



AGENDA REPORT

TO: Edward D. Reiskin
City Administrator

FROM: Fred Kelley,
Director, Department of
Transportation

SUBJECT: Major Encroachment Permit at
581 5th Street

DATE: December 12, 2022

City Administrator Approval

Date: Dec 28, 2022

RECOMMENDATION

Staff Recommends That The City Council Approve A Resolution Granting A Conditional And Revocable Major Encroachment Permit To Resneck Ventures, LLC, To Allow Portions Of Three Outward Swinging Doors, And Building Elements To Encroach Into The Public Right Of Way Adjacent To 581 5th Street, Major Encroachment Permit ENMJ22052; And Adopting Appropriate California Environmental Quality Act Findings.

EXECUTIVE SUMMARY

Approval of this resolution will authorize the City Administrator to issue a conditional and revocable Major Encroachment Permit (Permit) to Resneck Ventures, LLC (Applicant) to document and regulate encroachments in the public right of way at 581 5th Street.

The Permit will allow existing building elements consisting of a portion of exterior walls and portions of three outward swinging doors to encroach into the public right of way beyond the limits detailed in the California Building Code (section 3202.2 and section 3202.2.2)

The building elements and doors 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 owners to comply with the conditions of approval issued by the Planning and Building Department. The encroachments meet City of Oakland (City) standards and are described in more detail in **Exhibit A** to the Resolution.

BACKGROUND / LEGISLATIVE HISTORY

Oakland Municipal Code (O.M.C.) Chapter 12.08 requires a major encroachment permit for building encroachments into the public right-of-way exceeding the limits specified in the Oakland Building Code and California Building Code (CBC).

City Council
January 17, 2023

The subject structure was built in 1920 and is currently occupied by a small business operating as a bar and restaurant.

The Applicant applied for a Building Department permit for building alteration ([B2104596](#)) to legally A2 occupancy which designates building use for the primary purpose of assembly intended for food and/or drink consumption. Upon submission for building permits, the Applicant was informed that they must first obtain major encroachment permit approval ([ENMJ22052](#)) prior to building permit approval and issuance.

ANALYSIS AND POLICY ALTERNATIVES

Exhibit B to the Resolution is the Indenture Agreement to be executed between the City and Applicant, which sets out the conditions and obligations of the revocable Major Encroachment Permit. This Permit and the Indenture Agreement will hold the property owners liable and responsible for private improvements constructed in the public right of way and allows for construction and maintenance of encroachments.

The Permit includes an agreement allowing the City to revoke the Permit if in the City's best interest and require the property owners to remove the encroachments and restore the public right of way. In addition, Council may direct staff to include other conditions as the location and nature of the proposed encroachments may require for the public health, safety and appearance.

Approval of the encroachment will allow the business to legalize A2 occupancy without having to radically disrupt the historical façade. The doors swing into the public right of way a maximum of three feet, seven inches and building elements encroach a maximum of four inches into the public right of way. The proposed encroachments are not currently expected to interfere with public use of the right-of-way or buried utilities and will not endanger the public welfare and convenience.

Allowing this major encroachment to proceed advances the Citywide priority of **“housing, economic, and cultural security”**, as this proposal will allow an existing small business to continue to operate in Oakland without excessive building frontage reconstruction which would not be financially possible for the small business owner.

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 Applicant.

PUBLIC OUTREACH / INTEREST

This item did not require special public outreach other than the required posting on City's website.

COORDINATION

The Resolution was coordinated with Planning and Building Department, Budget Bureau, and the Office of the City Attorney.

SUSTAINABLE OPPORTUNITIES

Economic: The Permit facilitates improving the overall economic conditions in Oakland by allowing a small business to remain operational.

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

Race & Equity: There are no race and equity opportunities identified with this report.

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 exemption applies to this project, each of which provides a separate and independent basis for CEQA clearance: CEQA Guidelines Section 15301 (Existing Facilities).

ACTION REQUESTED OF THE CITY COUNCIL

Staff Recommends That The City Council Approve A Resolution Granting A Conditional And Revocable Major Encroachment Permit To Resneck Ventures, LLC, To Allow Portions Of Three Outward Swinging Doors And Building Elements To Encroach Into The Public Right Of Way, Adjacent To 581 5th Street, Major Encroachment Permit ENMJ22052; And Adopting Appropriate California Environmental Quality Act Findings.

For questions regarding this report, please contact Ishrat Jahan, Supervising Civil Engineer, at 510-238-7281.

Respectfully submitted,

Fred Kelley

Fred Kelley (Dec 28, 2022 12:10 PST)

FRED KELLEY
Director, Department of Transportation

Reviewed by:
Ariel Espiritu Santo, Assistant Director,
Department of Transportation

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