



# AGENDA REPORT


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

**FROM:** Josh Rowan, Director  
Oakland Department of  
Transportation

**SUBJECT:** Major Encroachment Permit at  
2101 Telegraph Avenue

**DATE:** April 15, 2024

City Administrator Approval

  
Jestin Johnson (May 2, 2024 06:49 PDT)

Date: May 2, 2024

## **RECOMMENDATION**

**Staff Recommends That The City Council Adopt A Resolution Granting A Conditional And Revocable Major Encroachment Permit To 2101 Telegraph Avenue Associates, A California Limited Partnership, To Allow Portions Of An Existing Basement And Lift To Encroach Into The Public Right Of Way Fronting The Property At 2101 Telegraph Avenue, Major Encroachment Permit ENMJ24015, And Adopting Appropriate California Environmental Quality Act Findings.**

## **EXECUTIVE SUMMARY**

Adoption of this proposed resolution will authorize the Oakland Department of Transportation (OakDOT) to issue a conditional and revocable Major Encroachment Permit (Permit) to the property owner, 2101 Telegraph Avenue Associates (Permittee), to document and regulate existing encroachments in the public right-of-way at 2101 Telegraph Avenue.

The Permit will allow existing building elements consisting of a portion of a basement and elevator to encroach into the public right-of-way beyond the limits specified in the Oakland Building Code. The existing encroachments do not currently interfere with public use of the right-of-way or buried utilities and do not endanger public welfare and convenience. The encroachments are described in more detail in Exhibit A to the resolution. An Indenture Agreement between the City of Oakland (City) and Permittee, which sets out the conditions and obligations of the revocable Permit, is provided as Exhibit B to the resolution.

## **BACKGROUND / LEGISLATIVE HISTORY**

On September 20, 2020, the City's Planning Commission approved the development permit (PLN19288) application for a tentative parcel map (TPM11076) to allow for a minor lot line adjustment between 2101 and 2125 Telegraph Avenue and for the construction of an eight story, ninety-seven (97) unit, one hundred percent (100%) affordable residential senior housing project. Permittee subsequently initiated a permit application for construction of the building (B2105280), and a permit application for public infrastructure improvements (PX2400006).

The City found that approximately 4,094 square feet of existing basement space and an existing elevator lift encroach into the public right-of-way along 21<sup>st</sup> Street and Telegraph Avenue and informed the Property Owner that a Permit was necessary to document the encroachments. The Oakland Municipal Code (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 such Permits.

### **ANALYSIS AND POLICY ALTERNATIVES**

Approval of the proposed resolution granting the Permit allows Permittee to install and maintain a structural sidewalk, improving safety and access for pedestrians without compromising the structural integrity of the existing residential building. Approval of the proposed resolution promotes the citywide priority of **Vibrant, Sustainable Infrastructure** and **Housing, Economic & Cultural Security** for Oakland residents because the project will add 97 new housing units, 100% of which are affordable, and allow the Permittee to make repairs to the sidewalk.

The Permit includes an agreement allowing the City to revoke the Permit if in the City's best interest and require the Property Owner to remove the encroachments and restore the public right-of-way. Because the Permit authorizes habitable space within the right-of-way, which in the future may need to be removed, the Indenture Agreement requires the Property Owner to record a Notice to Prospective Purchasers of the enclosed habitable space. In addition, the City Council may direct staff to include other conditions to protect public health, safety, and appearance. OakDOT staff do not recommend any additional conditions to protect public health, safety, and appearance.

Existing building encroachments consist of a basement extending from the property line to the back of the curb, and an elevator lift. Approximately 4,094 square feet of encroachments will be maintained in the right-of-way. The anticipated use of the lift is once a week to move trash receptacles in and out of the building.

The existing encroachments do not currently interfere with public use of the right-of-way or buried utilities and do not endanger public welfare and convenience.

Denial of the Permit may cause financial hardship to Permittee and may impact the structural integrity of the existing building. If denied, Permittee would need to remove the existing encroachments before reopening the sidewalk for public use.

### **FISCAL IMPACT**

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

### **PUBLIC OUTREACH / INTEREST**

Public outreach associated with the 97-unit affordable residential senior housing project was conducted during the planning entitlement process in 2020.

### **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 Permit facilitates upgrades to existing residential buildings, thereby improving the quality of the City's building stock. The development project will generate 97 units of 100% affordable housing, providing housing security for more Oakland seniors.

**Environmental:** Approval of this Permit enhances the structural integrity and Americans with Disability Act compliance of pedestrian facilities in the City with attendant potential greenhouse gas emissions benefits as walking becomes a more viable transportation option for some Oaklanders.

**Race & Equity:** Approval of the Permit will not directly impact the City's Race and Equity priorities. Indirectly, pedestrian access improvements associated with the structural sidewalk above the Encroachment will improve access and safety in one of the City's High 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)**


This Permit is exempt from the California Environmental Quality Act (CEQA) 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), each as a separate and independent basis.

**ACTION REQUESTED OF THE CITY COUNCIL**

Staff Recommends That The City Council Adopt: A Resolution Granting A Conditional And Revocable Major Encroachment Permit To 2101 Telegraph Avenue Associates, A California Limited Partnership, To Allow Portions Of An Existing Basement and Lift To Encroach Into The Public Right Of Way Fronting The Property At 2101 Telegraph Avenue, Major Encroachment Permit ENMJ 24015, And Adopting Appropriate California Environmental Quality Act Findings.

For questions regarding this report, please contact Ishrat Jahan, Supervising Civil Engineer, at IJahan@oaklandca.gov.

Respectfully submitted,

  
Josh Rowan (May 1, 2024 15:11 PDT)

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**JOSH ROWAN**  
Director  
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