

DRAFT

RESOLUTION NO. XXXX

RESOLUTION OF THE SAUSALITO CITY COUNCIL APPROVING AN ENCROACHMENT AGREEMENT FOR DESIGN REVIEW PERMIT APPLICATION NO. DR/EA 07-014 TO ALLOW THE CONSTRUCTION OF IMPROVEMENTS LOCATED IN THE RIGHT OF WAY CONSISTING OF TWO OFF- STREET PARKING SPACES, NEW STAIR LANDING AND ACCESS STAIRWAY, STAIRWAY ENTRY, AND CORNER OF GARAGE AWNING AT 694 SAUSALITO BOULEVARD (APN 065-132-35)

WHEREAS, an application has been filed by the applicant and property owner, Charles Slaughter, requesting Planning Commission approval of a Design Review Permit and recommendation of approval for an Encroachment Agreement for the construction of a new single-family home at 694 Sausalito Boulevard (APN 065-132-35) with a portion of the improvements located in the right of way consisting of two off-street parking spaces, new stair landing and access stairway, existing stairway entry, and a corner of a garage awning; and

WHEREAS, the Planning Commission conducted duly noticed public meetings on July 18, 2007 and September 12, 2007 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 reviewed and considered the project plans titled "The West-Slaughter Residence" and dated August 27, 2007; 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 18, 2007 and September 12, 2007 staff reports for the proposed project; and

WHEREAS, the Planning Commission deliberated on the historical significance of the existing site based on evidence presented in the July 18, 2007 and September 12, 2007 staff report, and public testimony received on July 18, 2007 and September 12, 2007; and

WHEREAS, the Planning Commission found that the proposed project will not have a significant effect on the environment and is categorically exempt in conformance with CEQA Guidelines Sections 15301(l) and 15303(a); and

WHEREAS, the Planning Commission found that, as conditioned herein, the proposed project complies with the requirements of the Zoning Code, including the required findings for approval of a Design Review Permit, Heightened Review and Encroachment Agreement as outlined in the staff report and included in the attached findings; and

WHEREAS, the Planning Commission found that, as conditioned herein, the proposed project complies with the General Plan as outlined in the staff report.

WHEREAS, on September 12, 2007, the Planning Commission adopted Resolution No.

2007-27 approving Design Review Permit No. DR/EA 07-014 and recommending approval to the City Council for the requested encroachments in the public right-of-way as enhancements of the streetscape, continuations of existing encroachments, and to reduce view obstructions; and

WHEREAS, the City Council has reviewed and considered the Planning Commission's recommendation of the Encroachment Agreement; and

WHEREAS, the City Council has reviewed and considered the project plans titled "The West-Slaughter Residence" and dated August 27, 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 Sections 15301(l) and 15303(a).

NOW, THEREFORE, THE CITY COUNCIL HEREBY approves the Encroachment Agreement for Application No. DR/EA 07-014 to allow the construction of improvements encroaching into the right of way including two off-street parking spaces, new stair landing and access stairway, stairway entry, and a corner of a garage awning located at 694 Sausalito Boulevard (APN 065-132-35), as specified 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 "The West-Slaughter Residence" dated revised on August 27, 2007.
2. This approval will expire in five (5) years from the date of adoption of the Planning Commission Resolution if the property owner has not exercised the entitlements hereby granted.
3. Construction materials, equipment, vehicles, and debris boxes shall be placed to minimize obstruction of roads and gutters, shall be maintained in a clean and safe condition, and shall not be maintained in a manner that becomes a nuisance to the neighborhood.
4. Pursuant to Ordinance 1143, the operation of construction, demolition, excavation, alteration, or repair devices within all residential areas or within a 500 foot radius of residential zones shall be limited to the following hours:
 - a. Weekdays – Between 8 a.m. and 7 p.m.
 - b. Saturdays – Between 9 a.m. and 5 p.m.
 - c. Holidays – Between 9 a.m. and 7 p.m.

Such operation is prohibited on Sundays except by a homeowner residing on the property. Such work shall be limited to 9 a.m. to 7 p.m.

5. Dumping of residues from washing of painting tools, concrete trucks and pumps, rock, sand, dirt, agricultural waste, or any other materials discharged into the City storm drain system that is not composed entirely of storm water is prohibited pursuant to Sausalito Municipal Code (SMC) Chapter 11.17. Liability for any such discharge shall be the responsibility of person(s) causing or responsible for the discharge. Violations constitute a misdemeanor in accordance with SMC Section 11.17.060.B.
6. 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.
7. 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.
8. 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.
9. 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.
10. An approval granted by the Planning Commission does not constitute a building permit or authorization to begin any construction. An appropriate permit issued by the Building Division must be obtained prior to constructing, enlarging, moving, converting, or demolishing any building or structure within the City.
11. Prior to issuance of a demolition permit, the applicant shall give the Merrills the opportunity to salvage any materials or portion of the house for their own use, which may include stained glass windows and original interior redwood moldings or other elements deemed of interest to them. The Richardson Bay Maritime Association shall also be given the opportunity to select any materials or portion of the house following the Merrills' selection. The net value of all materials remaining and not donated to the Merrills or Richardson Bay Maritime Association shall be placed into an escrow account to be used towards honoring Charlie Merrill.
12. Prior to issuance of a demolition permit, the applicant shall complete a photographic inventory of the interior and exterior of the existing structure and donate such inventory to the Sausalito Historical Society.

13. A permanent physical marker dedicated to Charlie and Virginia Merrill shall be located on the property, as approved by the Merrill family. The marker shall not be located in the public right-of-way, unless otherwise approved through an Encroachment Agreement.
14. All exterior lighting shall be downward facing and of low wattage.

Prior to submittal of any grading or construction permits:

15. The plans shall be revised to demarcate a landscape easement along the northern property line adjacent to 39 Cooper Lane with landscaping to be maintained at a minimum height of 325 feet NGVD. The easement shall be approved by the Community Development Department and recorded with the County of Marin prior to issuance of a building permit. Landscaping shall be installed in the easement prior to issuance of a Certificate of Occupancy.
16. The driveway profile shall be designed so that the driveway grade rises above the street gutter elevations by 6 inches before descending to and meeting up with the elevations of the garage floor.
17. The applicant shall submit construction plans to the Geotechnical Engineer for review and approval prior to submittal to the City for any construction permits. Approval may be by means of a signed and stamped signature block on the plan set or by separated letter signed and stamped by the Geotechnical Engineer.
18. The plans shall be revised to specify in words or show in graphics a driveway profile that contains freeboard to the street gutter area.
19. The plans shall be revised to show an area designated for a future curb, gutter, and sidewalk, with the face of the gutter set uniformly at 5' from the property line and a 5' wide sidewalk between the property line and the curb. The sidewalk shall be improved at a future date as executed by a deferred improvement agreement.
20. Protective measures shall be taken for all oak trees located on the property, in compliance with the Arborist Report prepared August 3, 2007, and shall include:
 - a. All pier holes within 25 feet of oak trees shall be hand dug.
 - b. If roots greater than 2 inches in diameter are found, the placement of the pier holes shall be altered after consulting with a Certified Arborist.
 - c. Roots less than 2 inches in diameter shall be cut cleanly and allowed to dry out.
 - d. Any tree-trimming or tree alteration shall require approval of a tree alteration permit, in accordance with the Tree and View Preservation Ordinance (SMC § 11.12.030), and shall be conducted by a Certified Arborist.
 - e. If any damage to a protected tree should occur during or as a result of work on the site, the contractor, builder or owner shall promptly notify the City of such damage. If such a protected tree can not be preserved in a healthy state, the applicant shall replace the tree with another tree or trees on the same site deemed adequate to compensate for the loss of the tree that is removed.

Prior to issuance of a building permit:

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21. The applicant shall comply with all recommendations detailed in the Geotechnical Report dated January 24, 2007, as directed by the City Engineer.
22. The applicant shall obtain a grading permit from the City of Sausalito, pay all fees and provide submit monetary assurance in a form acceptable to the City to assure performance of grading work. The amount of the assurance shall be based upon an estimate of construction as reviewed and approved by the City Engineer. No ground disturbances shall occur between October 15 and April 15 unless specific written approval by the Community Development Department staff. Grading permits shall not be issued until underground utility plans have been prepared and approved by the respective utilities.
23. A construction traffic control, parking, and staging plan and construction schedule shall be submitted for review and approval by the City Engineer or designee. The traffic control plan shall address controlling traffic on Sausalito Boulevard during construction. The transportation of workers to and from the site shall be discussed in the report. Construction workers shall be prohibited from using on-street parking in the vicinity of the project. The staging plan shall show where dumpsters, equipment, and construction material are to be stored during construction and any areas within the street right-of-way to be used for off-loading material and equipment. An encroachment permit is required for any such storage in the City right-of-way.
24. One-hour fire-resistive construction shall be used for all floor materials between the garage and the first floor, and all materials located in the public right-of-way per California Building Code requirements.
25. One fire department approved fire hydrant shall be provided to be spaced at a 350 feet interval and capable of providing a flow at the site of 1,000 gallons per minute. Hydrant placement (including water main extensions) shall be reviewed and approved by the Southern Marin Fire Protection District and the Marin Municipal Water District.
26. Fire sprinklers shall be required in all new construction.
27. The proposed residence shall be serviced by underground utility service connections. The applicant shall provide a schematic plan showing the proposed utility undergrounding, including location of existing poles location of electrical supply lines and locations of electrical panels.
28. Prior to issuance of any building or grading permit, applicant's general contractor shall provide the City with evidence of a standard comprehensive general liability insurance policy containing coverage for bodily injury, property damage, and completed operations and including liability resulting from earth movement. The policy shall provide limits of coverage not less than \$1,000,000 and the policy shall continue in force until a date five (5) years following completion of construction.

Prior to issuance of Certificate of Occupancy:

29. The applicant shall execute a deferred improvement agreement agreeing to fund the installation of a 5' sidewalk at a future undetermined date. At such time the sidewalk is constructed, the curb and gutter shall also be reconstructed to be realigned at a uniform distance of 5' from the

property line.

30. The site address shall be posted in a visible location and in accordance with the requirements of the Uniform Fire Code.
31. Smoke detectors shall be installed in accordance with the requirements of the Uniform Fire Code.
32. Non-combustible roofing shall be required for all new construction.
33. The applicant shall provide for compliance with Public Resource Code 4291 relating to brush and weed clearance.
34. A spark arrestor shall be installed on the chimney.
35. The applicant shall submit a sewer lateral video inspection subject to the review and approval of the Engineering Division of the Community Development Department. Repairs or replacement shall be made during the project construction phase as necessary.
36. The Encroachment Agreement shall be executed with the Community Development Department for all improvements located in the public right-of-way.
37. All landscape and irrigation plans must be designed in accordance with the Marin Municipal Water District Landscape Ordinance #385. Prior to providing water service for new landscape areas, or improved or modified landscape areas, the District must review and approve the project's working drawings for planting and irrigation systems.
38. Backflow protection shall be installed as a condition of water service and shall be compliant with the Marin Municipal Water District's backflow protection requirements.

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

EXHIBIT A

CITY OF SAUSALITO ENCROACHMENT AGREEMENT

This **ENCROACHMENT AGREEMENT** (“Agreement”) is entered into this 13th day of November, 2007 (the “Effective Date”) by and between Charles Slaughter (“Owner”) and the **CITY OF SAUSALITO**, a municipal corporation (“City”).

RECITALS

The following Recitals are a substantive part of this Agreement:

A. Application No. DR/EA 07-014 was submitted by applicant and Owner, Charles Slaughter, for approval of a Design Review Permit and Encroachment Agreement to construct a new single-family residence at 694 Sausalito Boulevard (APN 065-132-35).

B. Application No. DR/EA 07-014 includes improvements located in the public right-of-way adjacent to the property consisting of two off-street parking spaces, new stair landing and access stairway, existing stairway entry, and a corner of a garage awning as illustrated in the attached Exhibit B.

C. The Planning Commission of the City of Sausalito did duly pass and adopt Resolution No. 2007-27 and did thereby approve the Design Review Permit and recommended approval to the City Council of an Encroachment Agreement.

D. The City Council adopted Resolution No. XXX on November 13, 2007 approving the Encroachment Agreement subject to specific conditions contained in Section 1 of said Resolution.

E. The City has the authority to regulate the use of the public right-of-way and is willing to allow Owner the encroachments as set forth on and in accordance with the Plans in accordance with Titles 10 and 17 of the Sausalito Municipal Code under certain terms and conditions as set forth below.

NOW, THEREFORE, Owner and City hereby agree as follows:

1. Description of Encroachments. The encroachments covered by this Agreement are two off-street parking spaces, a new stair landing and access stairway, stairway entry, and corner of a garage as depicted on and subject to the plans titled “The West-Slaughter Residence” and dated August 27, 2007, a copy of which is attached hereto as Exhibit B and incorporated herein by this reference.

2. Term. The term of this Agreement is one (1) year after which it shall be automatically renewed on an annual basis unless City issues a notice of non-renewal.

3. Condition of Encroachments and Right of Way. Owner shall maintain all Encroachments and the City owned property affected thereby in good and safe condition and free from any nuisance to the satisfaction of the City Engineer.

4. Removal or Relocation. Owner acknowledges and agrees that it shall remove or relocate the Encroachment(s) at its sole cost and expense if the Encroachment(s) interferes with any lawful

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governmental or proprietary purpose of the City of Sausalito; is detrimental to governmental activities; and/or the right of way or street is being vacated. If the Owner fails to remove the Encroachment(s) within the time specified by the City Engineer, City may cause the work to be done at the Owners' expense.

5. Taxes. Owners shall be responsible for payment of all fees and taxes charged in connection with the right, title and interest in the Encroachments.

6. Indemnification. Owners hereby agree to indemnify, defend (with counsel reasonably acceptable to City and hold harmless City and its elected and appointed officials, officers, employees, consultants, agents, volunteers and successors in interest from any and all claims, demands, causes of action, damages, liabilities and obligations arising from or in any way related to this Agreement and/or Owner's use of the right of way.

7. Termination. This Agreement may be terminated by either party with or without cause upon thirty (30) days written notice. Upon such termination, the Encroachment(s) must be removed as specified by and within the time required by the City Engineer. In addition, the City owned right of way must be restored to the condition required by the City Engineer. In the event that Owner fails to remove the Encroachment(s) and/or restore the right of way as required by the City Engineer within the specified time, City shall have the right to perform the work and charge Owners.

8. No Grant. This Agreement is not a grant by City of any property interest but is made subject and subordinate to the prior and continuing right of City and its assigns to lawfully use any or all of the right of way for public facilities, including but not limited to, public use as a street and for the purpose of laying, installing, maintaining, repairing, protecting, replacing and removing sanitary sewers, water mains, storm drains, gas mains, poles, overhead and underground electric and telephone wires, television and other utility and municipal uses together with appurtenances thereof and with right of ingress and egress along, over, across and in the right of way. No use of any right of way or other interest under this Agreement shall create or vest in Owners any ownership interest in the right of way; nor shall anything in this Agreement be deemed or construed to grant or create any franchise rights.

9. Condemnation. If the right of way is taken totally by condemnation, this Agreement shall terminate on the date of the taking with no compensation to Owner therefore. If a portion of the right of way is taken by condemnation, then this Agreement shall remain in effect as to the part not taken.

10. Standard Conditions. Owner shall comply with any and all Standard Conditions for Encroachment Permits required by the City Engineer.

11. Compliance with Laws. Owners shall comply with all applicable laws, any permit issued by the City pursuant to this Agreement and any general or specific conditions required by the City Engineer.

12. Notices. All notices required or permitted to be given under the terms of this Agreement shall be in writing and shall be deemed to be given as of the time of hand delivery to the addresses set forth below, or three (3) days after deposit in the United States mail, postage prepaid, by register or certified mail, return receipt requested, addressed as follows:

Owners: Charles Slaughter
694 Sausalito Blvd.

City of Sausalito
Sausalito, CA 94965

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Sausalito, CA. 94965

Attention: City Engineer

13. Assignment. This Agreement is not assignable unless City consents in writing, which consent shall be withheld unreasonably. Such consent to assignment shall bind and insure to the benefit of the respective successors and assigns of the parties. This requirement for consent shall not apply to: (a) any disposition of all or a portion of the Property; or (b) any collateral assignment, security interest or pledge of this Agreement by Owner(s) to any lender.

14. Waivers. The failure of any party at any time or times to require performance of any provision hereof shall in no manner affect the right at a later time to enforce the same. No waiver by any party of any condition, or of any breach of any term, covenant, representation, or warranty contained herein, in any one or more instances, shall be deemed to be construed as a further or continuing waiver of any such condition or breach or waiver of any other condition or of any breach of any other term, covenant, representation or warranty.

15. Severability. If one or more of the provisions of this Agreement shall be held by a court of competent jurisdiction in a final judicial action to be void, voidable or unenforceable, such provision shall be deemed severable from the remaining provisions of this Agreement and shall not affect the legality, validity or constitutionality of the remaining portions of the Agreement.

16. Entire Agreement. This Agreement contains the entire agreement of the parties with respect to the matters addressed herein.

17. Modification. This Agreement may not be amended unless made in writing and signed by each party.

18. California Law. The interpretation and enforcement of this Agreement shall be governed by the laws of the State of California. In the event that suit shall be brought by either party to this Agreement, the parties agree that venue shall be exclusively vested in the State courts of the County of Marin or where appropriate, in the United States District Court, Northern District of California.

19. Attorneys' Fees. Should any legal proceeding be commenced between the parties to this Agreement seeking to enforce any of its provisions the prevailing party in such a proceeding shall be entitled, in addition to such other relief as may be granted, to a reasonable sum for attorneys' fees which shall be determined by the court or forum in such a proceeding or in a separate action brought for that purpose. For purposes of this provision, "prevailing party" shall include a party which dismisses an action for recovery hereunder in exchange for payment of the sum allegedly due, performance of covenants allegedly breached, or consideration substantially equal to the relief sought in the action or proceeding.

20. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement.

21. Authority. The parties represent that the individuals signing this Agreement have the authority to do so.

22. No Personal Liability. No member, official or employee of City shall be personally liable to Owners or any successor in interest in the event of any default or breach by City or on any obligation

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under the terms of this Agreement.

IN WITNESS WHEREOF, the parties have hereto set their signatures as of the date first above named herein.

OWNER:

CITY:

By: _____
Charles Slaughter

By: _____
D. Michael Kelly, Mayor

RECOMMENDED FOR APPROVAL:

APPROVED AS TO FORM:

Todd Teachout, City Engineer

Mary Wagner, City Attorney

ATTEST:

City Clerk

EXHIBIT B
PLANS AND ELEVATIONS