

FILED
OFFICE OF THE CITY CLERK
OAKLAND

CITY OF OAKLAND

Agenda Report

TO: 2007 NOV 29 PM 4:04
Office of the City Administrator
ATTN: Deborah Edgerly
FROM: Community and Economic Development Agency
DATE: December 11, 2007

RE: A Report And Resolution Granting The 311 Company, LLC, A Revocable And Conditional Permit For A New Residential Building At 311 2nd Street To Allow Above Ground Electrical Transformers, Fencing, A Wall, And A Kiosk To Encroach Into A Public Easement In The Previously Vacated Right-Of-Way Of Harrison Street

SUMMARY

A resolution has been prepared granting the 311 Company, a California limited liability company (no. 200617310135) and developer of a new eight (8) story residential condominium building at 311 2nd Street, a conditional and revocable permit (EMNJ 07275) that will allow above ground electrical transformers, fencing, a wall, and a kiosk to be constructed within a public easement in the previously vacated right-of-way of Harrison Street.

FISCAL IMPACT

Staff costs for processing the proposed encroachment permit are covered by fees set by the Master Fee Schedule and have been paid by the developer and were deposited in the special revenue Development Service Fund (2415), Engineering Services organization (88432), right-Encroachment Permits account (42314), Engineering and Architectural Plan Approval (PS30). The standard conditions of the encroachment permit require the property owner to maintain liability and property damage insurance and to include the City as a named insured.

PROJECT DESCRIPTION

The three-quarter (0.75) acre site is located in Jack London Square on a vacant parcel (APN 001-0149-007-00) bounded by Embarcadero, 2nd Street, and a previously vacated portion of Harrison Street. Caltrans' Posey Tube runs under the centerline of Harrison Street. The Planning Commission approved the project (CDV05522) in April 2006 to construct an eight (8) story building with a parking garage for one-hundred and twelve (112) residential condominium units.

The developer filed applications in June of this year for the building permit (B0702703) and public infrastructure improvements (PX07000078), which will include a new public sidewalk that will connect 2nd Street and the Embarcadero. The developer recently demolished the Meyer's plumbing warehouse, which formerly occupied the site (B0701724).

Item No. _____
Public Works Committee
December 11, 2007

KEY ISSUES AND IMPACTS

▪ Street vacation

In 1993, the City Council vacated Harrison Street (and Alice Street) between the intersections of 2nd Street and Embarcadero to facilitate vehicle access to the Amtrak parking lot (where a new parking garage will be constructed) and prevent through-traffic adjacent to the train platform along Embarcadero. The vacation ordinance (11646 C.M.S.) reserved a public utility easement across the full width of Harrison Street and also reserved the right to exclude buildings, structures, and wood growth from the easement. The easement encumbers forty (40) feet of the developer's parcel from the former centerline of Harrison Street to the front of the building. The Posey Tube, which is twelve (12) feet under Harrison Street, extends approximately twenty (20) feet on each side of the easement centerline. There are no buried public utilities in the easement.

▪ Obstructions

The Planning Commission confirmed the installation of three (3) above ground encroachments in the western side of the easement:

- ✓ a six (6) feet high masonry "living" wall, which will be landscaped with vines and other plantings, to provide a visual and sound barrier from vehicles and buses entering the new parking garage on the eastern side of the easement; and
- ✓ two (2) electrical transformers which will be screened from public view by fencing and the "living" wall; and
- ✓ a food vending kiosk, which will be connected to underground power, water, and sewer supplied from the new building, for future outdoor dispensing to the public; and

▪ Activities

The Planning Commission also confirmed two (2) new activities in the existing easement:

- ✓ an outdoor café, which will be separately permitted, where pedestrians can gather; and
- ✓ a dog run, which will be enclosed by the fencing and the "living" wall, for the exclusive use by the building residents.

▪ Encroachments

The transformers, which will be maintained by Pacific Gas and Electric, will encroach twenty (20) feet and the "living" wall and fencing will encroach thirty (30) feet into the easement. The encroachments will provide an environmental screen from garage traffic, a food vending destination to encourage pedestrian activities, and outdoor exercise area for building residents and their pets.

SUSTAINABLE OPPORTUNITIES

Economic

Environmental

Building permits require that contractors comply with City ordinances and regional Best Management Practices for reducing noise, dust, debris disposal, and pollutant runoff.

Social Equity

The new residential building will provide ownership opportunities for new residents of Jack London Square.

DISABILITY AND SENIOR CITIZEN ACCESS

The design and construction of new buildings are required to conform to State and City requirements for handicapped accessibility.

RECOMMENDATIONS

Staff recommends that the Committee accept this report and forward it to the City Council to adopt the proposed resolution approving the below and above ground encroachments in the public easement.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council accept this report and adopt the proposed resolution granting the 311 Company, LLC, a conditional and revocable encroachment permit to allow above ground transformers, fencing, a wall, and a kiosk to encroach into a public easement in the previously vacated Harrison Street right-of-way.

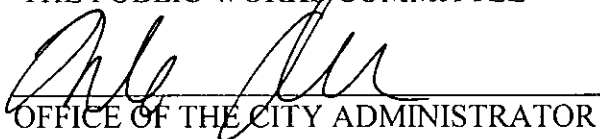
Respectfully submitted,



CLAUDIA CAPPIO
Development Director
Community and Economic Development Agency

Prepared by:
Raymond M. Derania
Interim City Engineer
Building Services Division

APPROVED FOR FORWARDING TO
THE PUBLIC WORKS COMMITTEE



OFFICE OF THE CITY ADMINISTRATOR

FILED
OFFICE OF THE CITY CLERK
Introduced By: D

DRAFT

Approved For Form And Legality

2007 NOV 29 PM 4:04

Councilmember

City Attorney

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

**RESOLUTION GRANTING 311 COMPANY, LLC, A REVOCABLE AND
CONDITIONAL PERMIT TO ALLOW ABOVE GROUND TRANSFORMERS,
FENCING, A WALL, AND A KIOSK FOR A NEW RESIDENTIAL BUILDING AT
311 2nd STREET TO ENCROACH INTO A PUBLIC EASEMENT IN A VACATED
PORTION OF HARRISON STREET**

WHEREAS, the 311 Company, a California limited liability company (no. 200617310135) and owner of the property identified by the Alameda County Assessor as APN 001-0149-007-00, and identified by the City of Oakland as 311 2nd 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 07275) to allow above ground electrical transformers, fencing, a wall, and a food vending kiosk for a new residential building (permit B0702703) to be constructed within an existing public easement in the previously vacated right-of-way of Harrison Street; and

WHEREAS, pursuant to ordinance 11646 C.M.S., Harrison Street, between the intersections of 2nd Street and Embarcadero, was vacated by the Council of the City of Oakland in 1993 with a reservation of a public utility easement for the full width of the right-of-way, which excluded private encroachments; and

WHEREAS, the limits of the encroachments are delineated in Exhibit B attached hereto; and

WHEREAS, the locations of the new transformers within the public easements are necessary to provide electrical power for the new residential building; and

WHEREAS, Pacific Gas and Electric has approved the locations of the transformers and will maintain the transformers; and

WHEREAS, the encroachments and their locations will not interfere with the use by the public of the roadway or sidewalk or easement or buried utilities or the Posey Tube, which is located beneath Harrison Street; and

WHEREAS, the City of Oakland, as the Lead Agency for purposes of environmental review under the California Environmental Quality Act of 1970 ("CEQA"), prepared the Jack London Square Final Environmental Impact Report ("EIR"), certified by the Oakland Planning Commission on March 17, 2004 in accordance with the California Environmental Quality Act, Public Resources Code § 21000, et seq., and upheld by the City Council on June 15, 2004 (Oakland City Council Resolution No. 78635 C.M.S.); and

WHEREAS, the City of Oakland has reviewed and considered documentation relevant to the proposed encroachment and the EIR and hereby finds and determines that there are no changes to the project considered in the EIR, or circumstances under which it will be undertaken, or new information of substantial importance that requires preparation of a subsequent or supplemental EIR, as specified in CEQA and the State EIR Guidelines, including without limitation, Public Resources Code Section 2116 and State EIR Guidelines Section 15162 and 15163; and 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 have been satisfied, in that this project is exempt from the California Environmental Quality Act in accordance with, but not limited to, each of following California Code of Regulations: Section 15332 (Class 32: Infill Projects), Section 15301 (minor alteration to existing structures), and Section 15304 (minor alterations to land), ; now, therefore, be it

RESOLVED: That the City hereby finds and determines: (1) that it has been presented with, and has independently reviewed and considered the information contained in the previously certified EIR and relevant to the encroachment, and the encroachment complies with CEQA and none of the circumstances necessitating preparation of additional CEQA review as specified in CEQA and the CEQA Guidelines, including without limitation Public Resources Code Section 21166 and CEQA Guidelines Section 15162, are present in that (1) there are no substantial changes proposed in the Project or the circumstances under which the Project is undertaken that would require major revisions of the EIR due to the involvement of new environmental effects or a substantial increase in the severity of previously identified significant effects; and (2) there is no “new information of substantial importance” as described in CEQA Guidelines Section 15162(a)(3); and be it

FURTHER RESOLVED: That the encroachment, as conditioned herein and delineated in Exhibit B, is hereby granted for a revocable permit to allow the construction of underground electrical and communications transformers and vaults and above ground fencing, a wall, and a kiosk within the public easement in the vacated right-of-way for Harrison Street for a new residential building at 311 2nd Street; and be it

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

1. the Permittee 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 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 from or caused by the existence, installation or maintenance of the encroachments in 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 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 is hereby directed to file a certified copy of this resolution for recordation by the Alameda County Clerk-Recorder.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2007

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

Description of the Private Property Abutting the Encroachment

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF OAKLAND, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

Parcel 1:

Lots 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 24, Block 9, Kellersberger's Map of the City of Oakland, filed in Alameda County Records, Map Book 7, Page 3.

Parcel 2:

Being Lots 12 and 25, Block 9, Kellersberger's Map of Oakland, filed in Alameda County Records, Map Book 7, Page 3.

Saving and excepting therefrom, that portion of said property, if any, that may lie southerly of the exterior boundary line of the Peralta Grant.

Assessor's Parcel No. 001-0149-007 (Affects Parcels 1 and 2)

Parcel 3:

The northwesterly 1/2 of the following described parcel of land:

All that real property situated in the City of Oakland, County of Alameda, State of California, being that portion of Harrison Street (80.67 foot right of way) which lies between the southwesterly line of Second Street and the northeasterly line of Embarcadero (formerly First Street), being more particularly described as follows:

Beginning at the most easterly corner of Block 9, as shown on that certain map entitled, "A Complete Map of Oakland", and referred to as the Kellersberger Map, recorded in Book 7 of Maps, at Page 3, Alameda County Records; thence along the southwesterly line of Second Street, south 62° 35' 23" east, 80.67 feet to the northwesterly line of Block 10 of said Map; thence along said northwesterly line, south 27° 24' 37" west, 199.99 feet to the northeasterly line of Embarcadero; thence along said northeasterly line, north 62° 35' 23" west, 80.67 feet to the southeasterly line of said Block 9; thence along said southeasterly line, north 27° 24' 37" east, 199.99 feet to the point of beginning.

The description above is based on the California Coordinate System of 1983, Zone III.

To obtain ground distance, multiply the above distance by 1.0000705.

As vacated by City of Oakland Ordinance No. 11646, recorded November 9, 1993, Series No. 93-399745, Official Records.

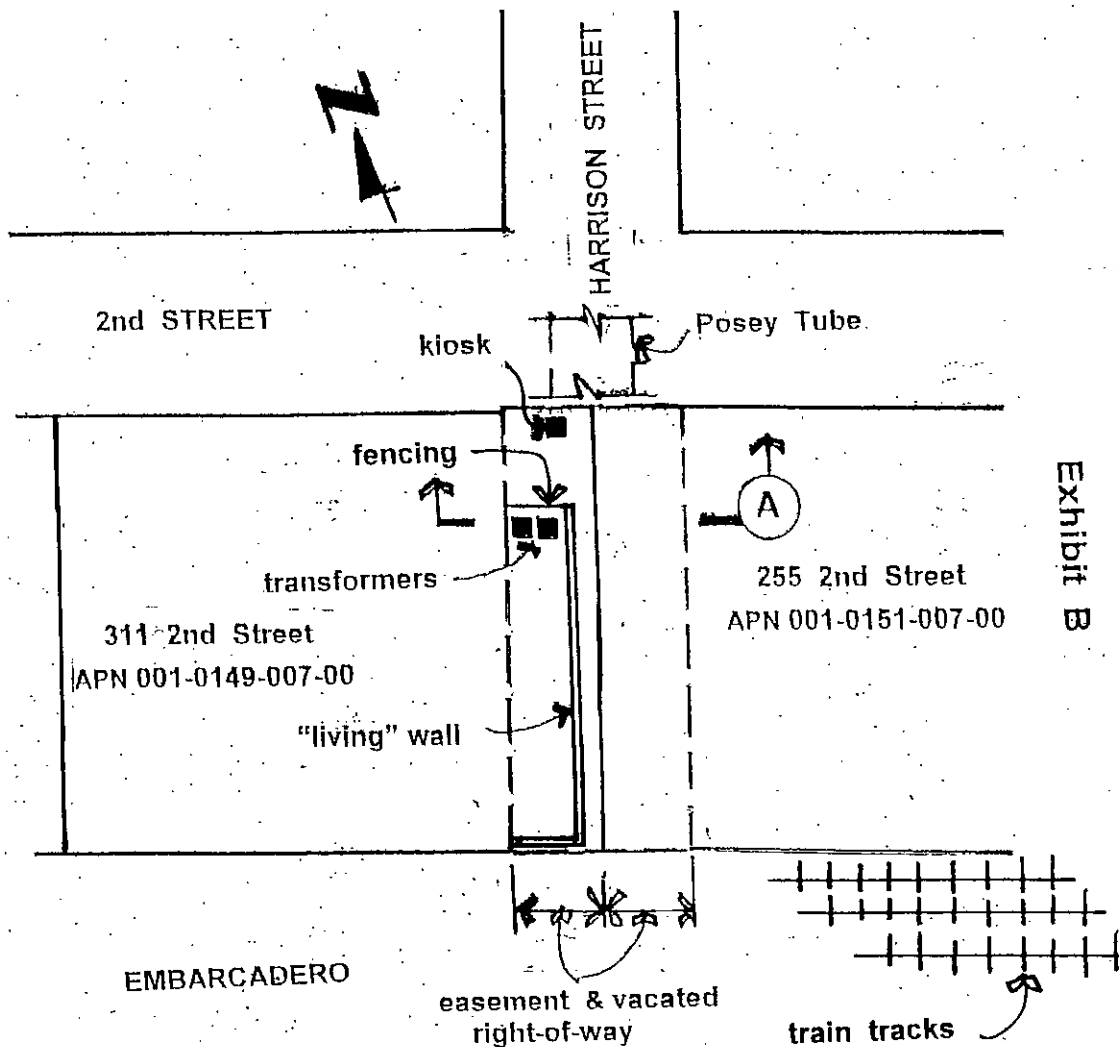
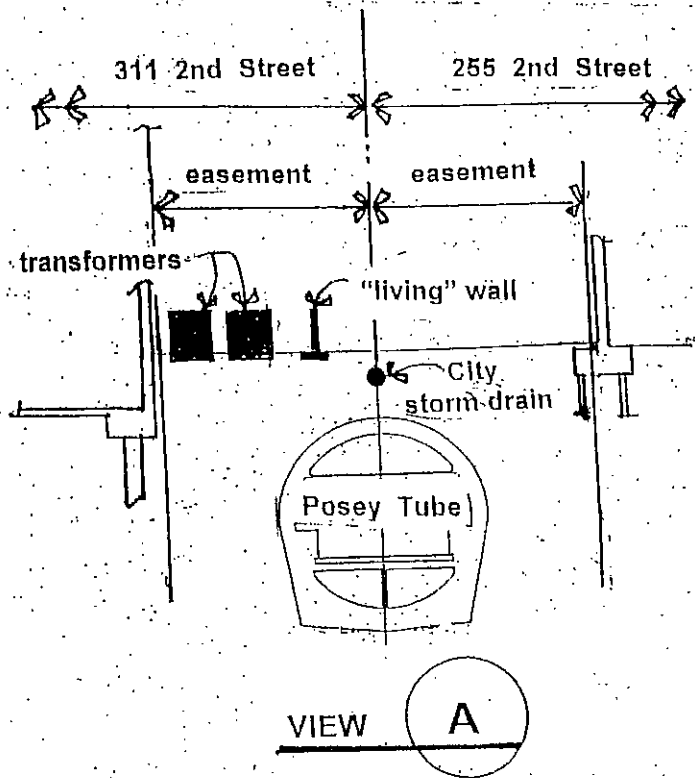


Exhibit B