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Approved For Form And Legality

Councilmember



City Attorney

OAKLAND CITY COUNCIL

RESOLUTION No. 81254 C.M.S.

RESOLUTION GRANTING ANH T. TRAN A REVOCABLE AND CONDITIONAL PERMIT TO ALLOW AN EXISTING BUILDING AT 545 INTERNATIONAL BOULEVARD TO ENCROACH INTO THE PUBLIC RIGHT-OF-WAY ALONG INTERNATIONAL BOULEVARD AND 6th AVENUE

WHEREAS, Anh T. Tran, owner of the property described in a Grant Deed, recorded July 18, 2003, Series No. 2003419025, by the Alameda County Clerk-Recorder, and identified by the Alameda County Assessor as APN 020-0124-006-02, and identified by the City of Oakland as 545 International Boulevard, and more particularly described in *Exhibit A* attached hereto, has made application to the Council of the City of Oakland for a conditional permit (ENMJ 07193) to allow the existing building to continue to encroach into the public right-of-way along International Boulevard and 6th Avenue, and

WHEREAS, the building has continuously occupied the area of the encroachment since its construction in 1960; and

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

WHEREAS, the encroachment and its location 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 Section 15332 (Class 32: Infill Projects) and Section 15301 (minor alteration to existing structure) of the California Code of Regulations this project is categorically exempt from the provisions of the California Environmental Quality Act; now, therefore, be it

RESOLVED: That the encroachment, 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 the existing building at 545 International Boulevard to encroach into the public right-of-way along International Boulevard and 6th Avenue; 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 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

EXHIBIT A

Description of the Private Property Abutting the Encroachment

Address 545 International Boulevard

Parcel no. 020 -0124-006-02

Deed no. 2003419025

Recorded July 18, 2003

The land referred to herein is situated in the State of California, County of ALAMEDA, CITY OF OAKLAND, described as follows:

A PORTION OF BLOCK 47, ACCORDING TO HIGLEY'S MAP OF CLINTON OF RECORD IN BOOK "B" OF DEEDS, AT PAGE 537, ALAMEDA COUNTY RECORDS, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE NORTHWESTERN LINE OF 6TH AVENUE AND THE SOUTHWESTERN LINE OF EAST 14TH STREET; THENCE NORTHWESTERLY ALONG THE LAST SAID LINE 50 FEET; THENCE AT RIGHT ANGLES SOUTHWESTERLY AND PARALLEL WITH SAID LINE OF 6TH AVENUE 80 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY AND PARALLEL WITH SAID LINE OF EAST 14TH STREET 4 FEET; THENCE AT RIGHT ANGLES SOUTHWESTERLY PARALLEL WITH SAID LINE OF 6TH AVENUE 20 FEET; THENCE AT RIGHT ANGLE SOUTHWESTERLY AND PARALLEL WITH SAID LINE OF EAST 14TH STREET 54 FEET TO SAID LINE OF 6TH AVENUE; THENCE ALONG LAST SAID LINE NORTHEASTERLY 100 FEET TO THE POINT OF BEGINNING.

APN 20-124-6-2

EXHIBIT B

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

address 545 International Boulevard

parcel no. 020-0124-006-02

