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OFFICE OF THE CITY CLERK  
OAKLAND

2018 NOV -1 PM 12: 33

# AGENDA REPORT

**TO:** Sabrina B. Landreth  
City Administrator

**FROM:** Ryan Russo  
Director, DOT

**SUBJECT:** Major Encroachment Permit at  
2401 Broadway

**DATE:** October 2, 2018

City Administrator Approval

Date:

11/1/18

## RECOMMENDATION

**Staff Recommends That The City Council Approve A Resolution Granting A Conditional And Revocable Major Encroachment Permit To 2401 Broadway Investors LLC, To Allow Portions Of The New Building Above Grade At 2401 Broadway To Encroach Into The Public Right-Of-Way On Broadway and 25<sup>th</sup> Street, Major Encroachment Permit ENMJ180612.**

## EXECUTIVE SUMMARY

Approval of this resolution will authorize the City Administrator or designee to issue a conditional and revocable Major Encroachment Permit to document and regulate new encroachments in the public right-of-way at 2401 Broadway. The development consists of a new six-story mixed use building containing 72 dwelling units, 159-room hotel, and approximately 17,000 square feet of retail space at ground floor.

Approximately 145 square feet of living space and 26 square feet of open balcony encroach above ground into the public right-of-way. Encroachments in this permit are for building elements extending into the public right of way beyond the limits shown in the Oakland Municipal Code Section 12.08.030 for living space and Section 15.04.3.2285 for open balconies.

## BACKGROUND / LEGISLATIVE HISTORY

Oakland Municipal Code requires a major encroachment permit for living space into the public right-of-way and for building elements such as balconies and architectural features beyond the specified limits.

The Planning and Building Department had approved the development (permit number PLN16-246). The proposed conditional and revocable Major Encroachment Permit (Permit number ENMJ18062) to be issued to 2401 Broadway Investors LLC, allows for building elements to encroach into the public right-of-way facing Broadway and 25<sup>th</sup> Street.

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Public Works Committee  
November 13, 2018

## **ANALYSIS AND POLICY ALTERNATIVES**

Encroachments were approved by the Planning and Building Department. Encroachments do not currently impact the use of the sidewalk fronting the property nor do they obstruct the path of travel for pedestrians or persons with disabilities.

The encroachment permit requires the property owners to comply with the conditions of approval issued by the City of Oakland Planning and Building Department. The encroachments meet City standards and are described in more detail in **Exhibit A** to the Resolution.

**Exhibit B** to the Resolution is the Indenture Agreement to be executed between the City and Permittee and 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 Major Encroachment 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. 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 owners to record a Notice to Prospective Purchasers of the enclosed habitable space. 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.

Approximately 145 square feet of living space and 26 square feet of open balcony encroach above ground into the public right-of-way.

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

## **FISCAL IMPACT**

There is no fiscal impact to the City associated with this Major Encroachment permit. Staff costs for processing the proposed encroachment 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.

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Public Works Committee  
November 13, 2018

**SUSTAINABLE OPPORTUNITIES**

***Economic*** – The Major Encroachment Permit facilitates private development improving the overall economic conditions in Oakland.

***Environmental*** – No environmental opportunities are identified.

***Social Equity*** – No social equity opportunities are identified.

**CEQA**

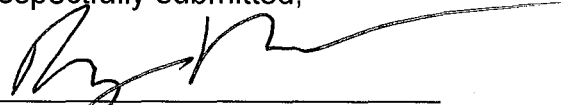
The California Environmental Quality Act (“CEQA”) and the CEQA Guidelines exempt specific types of projects from environmental review. The following CEQA exemptions apply to this project, each of which provide a separate and independent basis for CEQA clearance: CEQA Guidelines sections 15183 (projects consistent with a Community Plan, General Plan, or Zoning) and 15061(b)(3) (no significant effect on the environment).

**ACTION REQUESTED OF THE CITY COUNCIL**

Resolution Granting A Conditional And Revocable Major Encroachment Permit To 2401 Broadway Investors LLC, To Allow Portions Of The New Building Above Grade At 2401 Broadway To Encroach Into The Public Right-Of-Way On Broadway and 25<sup>th</sup> Street, Major Encroachment Permit ENMJ180612.

For questions regarding this report, please contact Kevin Kashi, Engineering Design and Right-of-Way Supervisor at (510) 238-7116.

Respectfully submitted,



RYAN RUSSO  
Director, Department of Transportation

Reviewed by:  
Wladimir Wlassowsky, P.E., Assistant Director,  
Department of Transportation

Reviewed by:  
Mohamed Alaoui, P.E., Principal Civil Engineer,  
Department of Transportation

Prepared and reviewed by:  
Kevin Kashi, P.E., Supervising Civil Engineer,  
Department of Transportation

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# OAKLAND CITY COUNCIL

Approved as to Form and Legality

  
\_\_\_\_\_  
City Attorney

RESOLUTION No. \_\_\_\_\_ C.M.S.

Introduced by Councilmember \_\_\_\_\_

**RESOLUTION GRANTING A CONDITIONAL AND REVOCABLE MAJOR ENCROACHMENT PERMIT TO 2401 BROADWAY INVESTORS, LLC, TO ALLOW PORTIONS OF THE NEW BUILDING ABOVE GRADE AT 2401 BROADWAY AND 25<sup>TH</sup> STREET TO ENCROACH INTO THE PUBLIC RIGHT-OF-WAY ON BROADWAY AND 25<sup>TH</sup> STREET, MAJOR ENCROACHMENT PERMIT ENMJ18062.**

**WHEREAS**, 2401 Broadway Investors, LLC, a Delaware limited liability company ("Permittee"), is the owner of the real property known as 2401 Broadway and described in a Grant Deed Recorded February 8, 2016 by the Alameda County Clerk-Recorder and identified by the Alameda County Assessor as APN: 008-0674-036 and commonly known as 2401 Broadway hereto and incorporated herein (the "Property"); and

**WHEREAS**, Permittee proposes to develop a six-story building with mixed use building containing 72 dwelling units, a 159-room hotel and approximately 17,000 square feet of ground floor retail space on the Property (the "Project"); and

**WHEREAS**, the Project includes building overhangs, balconies and canopies on portions of the new building, above grade fronting Broadway and 25<sup>th</sup> Street, that encroach onto the public right-of-way controlled by the City, the limits of which encroachment are delineated on *Exhibit A* hereto and incorporated herein (the "Encroachments"); and

**WHEREAS**, the City has approved the development of the Project (PLN16-246), subject to a condition of approval that Permittee obtain a conditional and revocable major encroachment permit for the Encroachments; and

**WHEREAS**, Permittee has filed an application with Department of Transportation for such conditional and revocable Major Encroachment Permit (ENMJ18062) (hereinafter referred to as the "Permit"); and

**WHEREAS**, staff has determined, in accordance with the Oakland Municipal Code Chapter 12.08 and based on review of the plans and investigation of the Property and the area of the proposed Encroachments, that the Encroachments in the public right-of-way and their location will not, currently understood, interfere with the public use of the roadway, sidewalk, buried utilities, and will not endanger the public welfare and convenience during said public use; and

**WHEREAS**, each as a separate and independent basis, this action is exempt from the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines sections 15183 (projects consistent with General Plan and Zoning) and 15061(b)(3) (no significant effect on the environment); now, therefore, be it

**RESOLVED:** That the City Council has reviewed all relevant documents relating to its grant of this Permit; and be it

**FURTHER RESOLVED:** That the City Council finds and determines that the decision made hereby is made in conformance with the requirements of CEQA; and be it

**FURTHER RESOLVED:** That the City Council hereby grants to the Permittee a conditional revocable Permit to allow the Encroachments, which Permit shall take effect only upon the City and Permittee entering into an Indenture Agreement in the form substantially attached hereto as *Exhibit B* (the "Indenture Agreement"), the conditions therein being incorporated into the Permit; and be it

**FURTHER RESOLVED:** That the Permit shall commence and continue in effect so long as Permittee satisfies, and continues to satisfy, all conditions and obligations set forth in the Indenture Agreement; and be it

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

**FURTHER RESOLVED:** That the Permit authorized by this Resolution shall take effect when all the conditions and obligations set forth in the Indenture Agreement 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 and obligations set forth in the Indenture Agreement, subject to the notice and cure provisions set forth therein, or upon a termination by resolution of the City Council as being in the City's best interest; and be it

**FURTHER RESOLVED:** That the City Engineer is hereby directed to file a certified copy of this Resolution for recordation with the Office of the Alameda County Clerk-Recorder as an encumbrance of the title of the property identified above.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 20\_\_\_\_\_

**PASSED BY THE FOLLOWING VOTE:**

AYES - BROOKS, CAMPBELL WASHINGTON, GALLO, GIBSON MCELHANEY, GUILLEN, KALB, KAPLAN and PRESIDENT REID

NOES -

ABSENT -

ABSTENTION -

ATTEST: \_\_\_\_\_

LaTonda Simmons  
City Clerk and Clerk of the Council  
of the City of Oakland, California

*Exhibit A:* 2401 Broadway (2 pages)  
*Exhibit B:* Indenture Agreement (9 pages)

**TABULATIONS**

BALCONY	LEVEL	QTY	AREA (EA)*	TOTAL*
	LEVEL 3	0	0 SF	0 SF
	LEVEL 4	5	32 SF	160 SF
	LEVEL 5	5	32 SF	160 SF
	LEVEL 6	5	32 SF	160 SF
	LEVEL 7	5	32 SF	160 SF
	<b>TOTAL:</b>	<b>20</b>		<b>640 SF</b>

**CANOPY**

MARK	AREA*
①	21 SF
②	68 SF
③	91 SF
④	91 SF
⑤	91 SF
<b>TOTAL:</b>	<b>383 SF</b>

**BUILDINGS OVERHANG**

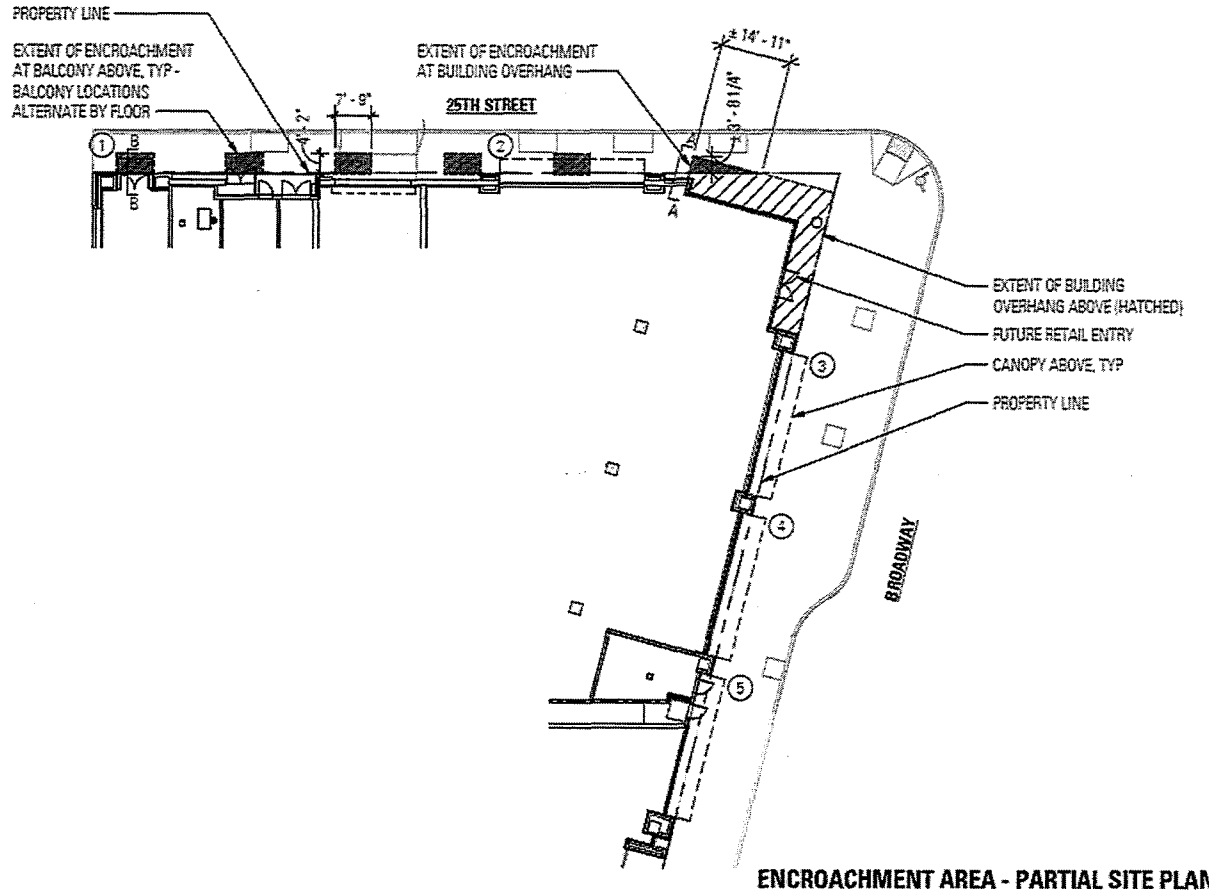
LEVEL	AREA*
LEVEL 3	29 SF
LEVEL 4	29 SF
LEVEL 5	29 SF
LEVEL 6	29 SF
LEVEL 7	29 SF
<b>TOTAL:</b>	<b>145 SF</b>

**NOTES**  
 \* AREAS INDICATED ARE FOR ELEMENTS BEYOND THE PROPERTY LINE, WITHIN THE PUBLIC RIGHT-OF-WAY.

8/24/2018 9:24:15 AM C:\D\RENT\17001 2401 Broadway Hotel-CENTRAL\_CTCorridor.rvt

**BROADWAY HOTEL**  
 2401 BROADWAY, OAKLAND, CA

**BAR** Architects  
 201 Battery Street, Suite 200 | San Francisco, CA 94111 | 415.253.5700 | www.bararch.com



**ENCROACHMENT AREA - PARTIAL SITE PLAN**

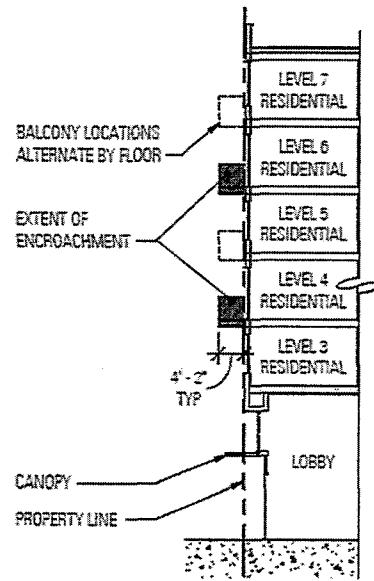
DATE: 8/24/18  
 PROJECT NO. 17001

DRAWN BY:  
 CHECK BY:

SCALE: 1" = 20'-0"

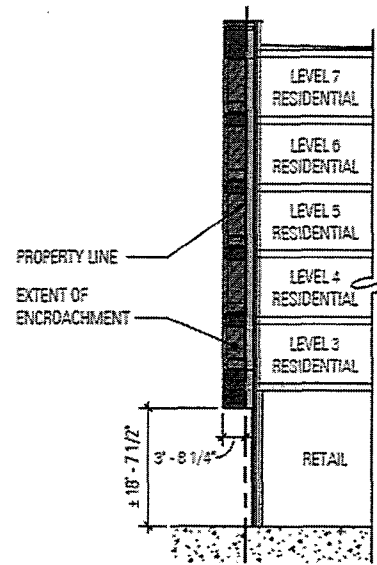
SK-180824A

**EXHIBIT A: 2401 BROADWAY AND 25th STREET ENCROACHMENTS**



(B) SECTION AT TYPICAL BALCONY

OPEN BALCONIES 4'-2" INTO PUBLIC RIGHT OF WAY (2 INCHES BEYOND ALLOWABLE LIMIT FOR OPEN BALCONY PROJECTION, A TOTAL OF 26SF, OMC SECTION 15.04.3.2285)



(A) SECTION AT OVERHANG

LIVING SPACE OVERHANG ENCROACHMENT INTO PUBLIC RIGHT OF WAY (TOTAL OF 145SF, OMC SECTION 12.08.030)

**ENCROACHMENT AREA - SECTIONS**

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**BROADWAY HOTEL**  
2401 BROADWAY, OAKLAND, CA

**BAR**architects  
501 Battery Street, Suite 300 | San Francisco, CA 94111 | 415.293.5700 | www.bararch.com

DATE: 8/24/18  
PROJECT NO. 17001

DRAWN BY:  
CHECK BY:

SCALE: 1/16" = 1'-0"

**SK-180824B**



**EXHIBIT B: INDENTURE AGREEMENT**

**(Attached Separately)**

## EXHIBIT B

### Description of the Private Property Abutting the Encroachment

Address 2401 Broadway

Parcel no. 123-4567-890-10

Deed no. 2016033751

Recorded 02/08/2016

Title No. **15-58206125-C-KD**  
Locate No. **CACTI7701-7701-5582-0058206125**

#### LEGAL DESCRIPTION

#### EXHIBIT "A"

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF OAKLAND, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

##### Parcel One:

Lot 15, in the Webster Homestead Map of the Lincoln and Webster Homesteads, filed November 13, 1869, Map Book 3, Page 16, Alameda County Records.

APN: 008-0674-005

##### Parcel Two:

A portion of Lots 30 and 31 in the Webster Homestead, Map of the Lincoln and Webster Homesteads, filed November 13, 1869, Map Book 3, Page 16, Alameda County Records, described as follows:

Beginning at a point on the Southern line of 25th Street, formerly Laurel Street, distant thereon 227 feet, 1 inch Westerly from the Western line of Broadway; thence Westerly along said line of 25th Street 59 feet, 6 inches; thence at right angles Southerly 119.00 feet; thence at right angles Easterly 59 feet, 6 inches; thence at right angles Northerly 119.00 feet to the point of beginning.

APN: 008-0674-036

##### Parcel Three:

Lot 31, in the Webster Homestead Map of the Lincoln and Webster Homesteads, filed November 13, 1869, Map Book 3, Page 16, Alameda County Records.

Excepting therefrom any portion of said land lying within Parcel Two above.

A more legible copy is available at the Office of the Director, DOT, City of Oakland, 250 Frank H. Ogawa Plaza, 4th floor.