

## RESOLUTION NO. 2022-18

### RESOLUTION OF THE SAUSALITO PLANNING COMMISSION APPROVING AN ENCROACHMENT AGREEMENT FOR THE PLACEMENT OF DECORATIVE PLANTERS IN THE PUBLIC RIGHT OF WAY (EA 2022-00118)

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**WHEREAS**, on June 30, 2022 an application was filed by the applicant, Barry Peterson of Studio 300A Architecture on behalf of property owner Dr. Alexander Kashef, requesting Planning Commission approval of an Encroachment Agreement freestanding planter boxes in the City's right-of-way along Main Street near Second Street and the Bridgeway Boardwalk (APN 065-242-06 and -17); and

**WHEREAS**, the project is consistent with the purpose and intent of the Neighborhood Commercial District as described in the staff report and the findings contained herein; and

**WHEREAS**, the Planning Commission conducted duly noticed public hearing on July 22, 2022, at which time all interested persons were given an opportunity to be heard and the Planning Commission considered the information contained in the application materials, the staff report, and found that the required findings listed in Sausalito Municipal Code could be made; and

**WHEREAS**, the Planning Commission finds that the project is categorically exempt from California Environmental Quality Act (CEQA) pursuant to Section 15304 of the CEQA Guidelines; and

**WHEREAS**, the Planning Commission finds that, as conditions herein, the project is consistent with the General Plan and complies with the requirements of the Zoning Ordinance.

#### **NOW, THEREFORE, THE PLANNING COMMISSION HEREBY RESOLVES:**

**Section 1.** An Encroachment Agreement to allow three (3) 3X3X3 planters in the Main Street right of way, is approved based upon the attached findings in Exhibit 1 subject to the attached conditions of approval in Exhibit 2, and as shown in Exhibit 3, project plans" date-stamped received on June 17, 2022.

**RESOLUTION PASSED AND ADOPTED**, at the regular meeting of the Sausalito Planning Commission on the 20<sup>th</sup> day of July, 2022, by the following vote:

AYES: Commissioner: Saad, Graef, Junius, Chair Feller  
NOES: Commissioner: Luxenberg  
ABSENT: Commissioner:  
ABSTAIN: Commissioner:



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Daniel Hortert, AICP  
Secretary to the Planning Commission

**EXHIBITS**

1. Findings
2. Conditions of Approval
3. Approved Project Plans and Elevations

**SAUSALITO PLANNING COMMISSION NO. 2022-18**

**July 20, 2022  
201 BRIDGEWAY  
EA 2022-00118**

**EXHIBIT 1: FINDINGS**

**ENCROACHMENT AGREEMENT**

Pursuant to Sausalito Municipal Code section 10.56.010 (Encroachment Review and Agreements), the purpose of the Encroachment Agreement is to provide “an opportunity to review permanent and/or semi-permanent encroachments onto public lands, easements, and rights-of-way of the City.” The encroachments of the project are as follows:

- **Main Street:** Locate three (3) 3X3X3 planter boxes with lavender plantings surrounding at grade in the Main Street Right of Way

In order to recommend City Council approval of the Encroachment Agreement, the Planning Commission must determine that the project is in conformance with the Encroachment Agreement Findings listed in Sausalito Municipal Code section 10.56.060. In reviewing the project, the Planning Commission must determine whether the following Findings can be achieved:

- A. *The proposed encroachment is compatible with the surrounding area and will either improve or not significantly diminish visual or physical public enjoyment of the streetscape upon which the encroachment is proposed.*

The encroachment along the Main Street right-of-way has a positive impact on aesthetics. The project includes enhancements in the form of planters that increase the physical public enjoyment of the site including improved Main Street, new landscaping along the Main Street sidewalk.

- B. *The encroachment will not adversely affect the usability or enjoyment of adjoining parcels nor create or extend an undesirable land use precedent.*

The encroachment is minor and does not impede the use or pedestrian access along Main Street or to adjacent parcels along the north side of the subject property. There are no adjacent parcels to the south along Main Street and west of Second Street that are impeded. Further, the San Francisco Bay is situated to the east of the project site.

- C. *The encroachment is necessary to the reasonable use and enjoyment of the property and the extent of the encroachment is justifiable.*

The encroachments ensure that the aesthetically improved right of way by the inclusion of the proposed planters maintains the character of the area and allows an enhanced and continued use of the existing Main Street and Bridgeway Boardwalks.

- D. *The proposed encroachment will not adversely affect the public circulation nor create or constitute a hazard to public safety.*

The encroachments do not adversely affect access and circulation on Main Street, the Main Street Boardwalk, or the Bridgeway Boardwalk. The physical improvements to public facilities included

with the project will enhance surrounding character of the overall Valhalla project.

- E. *The value of the proposed improvements will not prejudice a policy decision to terminate the encroachment nor preclude or make difficult the establishment or improvement of streets or pedestrian ways.*

The value of the project improvements in the public rights-of-way do not preclude or make difficult the establishment or improvement of streets or pedestrian ways in the future.

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**EXHIBIT 2: CONDITIONS OF APPROVAL**

These conditions apply to the project plans prepared by Michael Rex Architects, date-stamped May 25, 2022.

**COMMUNITY DEVELOPMENT DEPARTMENT - PLANNING DIVISION CONDITIONS OF APPROVAL:**

1. It shall be the applicant's/property owner's responsibility to diligently proceed to carry out the conditions of approval and implement any approved permit/entitlement. This shall include establishing the approved use within the time limits set forth by the applicable chapter (reference Sausalito Municipal Code (SMC) Section 10.50.120).
2. The Encroachment Agreement shall expire two years following the effective date of the agreement if the project entitlement has not been implemented, provided no extension has been filed prior to the expiration date. The project entitlement pursuant to the Encroachment Agreement is determined implemented if the applicable conditions of approval prerequisite to construction have been satisfied and any required construction permits have been issued. (SMC Section 10.56.130).
3. As part of the Building Permit application, all final Conditions of Approval shall be restated on the construction drawings and applicant shall thoroughly and accurately document in writing compliance with each Condition of Approval at the time of Building Permit application and any other subsequent submittals.
4. Except as otherwise noted in these conditions of approval, the plans submitted to the Building Division for plan check shall be identical to those approved by the Planning Commission, with plan date of June 17, 2022. If any changes are made to the approved plans the applicant is responsible for clearly identifying all such changes and reviewing them with the Planning Department prior to submitting for a Building Permit or a revision to the Building Permit. All changes made to the Design Review Plans approved by the Planning Commission (or any subsequent grant of approval for minor modifications to the project pursuant to SMC Section 10.50.180 granted by the Community Development Director) and the Building Permit construction document submittal must be clearly highlighted with a "bubble" or "cloud" on plans and marked with a "Delta" at the time of initial Building Permit submittal. A list describing in detail all such changes shall be submitted and attached to the plans. Any changes that have not been clouded on the plans and noted in a transmittal memo and explicitly approved by the Director through the required approval process in the Sausalito Municipal Code are not approved. Construction, demolition or grading that does not conform to the City Council/ Director approval is not valid and shall be subject to stop work orders and may require removal.

5. The applicant/property owner shall maintain all planters placed in the public right of way per Department of Public Works conditions and any conditions applied to the Encroachment Agreement by the Planning Commission and/or City Council.
6. Any changes to the approved project shall be heard by the granting authority.
7. The Applicant/Property Owners shall defend, indemnify (including reimbursement of all fees and costs reasonably incurred by separate counsel retained by the City) and hold harmless the City and its elected and appointed officials, officers, agents and employees, from and against any and all liability, loss, damage, or expense, including without limitation reasonable attorney's fees which City may suffer or incur as a result of any claims relating to or arising from the City's approval of the project or any portion of the project.
8. 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.
9. All vegetation shall be pruned back from the pedestrian circulation in the right-of-way.
10. Once an Encroachment Agreement is approved and prior to installation and use of the permanent or semi-permanent planters in the right of way, the applicant shall comply with the following:
  - a. Safe Passage. The sidewalk shall have adequate space to accommodate adequate safe passage along the sidewalk for pedestrian and wheelchair users of the sidewalk. Safe and adequate passage of 60 inches in width shall be provided both along the sidewalk and from the curb to the sidewalk (to provide for two pedestrians walking side by side or by a single wheelchair).
  - b. Location. The planters shall only be located as depicted on the approved site plan dated June 17, 2022.
  - c. Hold Harmless. The applicant shall enter into an encroachment permit agreement prepared by and satisfactory to the City Attorney. The applicant shall agree to conform to these conditions and all applicable City ordinances. The applicant shall also agree to indemnify the City and hold the City harmless from and against all liability arising out of the applicant's activities under the permit.
  - d. Preeminence. The applicant shall acknowledge that its use of the sidewalk under the permit is subordinate to the public's right to use the sidewalk for passage and travel. The permit shall be revocable from time to time by order of the City to allow for a public event or other public use of the sidewalk subject to the permit or if the use of the sidewalk for planter purposes conflicts with any public use of the sidewalk. The applicant shall also

acknowledge that the use of the sidewalk is subject to temporary suspension any time the City or any utility company or easement holder requires access to the sidewalk or any utility under the sidewalk or requires use of the sidewalk in conjunction with any construction project.

## **DEPARTMENT OF PUBLIC WORKS CONDITIONS OF APPROVAL:**

### **General Items**

1. Property owner shall maintain all landscaping and planter boxes in good condition and shall replace or repair said infrastructure upon request by the City.
2. Planting shall comply with the City's acceptable planting list including trees. (No fruit producing Olive trees are allowed.)
3. Watering of the plants identified in the Encroachment Agreement shall not overflow onto the sidewalk. Any such overflow shall be the responsibility of the property owner to clean and maintain. Specifically, no slippery surface shall be developed as a result of watering these plants.
4. A minimum of a 5-foot sidewalk path of travel shall be maintained at all times.
5. The applicant shall obtain a standard encroachment permit if maintenance of the planter areas requires the closure of the sidewalk area or encroachment into the sidewalk that would limit access for the public.
6. Planting shall not block sight distance for vehicles.
7. If improvements are intended to encroach into the City right of way, an encroachment permit and encroachment agreement are required. The maintenance of proposed olive trees, lavender plants and wood planters shall be maintained by applicant. Any damage to City property due to said mentioned trees, planters and plants are the sole responsibility of the property owner. This responsibility shall include potential trip and fall cases stemming from any the above, as these are not City trees or property.
8. Ensure the elevation of lavender ground/soil plantings surrounding and under the wood planters are level with the existing, adjacent sidewalk to prevent trip and fall accidents.

### **Advisory Notes:**

Advisory notes are provided to inform the applicant of Sausalito Municipal Code (SMC) requirements, and requirements imposed by other agencies. These requirements include, but are not limited to, the items listed below.

1. All applicable City Fees as established by City Council resolutions and ordinances shall be paid prior to or concurrent with building permit application.
2. Encroachment permit, grading permit, third party review fees (cost plus 10%) fees shall be paid.
3. An encroachment permit shall be obtained from the Department Public Works prior to using the public right of way for non-public purposes (e.g., material storage, construction, staging or demolition) including any and all construction and demolition activities.

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EXHIBIT 3: PROJECT PLANS

