



# AGENDA REPORT


**TO:** Jestin D. Johnson  
City Administrator

**FROM:** Josh Rowan  
Director, OakDOT

**SUBJECT:** Major Encroachment Permit at  
2225 81<sup>st</sup> Avenue

**DATE:** November 11, 2024

City Administrator Approval

  
Jestin Johnson (Nov 21, 2024 22:07 PST)

Date: **Nov 21, 2024**

## RECOMMENDATION

**Staff Recommends That The City Council Adopt A Resolution Granting A Conditional And Revocable Major Encroachment Permit ENMJ24057 To Roman Catholic Welfare Corporation Of Oakland To Allow A Modular Classroom On An Unimproved Portion Of 81<sup>st</sup> Avenue At 2225 81st Avenue, 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 to the property owner, Roman Catholic Welfare Corporation of Oakland, (Permittee), to document and regulate existing encroachments in the public right-of-way at the property located at 2225 81<sup>st</sup> Avenue (APN: 040-3376-005-0) (Property).

The Permit will allow existing building elements consisting of an existing modular classroom to encroach into the public right-of-way beyond the limits specified in the California Building Code. The existing modular classroom is approximately twenty-four (24) feet wide and sixty (60) feet long and encroaches into the public right-of-way along an unimproved portion of 81<sup>st</sup> Avenue between the City blocks of Atherton Street and Dowling Street, regarded as a 'paper street'. The existing encroachment does not currently interfere with public use of the right-of-way or buried utilities and does not endanger the public welfare and convenience. The encroachments are described in more detail in **Exhibit A** to the Resolution.

Consistent with Oakland Municipal Code (OMC) 12.08, a Major Encroachment Permit is required for all encroachments in the public right-of-way beyond the limits specified in the California Building Code (CBC) Section 3202.2. Major Encroachment Permits are reviewed by the Department of Transportation and approved and issued by the City Council. An Indenture Agreement between the City of Oakland (City) and Permittee, which sets out the conditions and obligations of the revocable Major Encroachment Permit, is provided as **Exhibit B** to the resolution.

## **BACKGROUND / LEGISLATIVE HISTORY**

Said unimproved portion of 81<sup>st</sup> Avenue, between the City blocks of Atherton Street and Dowling Street, was closed to traffic in 1959 by Resolution No. 37874 C.M.S. to allow the adjoining Saint Benedict's Church, which is also located on said parcel, to use the public right-of-way for a playground. This defines said portion of 81<sup>st</sup> Avenue as a 'paper street'.

In 2009, the City then adopted Resolution [No. 82323 C.M.S.](#) granting a conditional and revocable Major Encroachment Permit to Permittee for an existing modular classroom, referred to as Building #2, which encroaches into the public right-of-way along the unimproved portion of 81<sup>st</sup> Avenue. The City Building Department issued Building Permit number B0901712 to the Permittee for the construction of Building #2. The Indenture Agreement documenting said resolution was recorded under Encroachment Permit number ENMJ09055 and with the Alameda County Recorder under Serial No. 2009357058.

In 2016, the City Building Department issued Building Permit number B1504302 to the Permittee for further improvements, including an additional modular classroom, referred to herein as Building #3. Building #3 is of the same modular design as Building #2 and also encroaches into the public right-of-way along the unimproved portion of 81<sup>st</sup> Avenue. This Major Encroachment Permit number ENMJ24057 is required because Building #3 is currently an undocumented major encroachment within the public right-of-way, not included within the previous resolution granted to the Permittee and adopted by the City.

The City informed the Permittee that a Major Encroachment Permit was necessary to document this existing encroachment. OMC Chapter 12.08 requires a Major Encroachment Permit for building elements encroaching into the public right-of-way beyond the allowed limits in the California Building Code (CBC) Section 3202.2. Under OMC Chapter 12.08, the Department of Transportation reviews and the City Council approves Major Encroachment Permits.

Said modular classrooms will serve Aspire College Academy (formerly Aspire Millsmont Secondary Academy), which is chartered by the Oakland Unified School District and adjoins said portions of 81<sup>st</sup> Avenue.

## **ANALYSIS AND POLICY ALTERNATIVES**

Approval of the proposed Resolution granting the Major Encroachment Permit allows the Permittee to retain an existing modular classroom on the unimproved portion of 81<sup>st</sup> Avenue. Approval of the proposed Resolution promotes the Citywide priority of **Vibrant, Sustainable Infrastructure**, and **Responsive, Trustworthy Government** for existing Oakland residents.

Denial of the Major Encroachment Permit may cause financial hardship to the Permittee, who would need to remove the existing encroachment, which had been approved by the City Building department.

### **FISCAL IMPACT**

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

### **PUBLIC OUTREACH / INTEREST**

This item did not require special public outreach other than the required posting 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:** This Major Encroachment Permit allows the Permittee to maintain classrooms, providing economic benefit to the community.

**Environmental:** Approval of the Major Encroachment Permit provides a safer environment for the public by documenting existing encroachments within the public right-of-way.

**Race & Equity:** This Major Encroachment Permit facilitates maintaining classrooms in one of the City's Highest Priority Equity Neighborhoods. The [OakDOT Geographic Equity Priority Map](#) gives each census tract a level of priority between lowest and highest determined by seven demographic factors, including the proportion of people of color, low-income households, people with disability, seniors, single-parent households, severely rent-burdened households, and lower educational attainment.

### **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 sections 15301 (existing facilities) and 15061(b)(3) (no significant effect to the environment).


### **ACTION REQUESTED OF THE CITY COUNCIL**

Staff Recommends That The City Council Adopt A Resolution Granting A Conditional And Revocable Major Encroachment Permit ENMJ24057 To Roman Catholic Welfare Corporation of

Oakland To Allow A Modular Classroom On An Unimproved Portion of 81st Avenue at 2225 81st Avenue, And Adopting Appropriate California Environmental Quality Act Findings.

For questions regarding this report, please contact Tadd Tsui, Assistant Engineer II, at [ttsui@oaklandca.gov](mailto:ttsui@oaklandca.gov).

Respectfully submitted,

  
Josh Rowan (Nov 21, 2024 1:33 PST)

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**JOSH ROWAN**  
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