

2023 OCT -4 PM 3: 27

APPROVED AS TO FORM AND LEGALITY

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

  
CITY ATTORNEY'S OFFICE

## OAKLAND CITY COUNCIL

RESOLUTION NO. 89946 C.M.S.

---

**RESOLUTION GRANTING A CONDITIONAL AND REVOCABLE MAJOR ENCROACHMENT PERMIT ENMJ23052 TO EVAN HART, TO ALLOW PORTIONS OF EARTH RETAINING STRUCTURES TO ENCROACH INTO THE PUBLIC RIGHT-OF-WAY ALONG MOUNTAIN BOULEVARD, ADJACENT TO 1526 MOUNTAIN BOULEVARD, AND ADOPTING APPROPRIATE CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS**

**WHEREAS**, Evan Hart (Permittee), is the owner of the real property known as 1526 Mountain Boulevard and described in a Grant Deed recorded March 20, 2015, by the Alameda County Clerk-Recorder and identified by the Alameda County Assessor as APN: 048G-7419-064 commonly known 1526 Mountain Boulevard hereto and incorporated herein (Property); and

**WHEREAS**, Permittee proposes to construct an accessory dwelling unit on the Property (Project); and

**WHEREAS**, the Project is designed such that approximately thirteen feet of the new earth retaining structures will encroach into the public right-of-way (currently controlled by the City) on Mountain Boulevard, the encroachment limits are delineated on *Exhibit A* hereto and incorporated herein (Encroachments); and

**WHEREAS**, the City Planning Bureau has approved the development of the Project (DRX220340, DRX220340), subject to a condition of approval that Permittee obtain a conditional and revocable major encroachment permit of the Encroachments; and

**WHEREAS**, Permittee has filed an application with the Oakland Department of Transportation for such conditional and revocable major encroachment permit (ENMJ23052), hereinafter referred to as the "Permit"; and

**WHEREAS**, staff has determined, in accordance with the Oakland Municipal Code Chapter 12.08 and based on review of the plans and investigation of the Property and the area of the proposed Encroachments, that the Encroachments in the public right-of-way and their location will not interfere with the public use of the roadway, sidewalk, buried utilities, and will not endanger the public welfare and convenience during said public use; and

**WHEREAS**, each as a separate and independent basis, this action is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines sections 15303

(New Construction or Conversion of Small Structures), CEQA Guidelines section 15532 (In-Fill Development Projects), and CEQA Guidelines section 15183 (Projects Consistent with a Community Plan or Zoning); now, therefore, be it

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

**FURTHER RESOLVED:** That the City Council finds and determines that the decision made hereby is exempt from CEQA pursuant to CEQA since, on a separate and independent basis, this action is exempt from CEQA pursuant to CEQA Guidelines sections 15303 (New Construction or Conversion of Small Structures), CEQA Guidelines section 15332 (In-Fill Development Projects), and CEQA 15183 (Projects Consistent with a Community Plan or Zoning); and be it

**FURTHER RESOLVED:** That the City Administrator shall file a Notice of Determination/Exemption with the Clerk of the County of Alameda on the Major Encroachment permit matter named in this Resolution; and be it

**FURTHER RESOLVED:** That the City Council hereby grants to the Permittee a conditional revocable Permit to allow the Encroachments, which Permit 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 the City Council, at its sole discretion and at a future date not yet determined, may impose 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 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 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 certified copy of this Resolution 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:

**OCT 17 2023**

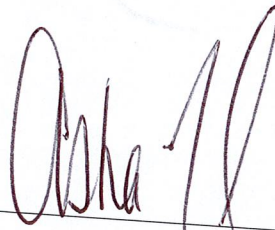
AYES - FIFE, GALLO, JENKINS, KALB, KAPLAN, REID, RAMACHANDRAN, AND  
PRESIDENT FORTUNATO BAS - 8

NOES

ABSENT

ABSTENTION

ATTEST:



ASHA REED

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

**Exhibit A:** 1526 Mountain Boulevard Encroachments (1 page)  
**Exhibit B:** Indenture Agreement (14 pages)

**EXHIBIT A: 1526 MOUNTAIN BOULEVARD ENCROACHMENTS**  
**(Attached Separately)**

**EXHIBIT B: INDENTURE AGREEMENT**

**(Attached Separately)**