

Introduced By

2011 APR 13 PM 6:15

Councilmember

Approved For Form And Legality

  
City Attorney

## OAKLAND CITY COUNCIL

RESOLUTION No. 83323 C.M.S.

**RESOLUTION GRANTING BENJAMIN WILLIAMS A REVOCABLE AND  
CONDITIONAL PERMIT TO ALLOW AN EXISTING BASEMENT FOR A  
BUILDING AT 6444 SAN PABLO AVENUE TO ENCROACH UNDER  
THE PUBLIC SIDEWALK**

**WHEREAS**, Benjamin Williams, who is the owner of the property described in a judgment, recorded July 28, 1977, series no. 77148691, by the Alameda County Clerk-Recorder, and identified by the Alameda County Assessor as parcel number 016-1451-001-00, and identified by the City of Oakland as 6444 San Pablo Avenue and more particularly described in *Exhibit A* attached hereto, has made an application to the City Engineer of the City of Oakland for a permit (ENMJ 11052) to allow an existing below-sidewalk basement to encroach approximately five (5) feet under the eleven (11) feet wide public sidewalk along San Pablo Avenue; and

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

**WHEREAS**, the owner has also applied to the Building Official of the City of Oakland for a permit (B1100475) to repair a deteriorated section of said public sidewalk which is above and supported by said encroaching basement; and

**WHEREAS**, section 12.08.030 of the Oakland Municipal Code requires that applications for permanent encroachments in the public right-of-way receive approval from the City Council as a condition of permit issuance; and

**WHEREAS**, said encroachment under the public right-of-way and its location beyond the limits of said parcel's boundaries has not interfered with the use by the public of the sidewalk since its construction circa 1910; and

**WHEREAS**, the Council of the City of Oakland has previously approved similar encroachments of existing basements under the public right-of-way throughout Oakland

**WHEREAS**, the encroachment is categorically exempted from the requirements of the California Environmental Quality Act (CEQA) in accordance with, but not limited to, each of the 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 encroachment complies with the requirements of the California Environmental Quality Act; 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 an existing below-sidewalk basement to encroach into the public right-of-way along San Pablo Avenue; and be it

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

1. the Permittee (Benjamin Williams) 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; and that 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, that it is responsible for the proper coordination of its activities with all other permittees, underground utilities, contractors, or workmen operating within the encroachment area, and that it is responsible for its own safety and the safety 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 take effect when all the conditions hereinabove set forth shall have been complied with to the satisfaction of 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; and be it

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

IN COUNCIL, OAKLAND, CALIFORNIA,           MAY 3 2011          , 2011

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, BRUNNER, DE LA FUENTE, ~~WILLIAMS~~, KERNIGHAN, NADEL, SCHAAF, AND PRESIDENT REID - 7

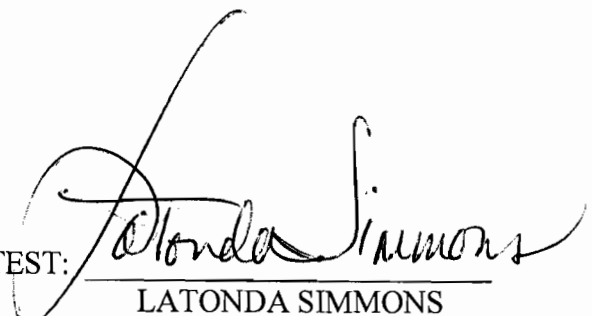
NOES - 0

ABSENT - 0

ABSTENTION - 0

Excused - Kaplan - 1

ATTEST:



LATONDA SIMMONS

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

EXHIBIT A

Metes And Bounds Of Assessor's Parcel No. 016-1451-001-00, As Shown On A Judgment, Recorded July 28, 1077, Series No. 77148691, By The Alameda County Recorder

RECORDING REQUESTED BY (AND MAIL TO) Name, Address and Telephone Number of Attorney(s)

77-148691

RE: 4975 IM:559

Space Below for Use of Court Clerk Only

WILLIAM T. HOFFMAN Professional Building MacDonald at Fortieth Richmond, California 94805 235-8600

ENDORSED FILED

JUL 28 1977

Attorney(s) for Petitioner

RENE C. DAVIDSON, County Clerk Harry Carsch, Deputy

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

In re the marriage of Petitioner: MARY ELLA WILLIAMS and Respondent: BENJAMIN WALKER WILLIAMS

CASE NUMBER 481950-9

INTERLOCUTORY JUDGMENT OF DISSOLUTION OF MARRIAGE (BY STIPULATION OF THE PARTIES)

This proceeding was heard on 7/19/77 before the Honorable ROBERT L. BOSTICK Department No. 22

The court acquired jurisdiction of the respondent on 9/3/76 by:

- Service of process on that date, respondent not having appeared within the time permitted by law.
Service of process on that date and respondent having appeared.
Respondent on that date having appeared.

The court orders that an interlocutory judgment be entered declaring that the parties are entitled to have their marriage dissolved. This interlocutory judgment does not constitute a final dissolution of marriage and the parties are still married and will be, and neither party may remarry, until a final judgment of dissolution is entered.

The court also orders that, unless both parties file their consent to a dismissal of this proceeding, a final judgment of dissolution be entered upon proper application of either party or on the court's own motion after the expiration of at least six months from the date the court acquired jurisdiction of the respondent. The final judgment shall include such other and further relief as may be necessary to a complete disposition of this proceeding, but entry of the final judgment shall not deprive this court of its jurisdiction over any matter expressly reserved to it in this or the final judgment until a final disposition is made of each such matter.

THE COURT, IN ACCORD WITH THE STIPULATION OF BOTH PARTIES MADE IN OPEN COURT WITH COUNSEL PRESENT, ALSO ORDERS THAT:

(1) The following items constitute the community property and community obligations of the parties and the same are divided, awarded and allocated between the parties in the following manner:

(b) The respondent is awarded the following property as his sole and separate property and allocated the following debts as his sole and separate obligations:

i. All right, title, and interest in and to the real property commonly known as 6430-6444 San Pablo Ave., Oakland, Alameda County, California, particularly described as follows:

"PARCEL ONE: Lots 48 and 49, according to the 'Map of the Rock Island Tract', filed August 29, 1887 in the office of the County Recorder of said Alameda County and of record in Map Book 9, page 3, excepting therefrom the eastern 41.50 feet thereof measured at right angles.

# EXHIBIT B

## Limits Of The Encroachment Of The Existing Below-Sidewalk Basement

LOTS 48 AND 49, ACCORDING TO THE "MAP OF THE ROCK ISLAND TRACT", FILED AUGUST 29, 1887 IN THE OFFICE OF THE COUNTY RECORDER OF SAID ALAMEDA COUNTY AND OF RECORD IN MAP BOOK 9, PAGE 3, EXCEPTING THEREFROM THE EASTERN 41.50 FEET THEREOF MEASURED AT RIGHT ANGLES.

