

DRAFT

RESOLUTION NO. XXXX

RESOLUTION OF THE SAUSALITO CITY COUNCIL APPROVING AN ENCROACHMENT AGREEMENT FOR IMPROVEMENTS CONDUCTED IN THE PUBLIC RIGHT-OF-WAY AS PART OF DESIGN REVIEW PERMIT AND ENCROACHMENT PERMIT APPLICATION NO. DR/EP 00-63 LOCATED AT 178 SANTA ROSA AVENUE (APN 065-142-30)

WHEREAS, an application has been filed by the applicant, William Miller of the Tarom Group, on behalf of property owner Rodeo Lane LLC, requesting City Council approval of an Encroachment Agreement for improvements approved by Planning Commission Resolution 2002-27 that encroach into the public right-of-way located at 178 Santa Rosa Avenue (APN 065-142-30) including a driveway parking deck, planter, elevated wood stairs, pedestrian bridge, roof overhang, retaining wall, and landscape features; and

WHEREAS, the Planning Commission conducted duly noticed public meetings on May 9 and June 13, 2001, and May 22, June 26 and July 10, 2002, in the manner prescribed by local ordinance, at which time all interested persons were given an opportunity to be heard; and

WHEREAS, the Planning Commission received and considered oral and written testimony on the subject application and obtained evidence from site visits; and

WHEREAS, the Planning Commission reviewed and considered the information contained in the July 10, 2002 staff report for the proposed project; and

WHEREAS, the Planning Commission found that, as conditioned, the Architectural and Site Plan Review and Encroachment Permit application complied with the requirements of the Zoning Code and General Plan in place at the time, as outlined in the June 26, 2002 staff report; and

WHEREAS, the Planning Commission found that the project is categorically exempt from the requirements of CEQA pursuant to CEQA Guidelines Section 15303(a); and

WHEREAS, the Planning Commission approved Application No. DR/EP 00-63 on July 10, 2002, pursuant to Resolution 2002-27 and subject to the stated conditions of approval; and

WHEREAS, the Planning Commission findings for approval of Application No. DR/EP 00-63 are substantially consistent with current Zoning Code findings for approval of Encroachment Agreements; and

WHEREAS, the applicant has submitted plans titled "178 Santa Rosa Avenue Encroachment Agreement" and date-stamped received October 8, 2007 illustrating encroachments that are consistent with the project plans approved by the Planning Commission titled "Taromi Residence", dated June 11 and July 1, 2002 and stamped received July 3, 2002, and the revised plans presented to the Commission at the July 10, 2002 meeting; and

WHEREAS, the City Council has reviewed and considered the project plans titled “178 Santa Rosa Avenue Encroachment Agreement” and date-stamped received October 8, 2007; and

WHEREAS, the City Council has received and considered written testimony on the subject application and obtained evidence from site visits; and

WHEREAS, the City Council agrees with the Planning Commission that the proposed project is categorically exempt from the requirements of the California Environmental Quality Act pursuant to CEQA Guidelines Section 15303(a).

NOW, THEREFORE, THE CITY COUNCIL HEREBY approves the Encroachment Agreement for Application No. DR/EP 00-63 to allow the improvements located at 178 Santa Rosa Avenue (APN 065-142-30) as recommended by Planning Commission Resolution 2002-27 to encroach into the public right-of-way adjacent to the property, as described in Exhibit A (Encroachment Agreement) and Exhibit B (Plans) and subject to the conditions of approval contained herein.

Section 1. Conditions of Approval

1. Approval of this application is limited to the project plans titled "178 Santa Rosa Avenue Encroachment Agreement" date-stamped received October 8, 2007.
2. As a condition of this approval, no alternative or unrelated construction, site improvements, tree removal and/or alteration, exterior alterations and/or interior alterations and/or renovations not specified in the project plans, or alterations approved by the Community Development Director, shall be performed on the project site. In such cases, this approval shall be rendered null and void unless approved by the Community Development Department as a modification to this approval.
3. In the event that any condition imposing a fee, exaction, dedication or other mitigation measure is challenged by the project sponsors in an action filed in a court of law or threatened to be filed therein which action is brought within the time period provided by law, this approval shall be suspended pending dismissal or final resolution of such action. If any condition is invalidated by a court of law, the entire project shall be reviewed by the City and substitute conditions may be imposed.
4. In accordance with Ordinance No. 1160, the applicant shall pay any and all City costs arising out of or concerning the proposed project, including without limitation, permit fees, attorneys' fees, engineering fees, license fees and taxes, whether incurred prior to or subsequent to the date of this approval. Applicant acknowledges and agrees that City's costs shall be reimbursed prior to this approval becoming valid.
5. The applicant shall indemnify the City for any and all costs, including without limitation attorneys' fees, in defending this project or any portion of this project and shall reimburse the City for any costs incurred by the City's defense of the approval of the project.
6. The Community Development Department is authorized to administratively approve minor modifications to the approved plans. Major design modifications to the approved project will

require further review and approval by the Community Development Director or the Planning Commission.

7. The applicant shall execute an Encroachment Agreement with the City subject to standard conditions in the model agreement within one year of City Council approval.
8. An encroachment permit shall be obtained from the Engineering Division for any improvements in the public right-of-way.

Section 2. Judicial Review

The time within which judicial review of this decision may be sought is governed by the provisions of section 65009 of the Government Code, section 1094.6 of the Code of Civil Procedure and all other applicable law.

RESOLUTION PASSED AND ADOPTED at the regular meeting of the City Council of the City of Sausalito on the 13th day of November 2007, by the following vote:

AYES: Councilmember:
NOES: Councilmember:
ABSENT: Councilmember:
ABSTAIN: Councilmember:

MAYOR D. MICHAEL KELLY

ATTEST: _____
CITY CLERK