

CITY OF OAKLAND
Agenda Report

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2009 FEB 26 PM 3:02

TO: Office of the City Administrator
ATTN: Dan Lindheim
FROM: Community and Economic Development Agency
DATE: March 10, 2009

RE: **A Report And Resolution Granting Clarence and Elaine Yee A Revocable And Conditional Permit To Allow An Existing Basement For A Building At 1002 Webster Street To Encroach Under The Public Sidewalk Along 10th Street and Webster Street**

SUMMARY

A resolution has been prepared granting Clarence and Elaine Yee a conditional and revocable permit (EMNJ 08072) that will allow an existing building basement to encroach approximately forty-two (42) inches under the sidewalk along 10th Street and Webster Street.

FISCAL IMPACT

Staff costs for processing the proposed encroachment permit are covered by fees set by the Master Fee Schedule and have been paid by the developer and were deposited in the special revenue Development Service Fund (2415), Engineering Services organization (88432), Encroachment Permits account (42314), Engineering and Architectural Plan Approval (PS30). The standard conditions of the encroachment permit require the property owner to maintain liability and property damage insurance and to include the City as a named insured.

PROJECT DESCRIPTION

The property (APN 002-0061-009-00) is a corner lot located at the intersection of Webster Street and 10th Street. The owners have applied for a building permit (B0804869) to replace the sidewalk over the existing basement serving the commercial building, which was constructed circa 1900. The sidewalk repair project has triggered the requirement for the owners to obtain a companion encroachment permit. The basement, which is used for storage, encroaches approximately forty-two (42) inches into the public right-of-way. The sidewalk is twelve (12) feet wide.

KEY ISSUES AND IMPACTS

- **General**

Approval of encroachments in a public easement or the public right-of-way is a discretionary action by the City Council. The permit, which is revocable by the Council, is issued by staff

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with “boilerplate” conditions related to indemnity for the City and maintenance by the property owner. Permit processing fees are prescribed in the Master Fee Schedule. In general, the City Council may

- approve or deny an encroachment as proposed; or
- approve the encroachment subject to modification of its type, location, and/ or extent.

Conditions imposed on ministerial and discretionary permits must have an associated relationship (nexus) with the permitted project and are typically based on public health, safety, and welfare.

- Oakland Municipal Code

Section 12.08.030 requires that major encroachments into the public right-of-way (basements, foundations, vaults, etc.) receive approval of the City Council. The under sidewalk encroachment has not interfered with the public’s use of the right-of-way and the maintenance of buried utilities since the building was constructed more than one-hundred (100) years ago. The City Council has previously approved similar encroachments throughout the City.

SUSTAINABLE OPPORTUNITIES

Economic

The sidewalk replacement project will provide opportunities for professional services and construction related jobs for the Oakland community.

Environmental

Building permits require that contractors comply with City ordinances and regional Best Management Practices for reducing noise, dust, debris disposal, and pollutant runoff.

Social Equity

The sidewalk replacement project will improve pedestrian safety for Oakland residents, including children and senior citizens.

DISABILITY AND SENIOR CITIZEN ACCESS

The design and construction of replacement sidewalks are required to conform to State and City requirements for handicapped accessibility.

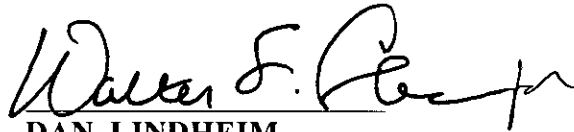
RECOMMENDATIONS

Staff recommends that the Committee accept this report and forward it to the City Council to adopt the proposed resolution approving the encroachment within the public right-of-way.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council accept this report and adopt the proposed resolution granting Clarence and Elaine Yee a conditional and revocable permit to allow an existing basement for a building at 1002 Webster Street to encroach under the public sidewalk along 10th Street and Webster Street.

Respectfully submitted,



DAN LINDHEIM

Director

Community and Economic Development Agency

Prepared by:

Raymond M. Derania

Interim City Engineer

Building Services Division

APPROVED FOR FORWARDING TO
THE PUBLIC WORKS COMMITTEE



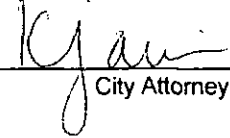
Office Of The City Administrator

Introduced By

FILED
OFFICE OF THE CITY CLERK
OAKLAND
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Approved For Form And Legality

Councilmember



City Attorney

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

A RESOLUTION GRANTING CLARENCE AND ELAINE YEE A REVOCABLE AND CONDITIONAL PERMIT TO ALLOW AN EXISTING BASEMENT FOR A BUILDING AT 1002 WEBSTER STREET TO ENCROACH UNDER THE PUBLIC SIDEWALK ALONG 10th STREET AND WEBSTER STREET

WHEREAS, Clarence Yee and Elaine J. Yee, Trustees of the Yee Family Trust UDT, ("Permittee"), who are the owners of a property described in a Grant Deed, recorded December 29, 1999, series no. 99456198, by the Alameda County Clerk-Recorder, and identified by the Alameda County Assessor as APN 002-0061-009-00, and identified by the City of Oakland as 1002 Webster Street, and more particularly described in Exhibit A attached hereto, have submitted an application to the City Engineer of the City of Oakland for a conditional permit (ENMJ 08072) to allow an existing basement serving a commercial building located on said property to encroach under the public sidewalk along 10th Street and Webster Street; and

WHEREAS, said owners have submitted a separate companion application to the Building Official of the City of Oakland for a permit (B0804869) to replace the deteriorated sidewalk supported by said basement; and

WHEREAS, the limits of said encroachment are delineated in Exhibit B attached hereto; and

WHEREAS, said encroachment and its location beyond the property boundaries of the corner lot and under the adjoining public sidewalk has not interfered with the use by the public of the roadway, sidewalk, or subsurface utilities since the construction of the building circa 1900; and

WHEREAS, pursuant to Oakland Municipal Code Section 12.08.030, said encroachment is required to receive approval from the Council of the City of Oakland as a condition for granting said permits; and

WHEREAS, the Council of the City of Oakland has previously approved similar encroachments elsewhere in the City of existing basements within the public right-of-way; 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 CEQA Guideline Section 15305 (Minor Alterations in Land Use Limitations) this project is categorically exempt from the provisions of the California Environmental Quality Act; now, therefore, be it

RESOLVED: That the encroachment permit, 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 granted for a revocable permit to allow an existing basement for a building at 1002 Webster Street to encroach under the public sidewalk along 10th Street and Webster Street; 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

13. the 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" ; and
14. the Permittee recognizes that by waiving the provisions of Civil Code Section 1542, it will not be able to make any claims for damages that may exist, and to which, if known, would materially affect its decision to execute this encroachment agreement, regardless of whether Permittee's lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause; and
15. the hereinabove conditions shall be binding upon the Permittee and the successive owners and assigns thereof; and be it

FURTHER RESOLVED: That the Council of the City of Oakland, at its sole discretion and at a future date not yet determined, may impose additional and continuing fees as prescribed in the Master Fee Schedule for occupancy and use of the public right-of-way; and be it

FURTHER RESOLVED: That this resolution shall take effect when all the conditions hereinabove set forth 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 hereinabove set forth after notice and failure to cure such conditions in a reasonable manner; and be it

FURTHER RESOLVED: That the City Clerk is hereby directed to file a certified copy of this resolution for recordation by the Alameda County Clerk-Recorder.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2009

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, AND
PRESIDENT BRUNNER

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

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

EXHIBIT A

Lands of Yee, as described in a Grant Deed, recorded
December 29, 1999, series no. 99456198, by the Alameda County Clerk-Recorder

BEGINNING at the point of intersection of the Northern line of Tenth Street with the Eastern line of Webster Street, as said streets are shown on the Map hereinafter referred to; running thence Northerly along said line of Webster Street, 50 feet; thence at right angles Easterly 90 feet; thence at right angles Southerly 50 feet to the Northern Line of Tenth Street; thence Westerly along said line of Tenth Street 90 feet to the point of beginning.

BEING Lots numbered 1 and 2 and a portion of Lot numbered 2B, in Block numbered 141, as said lots and block are delineated and so designated upon that certain map entitled, "A Complete Map of Oakland," made by J. Kellersberger, filed 09/02/53, in Liber 7 of Maps at page 3, in the office of the County Recorder of Alameda County.

EXHIBIT B

Location of Under Sidewalk Basement Encroachment

