirement that the Permittee obtain required permits from the Building Official of the City of Oakland to construct said building within one (1) calendar year following the date of approval of the Conditional Use Permit; and

WHEREAS, the limits of the encroachment is delineated in Exhibit B attached hereto; and

WHEREAS, the City Engineer of the City of Oakland has determined that the encroachment and its location beyond the property boundaries will not interfere with the use by the public of the roadway or sidewalk or buried utilities; and

WHEREAS, the requirements of the California Environmental Quality Act (CEQA), the Guidelines as prescribed by the Secretary of Resources, and the provisions of the Statement of

Objectives, Criteria and Procedures for Implementation of the California Environmental Quality Act: City of Oakland, have been satisfied, and that in accordance with CEQA Guideline Section 15332 (Class 32, Infill Projects), this project is categorically exempted; now, therefore, be it

RESOLVED: That the City Council's action approving the encroachment, as conditioned herein, complies with the California Environmental Quality Act; and be it

FURTHER RESOLVED: That the encroachment, as described and conditioned herein and delineated in Exhibit B, is hereby granted for a revocable permit to allow enclosed living space for twenty-four (24) apartments on the third, fourth, and fifth stories of a new building at 1633 Harrison Street to encroach over the public sidewalk along 17th Street and Harrison Street; and be it

FURTHER RESOLVED: That the encroachment is hereby conditioned by the following special requirements:

1. the Permittee (Housing Authority of the City of Oakland) is responsible for the relocation of all existing public utilities including but not limited to fire alarm cable, master signal cable, street lighting and intersection signal cable, as required; and
2. after notice to the Permittee, this permit shall be revocable at the sole discretion of the Council of the City of Oakland, expressed by resolution of said Council; and
3. the Permittee, by the acceptance of this conditional and revocable permit, hereby disclaims any right, title, or interest in or to any portion of the public right-of-way area, underlying the encroachments or the air space above and agrees that said temporary use of the area does not constitute an abandonment on the part of the City of Oakland of any of its rights for street purposes and otherwise; and
4. the Permittee shall maintain in force and effect at all times that the encroachments occupy the public right-of-way, valid and sufficient Commercial General Liability insurance in an amount not less than \$2,000,000.00 for each occurrence with a property damage sub-limit in the amount not less than \$1,000,000.00 for each occurrence, including contractual liability and naming as additional insured the City of Oakland, its directors, officers, agents, representatives, employees, and volunteers against any and all claims arising out of the existence of said encroachments in said right-of-way area, and that a certificate of such insurance and subsequent notices of the renewal thereof, shall be filed with the City Engineer of the City of Oakland and that such certificate shall state that said insurance coverage shall not be canceled, materially changed, or be permitted to lapse without thirty (30) days' written notice to the City Engineer. The Permittee also agrees that the City of Oakland may review the type and amount of insurance required at any time and may require the Permittee to increase the amount of and/or change the type of insurance coverage required. In addition, the insurance amounts stated above shall be automatically adjusted upwards cumulatively consistent with the Consumer Price Index (CPI) in the Bay Area every five (5) years; and
5. the Permittee, by the acceptance of this conditional permit agrees and promises to defend, hold harmless, and indemnify the City of Oakland and its officials, officers, employees, agents, representatives, and volunteers from any and all claim, demand, lawsuit and judgment for

damages of any kind and nature whatsoever arising out of or caused by the existence, installation or maintenance of the encroachments into the public right-of-way and regardless of responsibility for negligence. This indemnification shall survive termination of this Permit; and

6. the Permittee shall make no changes to the encroachments hereby allowed either structurally, with regard to dimension, or with respect to use, without the prior written consent of the City Engineer and understands that the City of Oakland may impose reasonable fees and considerations for processing permits required for such proposed changes. The Permittee also understands that the City of Oakland is not obligated to grant any changes requested by the Permittee; and
7. the Permittee, by the acceptance of this conditional permit shall be solely and fully responsible for the repair or replacement of any portion or all of the improvements in the event that the improvements shall have failed or have been damaged to the extent of creating a menace or of becoming a hazard to the safety of the general public; and that the Permittee shall be solely liable for the expenses connected therewith; and
8. upon the termination of the permission herein granted, the Permittee shall immediately remove the encroachments from within the public right-of-way, restore the premises to its original condition, and shall repair any resulting damage to the satisfaction of the City Engineer; and
9. the Permittee shall file with the City of Oakland for recordation, a disclaimer and agreement that Permittee accepts and shall comply with and shall be bound by each and all of the terms, conditions and provisions of this resolution; and that the disclaimer and agreement shall be subject to the approval of the City Attorney and the City Engineer; and
10. the plans and exact location of the encroachments hereby granted are subject to the review and approval of the City Engineer and that the Permittee shall obtain all necessary permits prior to commencing said work; and that the encroachment shall be located as set forth in Exhibit B; and
11. the Permittee acknowledges that the City of Oakland makes no representations or warranties as to the conditions beneath the encroachments; and that by accepting this conditional revocable permit, the Permittee agrees that it will use the encroachment area at its own risk, is responsible for the proper coordination of its activities with all other permittees, underground utilities, contractors, or workmen operating within the encroachment area and for the its own safety and any of its personnel in connection with its entry under this conditional revocable permit; and
12. the Permittee acknowledges that the City of Oakland is unaware of the existence of any hazardous substances beneath the encroachment areas, and hereby waives and fully releases and forever discharges the City of Oakland and its officers, directors, employees, agents, and volunteers from any and all claims, demands, liabilities, damages, actions, causes of action, penalties, fines, liens, judgments, costs, or expenses whatsoever (including, without limitation, attorneys' fees and costs), whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise out of or in any way connected with the physical condition, or required remediation of the excavation area or any law or regulation applicable thereto,

including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601 et seq.), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.), the Clean Water Act (33 U.S.C. Section 466 et seq.), the Safe Drinking Water Act (14 U.S.C. Sections 1401-1450), the Hazardous Materials Transportation Act (49 U.S.C. Section 1801 et seq.), the Toxic Substance Control Act (15 U.S.C. Sections 2601-2629), the California Hazardous Waste Control Law (California Health and Safety Code Sections 25100 et seq.), the Porter-Cologne Water Quality Control Act (California Health and Safety Code Section 13000 et seq.), the Hazardous Substance Account Act (California Health and Safety Code Section 25300 et seq.), and the Safe Drinking Water and Toxic Enforcement Act (California Health and Safety Code Section 25249.5 et seq.); and

13. the Permittee further acknowledges that it understands and agrees that it hereby expressly waives all rights and benefits which it now has or in the future may have, under and by virtue of the terms of California Civil Code Section 1542, which reads as follows: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR"; and
14. the Permittee recognizes that by waiving the provisions of Civil Code Section 1542, it will not be able to make any claims for damages that may exist, and to which, if known, would materially affect its decision to execute this encroachment agreement, regardless of whether Permittee's lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause; and
15. the hereinabove conditions shall be binding upon the Permittee and the successive owners and assigns thereof; and be it

FURTHER RESOLVED: That the Council of the City of Oakland, at its sole discretion and at future date not yet determined, may impose additional and continuing fees as prescribed in the Master Fee Schedule, for use and occupancy of the public right-of-way; and be it

FURTHER RESOLVED: That this resolution shall become null and void in the event that the Permittee (Housing Authority of the City of Oakland) fails to comply satisfactorily with all conditions and requirements of said Conditional Use Permit within the time limitations prescribed therein, including, but not limited to, merger of said three (3) parcels and issuance of required permits to construct said building; and be it

FURTHER RESOLVED: That this resolution shall take effect when all the conditions hereinabove set forth shall have been complied with to the satisfaction of the City Attorney and the City Engineer of the City of Oakland and shall become null and void upon the failure of the Permittee to comply with the conditions hereinabove set forth after notice and failure to cure such conditions in a reasonable manner; and be it

FURTHER RESOLVED: That the City Clerk of the City of Oakland is hereby directed to file a certified copy of this resolution for recordation by the Alameda County Clerk-Recorder.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2008

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, AND
PRESIDENT DE LA FUENTE

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

Exhibit A

Lands of the Housing Authority of the City of Oakland, as described in two (2) grant deeds, recorded June 16, 1993, series no. 9314443, and October 13, 2006, series no. 2006385780, by the Alameda County Clerk-Recorder

EXHIBIT A

Description of the Private Property Abutting the Encroachment

address 321 17th Street
address 1633 Harrison Street

parcel no. 008 -0625-020-00 and
parcel no. 008 -0625-021-00

Deed no. 2006385780

Recorded October 13, 2006

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

PARCEL ONE:

BEGINNING AT A POINT ON THE SOUTHERN LINE OF 17TH STREET AS OPENED BY THE FINAL DECREE OF CONDEMNATION RENDERED IN THAT CERTAIN ACTION ENTITLED, "CITY OF OAKLAND, A MUNICIPAL CORPORATION, VS. P. J. WALKER, ET AL.; CASE NO. 64601, IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF ALAMEDA," A CERTIFIED COPY OF WHICH DECREE WAS RECORDED SEPTEMBER 26, 1922, IN BOOK 268 OF OFFICIAL RECORDS OF ALAMEDA COUNTY, AT PAGE 246, DISTANT THEREON 125 FEET WESTERLY FROM THE POINT OF INTERSECTION THEREOF WITH THE WESTERN LINE OF HARRISON STREET; RUNNING THENCE WESTERLY ALONG SAID LINE OF 17TH STREET 25 FEET; THENCE AT RIGHT ANGLES SOUTHERLY 68 FEET, MORE OR LESS TO A POINT ON A LINE DRAWN WESTERLY AT RIGHT ANGLES FROM SAID LINE OF HARRISON STREET FROM A POINT DISTANT THEREON NORTHERLY 806 FEET FROM THE POINT OF INTERSECTION OF SAID LINE OF HARRISON STREET WITH THE NORTHERN LINE OF 14TH STREET; RUNNING THENCE EASTERLY ALONG SAID LINE SO DRAWN 25 FEET; THENCE AT RIGHT ANGLES NORTHERLY 68 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

APN: 008-0625-020

PARCEL TWO:

BEGINNING AT A POINT ON THE SOUTHERN LINE OF 17TH STREET, AS OPENED BY THE FINAL DECREE IN CONDEMNATION RENDERED IN THAT CERTAIN ACTION ENTITLED, "CITY OF OAKLAND, A MUNICIPAL CORPORATION, VS. P. J. WALKER, ET AL, CASE NO. 64601, IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF ALAMEDA", A CERTIFIED COPY OF WHICH DECREE WAS RECORDED SEPTEMBER 26, 1922, IN BOOK 268 OF OFFICIAL RECORDS, PAGE 246, DISTANT THEREON 100 FEET WESTERLY FROM THE POINT OF INTERSECTION THEREOF WITH THE WESTERN LINE OF HARRISON STREET; RUNNING THENCE WESTERLY ALONG SAID LINE OF 17TH STREET 25 FEET; THENCE AT RIGHT ANGLES SOUTHERLY 68 FEET, MORE OR LESS, TO A POINT ON A LINE DRAWN WESTERLY AT RIGHT ANGLES FROM SAID LINE OF HARRISON STREET FROM A POINT DISTANT THEREON NORTHERLY 806 FEET FROM THE POINT OF INTERSECTION OF SAID LINE OF HARRISON STREET WITH THE NORTHERN LINE OF 14TH STREET; RUNNING THENCE EASTERLY ALONG SAID LINE SO DRAWN 25 FEET; AND THENCE AT RIGHT ANGLES NORTHERLY 68 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

APN: 008-0625-021

EXHIBIT A (continued)

Description of the Private Property Abutting the Encroachment

address 1633 Harrison Street

parcel no. 008 -0625-022-00

Deed no. 93214443

Recorded June 16, 1993

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

PARCEL THREE:

COMMENCING AT A POINT IN THE WESTERLY LINE OF HARRISON STREET, DISTANT THEREON 774.000 FEET NORTHERLY FROM THE POINT OF INTERSECTION OF SAID WESTERLY LINE OF SAID HARRISON STREET WITH THE NORTHERLY LINE OF 14TH STREET, AS SAID STREETS NOW EXIST; AND RUNNING THENCE NORTHERLY ALONG SAID WESTERLY LINE OF SAID HARRISON STREET 100.00 FEET TO THE SOUTHERLY LINE OF 17TH STREET AS SAID 17TH STREET NOW EXISTS SINCE THE OPENING THEREOF BY THE FINAL DECREE OF CONDEMNATION ACTION, CITY OF OAKLAND VS J. P. WALKER, ET AL, CASE NO. 64601 ON RECORD IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY OF ALAMEDA IN BOOK 268 OF OFFICIAL RECORDS AT PAGE 246 THEREOF; THENCE AT RIGHT ANGLES WESTERLY ALONG SAID SOUTHERLY LINE OF SAID 17TH STREET 100.00 FEET; THENCE AT RIGHT ANGLES SOUTHERLY LEAVING SAID LINE OF SAID 17TH STREET, 100.00 FEET TO A LINE DRAWN WESTERLY FROM THE POINT OF COMMENCEMENT AT RIGHT ANGLES WITH SAID LINE OF HARRISON STREET; AND THENCE AT RIGHT ANGLES EASTERLY 100.00 FEET TO THE POINT OF COMMENCEMENT.

APN: 008-0625-022

EXHIBIT B

Limits Of The Encroachment In The Public Right-Of-Way

address 321 17th Street

parcel no. 008 -0625-020-00;

address 1633 Harrison Street

parcel no. 008 -0625-021-00; and

address 1633 Harrison Street

parcel no. 008 -0625-022-00

