

OFFICE OF THE CITY CLERK

Introduced by

2007 JUN 27 PM 1:50

Approved for Form and Legality

F. Fair

Councilmember

City Attorney

OAKLAND CITY COUNCIL

RESOLUTION No. 80744 C.M.S.

A RESOLUTION GRANTING A REVOCABLE AND CONDITIONAL PERMIT TO THE OAKLAND REDEVELOPMENT AGENCY TO ALLOW PORTABLE CLASSROOM BUILDINGS FOR THE OAKLAND SCHOOL FOR THE ARTS TO ENCROACH INTO PORTIONS OF SAN PABLO AVENUE AND 18th STREET

WHEREAS, the Oakland Redevelopment Agency ("Permittee"), owner of the property identified by the Alameda County Assessor as APN 008-0642-018-00, and by the City of Oakland as 1800 San Pablo Avenue, and more particularly described in Exhibit A attached hereto, has made an application to the Council of the City of Oakland for a conditional and revocable permit (ENMJ 07134) to allow the encroachment for a limited duration of portable classroom buildings and sanitary facilities within the public right-of-way along portions of San Pablo Avenue and 18th Street for the Oakland School For The Arts, a privately chartered high school; and

WHEREAS, the Oakland Redevelopment Agency has provided funding for an addition to the nearby Fox Theater and for a remodeling of the contiguous Annex for a change of occupancy for permanent classrooms and ancillary facilities for the Oakland School For The Arts; and

WHEREAS, said construction is scheduled to be completed in the fall of 2008; and

WHEREAS, the Oakland School For The Arts has portable classroom buildings and sanitary facilities located on said vacant parcel and a contiguous and intervening vacant parcel, identified by the Alameda County Assessor as APN 008-0642-017-00, which is also contiguous with the parcel containing the Fox Theater and its Annex; and

WHEREAS, the Oakland Redevelopment Agency has previously sold said intervening parcel to a developer for construction of a residential housing project; and

WHEREAS, said developer will take possession of vacant parcel in August 2007; and

WHEREAS, said developer has submitted an application to the City of Oakland for construction of a residential housing project on its parcel to commence at the end of 2007; and

WHEREAS, the Oakland School For The Arts is required to vacate said parcel before the commencement of its academic year in September 2007; and

WHEREAS, the Oakland School For The Arts and the Oakland Redevelopment Agency have diligently but unsuccessfully attempted to acquire alternative accommodations for approximately one-half (50%) of the students who have registered for the 2007-2008 academic year; and

WHEREAS, the Oakland School For The Arts and the Oakland Redevelopment Agency have proposed that the portable buildings be relocated into portions of San Pablo Avenue and 18th Street which immediately adjoin the campus; and

WHEREAS, pursuant to California Vehicle Code Section 21101, two (2) lanes of traffic within the existing roadway of San Pablo Avenue and 18th Streets will be maintained at all times for the delivery of freight by commercial vehicles, the operation of emergency vehicles, and the performance of municipal services and will not restrict access for certain members of the public while permitting others unrestricted access; and

WHEREAS, the Traffic Engineer, Fire Marshal, and City Engineer of the City of Oakland have reviewed and approved the proposed temporary relocations of portable buildings and the proposed temporary closures of San Pablo Avenue and 18th Street; and

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

WHEREAS, the encroachment and its location within the public right-of-way will not interfere with pedestrian or vehicular access to the Oakland School For The Arts and the surrounding neighborhood and businesses nor interfere with maintenance access and repair or replacement by the City of Oakland and utility companies of public infrastructure; and

WHEREAS, the portable buildings and their proposed installation in the closed portions of sections of San Pablo Avenue and 18th Street, including structural support and electrical service, will conform with the requirements of the Oakland Building Code and the Oakland Municipal Code; 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 15305 (Minor Alterations in Land Use Limitations) this project is categorically exempt from the provisions of the California Environmental Quality Act; now, therefore, be it

RESOLVED: That the encroachment permit, as conditioned herein, does comply with 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 portable classroom buildings and sanitary facilities for the Oakland School For The Arts at 1800 San Pablo Avenue to encroach in closed sections of San Pablo Avenue and 18th Street temporarily during construction of permanent classrooms facilities in the Fox Theater Annex; and be it

FURTHER RESOLVED: That the encroachment permit 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, assigns, successors, and volunteers from any and all claims, demands, lawsuits and judgments 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 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 workers operating within the encroachment area and for 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 Permittee further acknowledges that it understands and agrees that the City of Oakland and utility agencies will periodically conduct work within the public right-of-way, including excavation, trenching, repair, and relocation of its above and below ground facilities, all of which may damage the encroachment and require the permittee to remove the encroachment; and

16. the Permittee further acknowledges that it understands and agrees that the City of Oakland and utility agencies shall not be responsible for the repair or replacement of the encroachment that may be damaged by the City of Oakland or the public utility agencies and their contractors and authorized agents; and
17. the hereinabove conditions shall be binding upon the Permittee and the successive 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 Clerk of the City of Oakland is hereby directed to file a certified copy of this resolution for recordation with the Alameda County Clerk-Recorder.

IN COUNCIL, OAKLAND, CALIFORNIA, JUL 17 2007, 2007.

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, AND
PRESIDENT DE LA FUENTE - 8

NOES - 0

ABSENT - 0

ABSTENTION - 0

ATTEST:

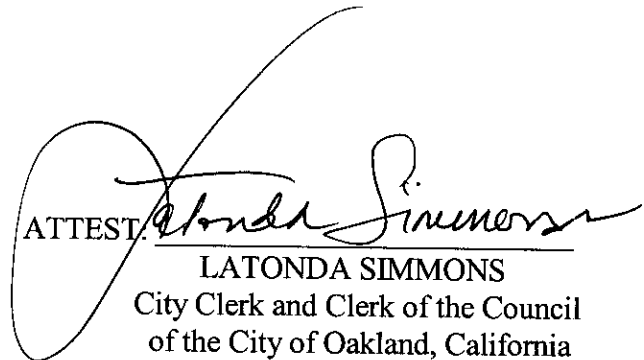

LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

EXHIBIT A

Lands of the Oakland Redevelopment Agency, as described on amended Parcel Map 8686, recorded in book of maps 288, pages 3 and 4, by the Alameda County Clerk-Recorder

ASSESSOR'S MAP 8

Code Area Nos. 17-022

P.M. 8586 28299-100 AMENDED 2882-4

642 SCALE 1"=80'

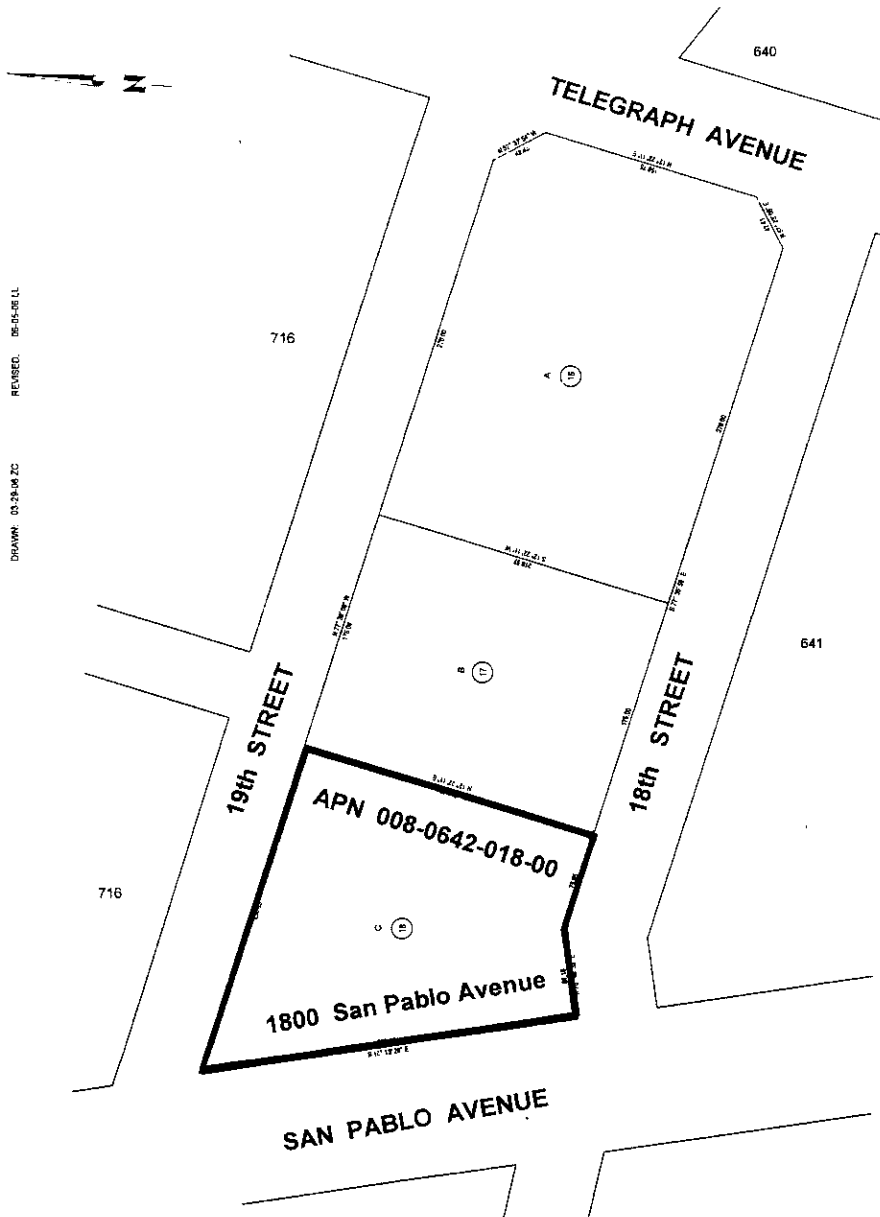


EXHIBIT B

Oakland School For The Arts encroachments into San Pablo Avenue and 18th Street

