



AGENDA REPORT

TO: Jestin D. Johnson
City Administrator

FROM: Fred Kelley, Director
Oakland Department of
Transportation

SUBJECT: Major Encroachment Permit at
1526 Mountain Boulevard

DATE: September 11, 2023

City Administrator Approval

Date: Sep 27, 2023

RECOMMENDATION

Staff Recommends That The City Council Adopt A 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.

EXECUTIVE SUMMARY

Adoption of this proposed resolution will authorize the City Administrator to issue a conditional and revocable Major Encroachment Permit (Permit) to the property owner, Evan Hart (Permittee), to document and regulate new encroachments in the public right-of-way at the property located at 1526 Mountain Boulevard associated with the development of an accessory dwelling unit on a lot containing one single-family home.

The Permit will allow new building elements consisting of a portion of two earth retaining walls to encroach into the public right-of-way beyond the limits specified in the California Building Code and Oakland Municipal Code (OMC).

The retaining wall elements and other elements listed above do not impact the use of the sidewalk fronting the property, nor do they obstruct the path of travel for pedestrians or persons with disabilities.

The Permit requires the property owner to comply with the conditions of approval issued by the Planning and Building Department. The encroachments meet City standards and are described more in Exhibit A to the Resolution.

BACKGROUND / LEGISLATIVE HISTORY

[OMC Chapter 12.08](#) requires a major encroachment permit for structural encroachment into the public right-of-way.

The Permittee applied for, and the Planning and Building Department has approved, the development (record number DRX220340) to allow for the construction of a new accessory dwelling unit on the Property. Upon submission for building permits, the Permittee was informed that they must first obtain major encroachment permit approval (ENMJ23052) prior to building permit approval (RBC2204375).

The proposed development plans include an earth retaining structure encroaching into the public right-of-way. Consistent with OMC Chapter 12,08, the Permittee applied for a Permit for this encroachment.

ANALYSIS AND POLICY ALTERNATIVES

The Permit requires an Indenture Agreement to be executed between the City and Permittee, which sets out the conditions and obligations of the Permit (see Exhibit B to the attached proposed Resolution). This Permit and the Indenture Agreement will hold the property owners liable and responsible for private improvements constructed in the right-of-way and allow for the construction and maintenance of encroachments. It also allows the City to revoke the Permit if it is in the City's best interest and requires the property owners to remove the encroachments and restore the public right-of-way. In addition, Council may direct the Department of Transportation Engineering Services staff to include other conditions, as the location and nature of the proposed encroachments may require for the public health, safety, and appearance.

The retaining walls will encroach approximately thirteen feet into the public right-of-way. The public right-of-way in this location is approximately 60 feet wide. The proposed encroachments are not expected to interfere with the current or potential future public use of the right-of-way or buried utilities and will not endanger public welfare and convenience.

The retaining walls are vital to the structure's design and access. If the major encroachment is not approved, a major redesign would need to happen, and the accessory dwelling unit would not be constructed as proposed.

Approval of the proposed encroachments promotes the Citywide policy of **Housing, Economic & Cultural Security** because the encroachments are critical to designing the accessory dwelling unit.

FISCAL IMPACT

There is no fiscal impact to the City associated with this Permit. Staff costs for processing the proposed Permit are covered by fees set by the Master Fee Schedule and have been paid by the Permittee.

PUBLIC OUTREACH / INTEREST

Public outreach associated with the proposed accessory dwelling unit was conducted by the Department of Planning & Building as part of the land use entitlement process. The proposed major encroachment permit approval has been noticed on the City's website.

COORDINATION

The agenda report and proposed resolution were coordinated with the Planning and Building Department, Budget Bureau, and Office of the City Attorney.

SUSTAINABLE OPPORTUNITIES

Economic: Approval of the Permit facilitates an additional housing unit in the City of Oakland, which could potentially support workforce housing. During the land use entitlement, the Permittee contributed to the School Tax. There are no other substantive economic opportunities associated with the proposed retaining wall.

Environmental: There are no environmental opportunities associated with this Permit.

Race & Equity: There are no impacts to race and equity associated with the proposed retaining wall.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The California Environmental Quality Act (CEQA) and the CEQA Guidelines exempt specific types of projects from environmental review. The following CEQA exemptions apply to this project, each of which provides a separate and independent basis for CEQA clearance: CEQA Guidelines section 15303 (New Construction or Conversion of Small Structures), CEQA Guidelines section 15332 (In-Fill Development Projects), and CEQA Guidelines section 15183 (Projects Consistent with a Community Plan or Zoning).

ACTION REQUESTED OF THE CITY COUNCIL

Staff Recommends That The City Council Adopt A 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.

For questions regarding this report, please contact Bradley Howard, Civil Engineer, at
BHoward@oaklandca.gov.

Respectfully submitted,


Fred Kelley (Sep 26, 2023 13:37 PDT)

FRED KELLEY
Director, Department of Transportation

Reviewed by:
Wlad Wlassowsky, Acting Assistant Director,
Department of Transportation

Emily Ehlers, Division Manager,
Department of Transportation

Ishrat Jahan, P.E, Supervising Civil Engineer,
Department of Transportation

Prepared by:
Bradley Howard, P.E., Civil Engineer,
Department of Transportation