

**OAKLAND CITY COUNCIL**

**RESOLUTION NO. \_\_\_\_\_ C.M.S.**

**RESOLUTION GRANTING A CONDITIONAL AND REVOCABLE MAJOR ENCROACHMENT PERMIT AND A WAIVER OF OAKLAND MUNICIPAL CODE SECTION 12.08.100 STANDARDS TO KIMMY CHUNG TO ALLOW PORTIONS OF AN EXISTING TWO-STORY COMMERCIAL BUILDING TO ENCROACH INTO THE PUBLIC RIGHT-OF-WAY FRONTING THE PROPERTY AT 2121 EAST 12TH STREET, MAJOR ENCROACHMENT PERMIT ENMJ24054; AND ADOPTING APPROPRIATE CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS**

**WHEREAS**, Kimmy Chung (Permittee) is the owner of the real property known as 2121 E 12<sup>th</sup> Street and as described in a Grant Deed recorded September 22, 2021, by the Alameda County Clerk-Recorder and identified by the Alameda County Assessor as APN: 19-47-1-7 (Property); and

**WHEREAS**, the Permittee owns the existing two-story commercial building on the Property with a portion of the existing building structure encroaching into the public right-of-way (Encroachment); and

**WHEREAS**, the Permittee has an application with the Building Department (B2302687) to allow for the legalization of unpermitted tenant improvement work intended to convert the existing commercial facility into a cultivation facility; subject to a condition of approval that Permittee obtain a conditional and revocable Major Encroachment Permit for the encroachment shown on *Exhibit A*; and

**WHEREAS**, Oakland Municipal Code (OMC) Section 12.08.100 requires that all encroachments preserve a minimum pedestrian clear space of five and one-half (5.5) feet, and the existing two-story commercial building limits the width of the sidewalk to five (5) feet; and

**WHEREAS**, OMC Section 12.08.070 allows City Council to prescribe additional conditions on the approval of a Major Encroachment Permit; and

**WHEREAS**, Staff has determined, based on review of the plans and investigation of the Property and area of the existing encroachments, that deviating from the five and one-half (5.5)

feet to five (5) feet encroachment limit will not endanger public welfare, convenience, and access, provided the Permittee implement public improvements to ensure the existing sidewalk complies with the Americans with Disabilities Act (ADA); and

**WHEREAS**, Staff has further determined, based on review of the plans and investigation of the Property and the area of the existing encroachments, that the location of the encroachments does not interfere with the public use of the roadway, sidewalk, buried utilities; and

**WHEREAS**, this action is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines sections 15301 (existing facilities), 15183 (Project Consistent with a Community Plan or Zoning), and 15061(b)(3) (no significant effect to the environment), each as a separate and independent basis; now, therefore, be it

**RESOLVED:** That the City Council has reviewed all relevant documents relating to its granting of this permit; and be it

**FURTHER RESOLVED:** That the City Council finds and determines that the decision made hereby is exempt from CEQA, on a separate and independent basis pursuant to CEQA Guidelines sections 15301 (existing facilities), 15183 (Projects Consistent with a Community Plan or Zoning), and 15061 (b)(3) (no significant effect on the environment) and therefore, the decision made hereby is made in conformance with the requirements of CEQA; and be it

**FURTHER RESOLVED:** That the City Council grants to the Permittee a waiver on the requirements of OMC Chapter 12.08.100; and be it

**FURTHER RESOLVED:** That the City Council grants to the Permittee a conditional and revocable Permit to allow the Encroachments, which shall take effect only upon the City and Permittee entering into an Indenture Agreement in substantially the same form as attached hereto as *Exhibit B* (Indenture Agreement), the conditions therein being incorporated into the Permit; and be it

**FURTHER RESOLVED:** That this Indenture Agreement shall expire by limitation and become void in the event that the Permittee and its representatives, heirs, successors, and assigns and successive owners of said Property fail to complete, to the satisfaction and approval of the City, the following required actions below:

- Within two (2) years following adoption of this resolution, complete public infrastructure construction under infrastructure permit number PX2400008, which include, but are not limited to, sidewalk, curb, and gutter replacement, and removal of an unused driveway.
- Submit to the City a surety bond as assurance for completing said public infrastructure construction; and be it

**FURTHER RESOLVED:** That the City Council, at its sole discretion and at a future date not yet determined, may imposed additional and continuing fees for use and occupancy of the Public Right of Way; and be it

**FURTHER RESOLVED:** That the Permit authorized by this Resolution shall take effect when all the conditions and obligations set forth in the Indenture Agreement shall have been

complied with to the satisfaction of the City of Oakland City Attorney and the City of Oakland City Engineer, and shall become null and void upon the failure of the Permittee to comply with the conditions and obligations set forth in the Indenture Agreement, subject to the notice and cure provisions set forth therein, or upon termination by resolution of the City Council as being in the City's best interest; and be it

**FURTHER RESOLVED:** That the City Engineer is hereby directed to file a copy of the executed Indenture Agreement for recordation with the Office of the Alameda County Clerk-Recorder as an encumbrance of the title of the Property identified above.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - FIFE, GALLO, JENKINS, KALB, KAPLAN, RAMACHANDRAN, REID, AND  
PRESIDENT FORTUNATO BAS

NOES –

ABSENT –

ABSTENTION –

ATTEST: \_\_\_\_\_

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



No Fee Document Pursuant To Government Code Section 27383

Recording requested by:  
**CITY OF OAKLAND**  
When recorded mail to:  
City of Oakland  
Department of Transportation  
Dalziel Admin Building  
250 Ogawa Plaza - 4th Floor  
Oakland, CA 94612  
Attn: Ishrat Jahan

----- space above for Recorder's use only -----

**INDENTURE AGREEMENT**

**Address** 2121 East 12<sup>th</sup> Street

**Permit no.** ENMJ 24054

**Parcel no.** 19-47-1-7

**Authorities** Municipal Code Section 12.08.080

**Description** Portions of an existing two-story commercial building encroaching into the Public Right of Way addressed to 2121 East 12<sup>th</sup> Street. The executed agreement produced by this permit application shall automatically expire upon substantial redevelopment of the subject parcel, at which point the encroachment shall be removed and the full sidewalk width restored.

**RECITAL**

The owner subscribed below of fee simple interest in the property referenced above and described in Exhibit B, attached hereto, is hereby granted, for an indeterminate period of time, the revocable permit referenced above allowing the temporary encroachment described above and delineated in Exhibit C, attached hereto, and limiting the use, exercise, and operation of the encroachment with the requirements and restrictions set forth in Exhibit A, attached hereto, and the associated permit. The owner agrees by and between themselves to be bound by the general and special conditions in Exhibit A and to comply with these conditions faithfully and fully at all times. The conditions of this agreement and associated permit shall equally bind all agents, heirs, successors, and assigns of the owner.

**ACKNOWLEDGEMENT OF PROPERTY OWNER**

(Notarization of signature required)

**Kimmy Chung, an unmarried woman**

**Signature** \_\_\_\_\_

**Date** \_\_\_\_\_

**Print Name** \_\_\_\_\_

**Title** \_\_\_\_\_

**ATTACHMENTS**

Exhibit A - Conditions of encroachment

Exhibit C - Limits of encroachment

Exhibit B - Description of privately owned parcel

Exhibit D - Oakland City Council Resolution XXXX

Exhibit E - Form of Notice to Prospective Purchasers

**CITY OF OAKLAND**  
a municipal corporation  
**JAMIE PARKS**  
Assistant Director  
Department of Transportation

by \_\_\_\_\_ date \_\_\_\_\_

**EMILY EHLERS**  
Transportation Manager  
Department of Transportation

## EXHIBIT A

### Conditions for the Encroachments in the Public Right-Of-Way

Address 2121 East 12<sup>th</sup> Street

Parcel no. 19-47-1-7

Permittee Kimmy Chung

Permit no. ENMJ 24054

1. This Indenture Agreement will be automatically voided should (a) the associated Permit be revoked at any time and for any reason, at the sole discretion of the City Council, expressed by resolution, or (b) the associated Permit be suspended at any time, upon failure of the Permittee to comply fully and continuously with each and all of the general and special conditions set forth herein and in the associated Permit, as may be determined by the City Engineer in his or her sole discretion.
  2. Upon revocation of the Permit, the Permittee shall immediately, completely, and permanently remove the Encroachments from the public right-of-way and restore the public right-of-way to its original conditions existing before the construction or installation of the encroachment, to the satisfaction of the City Engineer and all at the sole expense of the Permittee.
  3. The Permittee does hereby disclaim any right, title, or interest in or to any portion of the public right-of-way, including the sidewalk and street, and agree that the use and occupancy by the Permittee of the public right-of-way is temporary and does not constitute an abandonment, whether expressed or implied, by the City of Oakland of any of its rights associated with the statutory and customary purpose and use of and operations in the public right-of-way.
  4. The Permittee agrees to indemnify and save harmless the City of Oakland, its officers, agents, employees, and volunteers, and each of them, from any suits, claims, or actions brought by any person or persons, corporations, or other entities on account of (a) any bodily injury, disease, or illness, including death, damage to property, real or personal, or damages of any nature, however caused, and regardless of responsibility for negligence, arising in any manner out of the construction or installation of a private improvement itself or resulting from the Permittee's failure to maintain, repair, remove and/or reconstruct the private improvement, or (b) any title, ownership or authority issues arising from the existence of the Encroachments in the public right of way.
1. The Permittee shall maintain fully, in force and effect at all times that the Encroachments occupy the public right-of-way good and sufficient public liability insurance in a face amount not less than \$1,000,000.00 for each occurrence, including contractual liability, naming the City of Oakland, its Councilmembers, officers, agents, employees, and volunteers against any and all claims arising out of the existence of the encroachment in the public right-of-way, as respects liabilities assume under this Permit, 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 the insurance coverage shall not be canceled or be permitted to lapse without thirty calendar (30) days written notice to the City Engineer. The Permittee also agree that the City of Oakland may review the type and amount of insurance required of the Permittee annually and may require the Permittee to increase the amount of and/or change the type of insurance coverage required.
  2. The Permittee shall be solely and fully liable and responsible for the repair, replacement, removal, reconstruction, and maintenance of any portion or all of the private improvements constructed or installed in the public right-of-way, whether by the cause, neglect, or negligence of the Permittee or others and for the associated costs and expenses necessary to restore or remove the encroachment to the satisfaction of the City Engineer and shall not allow the Encroachments to become a blight or a menace or a hazard to the health and safety of the general public.

3. The Permittee acknowledges and agrees that the Encroachments are out of the ordinary and do not comply with City of Oakland standard installations. The Permittee further acknowledges and agrees that the City of Oakland and public utility agencies will periodically conduct work in the public right-of-way, including excavation, trenching, and relocation of its facilities, all of which may damage the encroachment. Permittee further acknowledges and agrees that the City and public utility agencies take no responsibility for repair or replacement of the Encroachments, which may be damaged by the City or its contractors or public utility agencies or their contractors. Permittee further acknowledge and agree that upon notification by and to the satisfaction of the City Engineer, Permittee shall immediately repair, replace, or remove, at the sole expense of the Permittee, all damages to the encroachment that are directly or indirectly attributable to work by the City or its contractors or public utility agencies or their contractors.
4. Permittee shall remain liable for and shall immediately reimburse the City of Oakland for all costs, fee assessments, penalties, and accruing interest associated with the City's notification and subsequent abatement action for required maintenance, repairs, or removal, whether in whole or in part, of the encroachment or of damaged City infrastructure made necessary by the failure, whether direct or indirect, of the Permittees to monitor the encroachment effectively and accomplish preventative, remedial, or restorative work expeditiously. The City reserves the unqualified right to collect all monies unpaid through any combination of available statutory remedies, including recordation of Prospective Liens and Priority Liens/ Special Assessments with the Alameda County Recorder, inclusion of non-reimbursed amounts by the Alameda County Assessor with the annual assessment of the general levy, and awards of judgments by a court of competent jurisdiction.
5. The Permittee shall provide written notice, in the form attached hereto as *Exhibit E*, to all prospective purchasers and/or tenants of any enclosed habitable space subject to this Encroachment Permit, that the City may revoke or suspend this Permit and require the removal of such encroachments (the "Notice").
6. The Permittee shall file this Indenture Agreement and the Notice to prospective purchasers and/or tenants with the Alameda County Recorder for recordation as encumbrances of the property and its title.
7. That said Permittee acknowledges that the City makes no representations or warranties as to the conditions beneath said encroachment. By accepting this revocable Permit, 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 Permittee, underground utilities, contractors, or workmen operating, within the encroachment area and for the safety of itself and any of its personnel in connection with its entry under this revocable Permit.
8. That said Permittee acknowledges that the City is unaware of the existence of any hazardous substances beneath the encroachment area, and Permittee hereby waives and fully releases and forever discharges the City and its officers, directors, employees, agents, servants, representatives, assigns and successors 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 of 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 466 et seq.), the Safe Drinking Water Act (14 U.S.C. Sections 1401, 1450), the 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 Sections 253000 et seq.), and the Safe Drinking Water and Toxic Enforcement Act (California Health and Safety Code Section 25249.5 et seq.).
9. That said 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."

10. That said Permittee recognizes that by waiving the provisions of this section, Permittee will not be able to make any claims for damages that may exist, and to which, if known, would materially affect its decision to agree to these encroachment terms and conditions, regardless of whether Permittee's lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.
11. That said Permittee, by the acceptance of this revocable Permit, agrees and promises:
  - (a) To indemnify, defend, and hold harmless the City of Oakland, its officers, agents, and employees, to the maximum extent permitted by law, 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; collectively referred to as "claims", whether direct or indirect, known or unknown, foreseen or unforeseen, to the extent that such claims were either (1) caused by the Permittee, its agents, employees, contractors or representatives, or, (2) in the case of environmental contamination, the claim is a result of environmental contamination that emanates or emanated from the 2121 East 12<sup>th</sup> Street, Oakland, California site, or was otherwise caused by the Permittee, its agents, employees, contractors or representatives.
  - (b) That, if any contamination is discovered below or in the immediate vicinity of the encroachment, and the contaminants found are of the type used, housed, stored, processed or sold on or from 2121 East 12<sup>th</sup> Street, Oakland, California site, such shall amount to a rebuttable presumption that the contamination below, or in the immediate vicinity of, the encroachment was caused by the Permittee, its agents, employees, contractors or representatives.
  - (c) That said Permittee shall comply with all applicable federal, state, county and local laws, rules, and regulations governing the installation, maintenance, operation and abatement of the encroachment.
12. That this Indenture Agreement and associated Permit shall take effect when all the conditions hereinabove set forth shall have been complied with to the satisfaction of the City Engineer.
13. That this Indenture Agreement alone does not allow work to be done which requires permitting and/or inspection. The Permittee must obtain any and all required permits before beginning work.
14. The City, at its sole discretion and at future date not yet determined, may impose additional and continuing fees for use and occupancy of the public right-of-way.
15. Additional or continuing fees will apply in accordance with the City's Municipal Code, City standards, future plans for the right of way, and City practices to regulate the right of way for the public interest.
16. The rights and obligations of this Indenture Agreement shall be binding upon the Permittee, all successive owners and assigns thereof, and shall be automatically assigned to and assumed by any and all successive persons or entities with a fee interest in all or any portion of the Property.



# EXHIBIT B

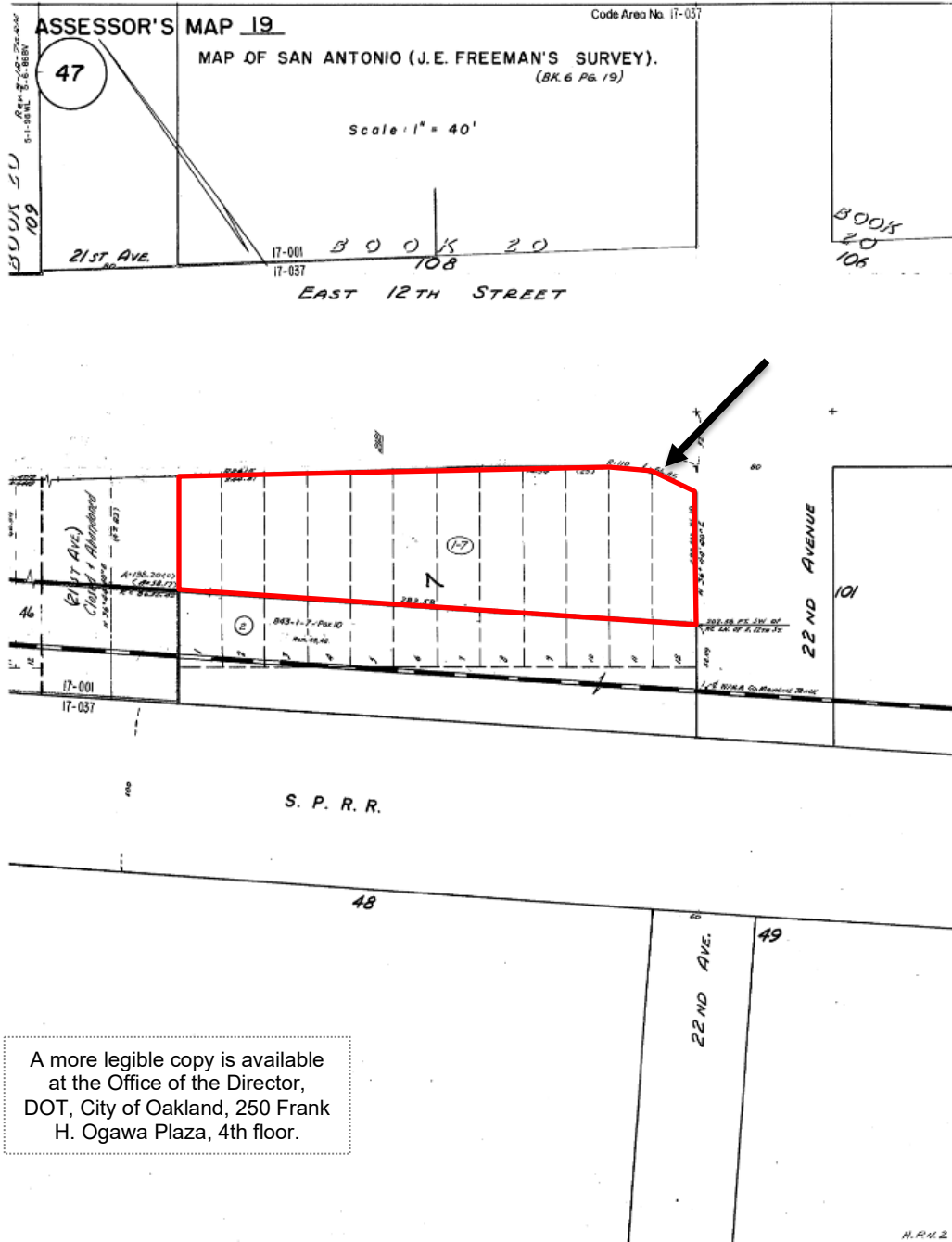
## Description of the Private Property Abutting the Encroachment

Address 2121 East 12<sup>th</sup> Street

Parcel no. 19-47-1-7

Deed no. 2021318398

Recorded September 22, 2021



## EXHIBIT B (continued)

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

A portion of Blocks 6 and 7 and 21st Avenue, formerly Alameda Street, as said Blocks and Avenue are shown on the "Map of San Antonio", filed September 12, 1854, in the Office of the County Recorder of Alameda County, and of record in Map Book 1, Page 3, bounded as follows:

Beginning at the intersection of the Southwestern line of East 12th Street, as said line was established by Deed from Standard Realty and Development Co. to City of Oakland, dated February 13, 1948, recorded March 29, 1948, under Recorder's Series AC/25485, Alameda County Records, with the Northwestern line of 22nd Avenue; running thence along said line of 22nd Avenue, Southwesterly 90.56 feet to a line drawn parallel with the center line of the Western Pacific Railroad Company's main line track, and distant at right angles 38 feet Northeasterly therefrom, as said center line existed on April 1, 1948; thence deflecting to the right, through an angle  $93^{\circ} 51' 30''$  along said parallel line, Northwesterly 282.58 feet; thence continuing parallel with said center line of main line track, Northwesterly along the arc of a curve to the left with a radius of 8632.42 feet and tangent to the preceding course, through a central angle of  $0^{\circ} 55' 05''$ , a distance of 138.32 feet to a line drawn parallel with the direct extension Southwesterly of the center line of 21st Avenue, and distant 80 feet Northwesterly therefrom, measured along the Southwestern line of East 12th Street, as last said line was established by the Deed from the Western Pacific Railroad Co. to City of Oakland, dated February 13, 1948, recorded March 29, 1948, under Recorder's Series No. AC/25484, Alameda County Records; thence along last said parallel line, Northeasterly 63.34 feet to said line of East 12th Street; thence along the last mentioned line, as established by the Deeds herein mentioned, Southeasterly 420 feet to the point of beginning.

Excepting therefrom, that portion described in the Judgment in Condemnation entered April 10, 1963 in the Superior Court of the State of California in and for the County of Contra Costa, Case No. 85839, a Certified Copy of which recorded April 19, 1963, Reel 859, Image 907, Series No. AU-66591, Official Records.

Also excepting therefrom, that portion described in the Final Order of Condemnation entered March 14, 1969, in the Superior Court of the State of California in and for the County of Alameda, Case No. 359970, a Certified Copy of which recorded March 14, 1969, Reel 2364, Image 859, Series No. 69-28890, Official Records.

APN: 019-0047-001-07

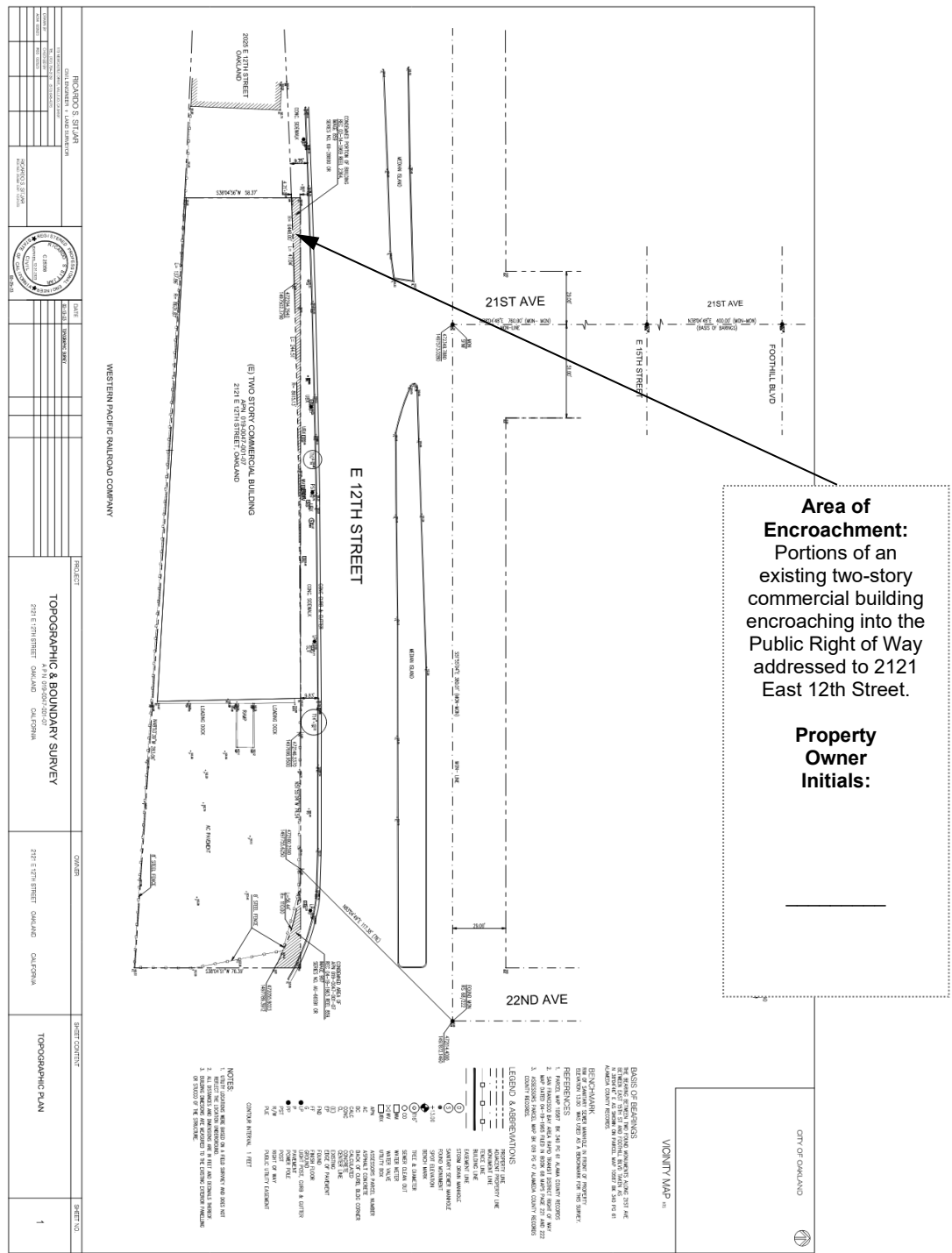
A more legible copy is available at the Office of the Director, DOT, City of Oakland, 250 Frank H. Ogawa Plaza, 4th floor.

# EXHIBIT C

## Limits of the Encroachment in the Public Right-Of-Way

Address 2121 E 12<sup>th</sup> Street

Parcel no. 19-47-1-7



A more legible copy is available at the Office of the Director, DOT, City of Oakland, 250 Frank H. Ogawa Plaza, 4th floor.

## **EXHIBIT D**

**Oakland City Council Resolution XXXX C.M.S.** (page 1 reference)

**EXHIBIT E:**

**FORM OF NOTICE TO PROSPECTIVE PURCHASERS AND/OR TENANTS  
OF PORTION OF EXISTING TWO-STORY COMMERCIAL BUILDING  
IN RIGHT-OF-WAY AT 2121 E 12<sup>th</sup> STREET**

Recording requested by:

**CITY OF OAKLAND**

When recorded mail to:

City of Oakland  
Department of Transportation  
Dalziel Admin Building  
250 Ogawa Plaza - 4th Floor  
Oakland, CA 94612  
Attn: Ishrat Jahan

----- *space above for Recorder's use only* -----

**Address** 2121 East 12<sup>th</sup> Street

**Permit no.** ENMJ 24054

**Parcel no.** 19-47-1-7

**Authorities** Municipal Code Section 12.08.080

**Description** Portions of an existing two-story commercial building encroaching into the Public Right of Way addressed to 2121 E 12<sup>th</sup> Street. The executed agreement produced by this permit application shall automatically expire upon substantial redevelopment of the subject parcel, at which point the encroachment shall be removed and the full sidewalk width restored.

This property is subject to a conditional and revocable Major Encroachment Permit No. ENMJ24054 for portions of the existing two-story commercial building encroaching into the public right-of-way ("Encroachment Property"), authorized by City Council Resolution C.M.S. XXXX on **DATE**, and effective upon recordation of the accompanying Indenture Agreement between the City of Oakland and Kimmy Chung, an unmarried woman ("Permittee") and satisfaction of all conditions therein.

The conditional and revocable Major Encroachment Permit and accompanying Indenture Agreement are binding on the Permittee, successive owners and assigns thereof, and on all successive persons or entities with a fee interest in all or any portion of the Encroachment Property. The conditions and requirements of said Major Encroachment Permit and accompanying Indenture Agreement are recorded with the Alameda County Recorder as encumbrances of the Encroachment Property and its title.

Prospective purchasers and tenants are hereby given notice that the City may revoke this Major Encroachment Permit and require removal of said Encroachments upon the terms and conditions set forth in the Indenture Agreement.