

Introduced by

Nancy Nadel

Councilmember – District 3

Approved for Form and Legality


City Attorney

OAKLAND CITY COUNCIL

Resolution No. 83118 C.M.S.

**RESOLUTION REVOKING A CONDITIONAL AND REVOCABLE PERMIT
GRANTED TO ROCK PAPER SCISSORS COLLECTIVE AND GRANTING
A CONDITIONAL AND REVOCABLE PERMIT TO OAKLAND ART MURMUR
TO ALLOW THE FIRST FRIDAY COMMUNITY CULTURAL EVENT TO
ENCROACH INTO 23rd STREET BETWEEN VALLEY STREET AND TELEGRAPH
AVENUE ON THE FIRST FRIDAY OF EACH MONTH BETWEEN THE HOURS
OF 5:00 P.M. AND 10:00 P.M**

WHEREAS, the merchants in the Uptown and Northgate areas desire to stimulate the economic viability of, encourage the public's attendance in, and advance pedestrian access in the surrounding business districts; and

WHEREAS, said merchants have determined that the continued operation of an outdoor community fair for the sale of art by local artisans in these business districts would continue to serve the public best by operating during a portion of the evening on the first Friday of each month; and

WHEREAS, the City of Oakland generally desires to support the vitality of commerce throughout the City and to sustain the communication between business and the public through pedestrian-oriented endeavors wherever practical; and

WHEREAS, Oakland Municipal Code section 12.08.030 authorizes the issuance of encroachment permits for events that take place on streets and sidewalks and are open to the public and sponsored by merchant associations representing the majority of merchants in the area; and

WHEREAS, Oakland Municipal Code section 12.08.070 requires approval by the Council of the City of Oakland of a short-term encroachment that exceeds three (3) days duration; and

WHEREAS, pursuant to Resolution No. 80743 C.M.S., the Council of the City of Oakland granted the non-profit organization Rock Paper Scissors Collective a conditional and revocable permit in 2007 to allow the First Friday Community Cultural Event to encroach into the public right-of-way along 23rd Street between its intersections with Valley Street and Telegraph Avenue on the first Friday of each month between the hours of 5:00 P.M. and 10:00 P.M.; and

WHEREAS, said First Friday Community Cultural Event has operated successfully during this time and has no practical alternative site to operate on privately owned property that will satisfy

the companion requirements of maintaining public parking, permitting pedestrian circulation, and providing adequate square footage for an open-air art gallery; and

WHEREAS, the intermittent use of said section of 23rd Street for said First Friday Community Cultural Event has not unsafely impeded vehicular and pedestrian circulation and emergency access within the surrounding area during this time; and

WHEREAS, the Rock Paper Scissor Collective has recently expressed its desire to withdraw voluntarily from operating said First Friday Community Cultural Event; and

WHEREAS, the non-profit organization Oakland Art Murmur as recently expressed its desire to become the new operator of said First Friday Community Cultural Event; and

WHEREAS, pursuant to Condition No. 1 of said Resolution, the Council of the City of Oakland may revoke the permit for said encroachment in 23rd Street at its sole discretion; and

WHEREAS, the requirements of the California Environmental Quality Act (CEQA), the CEQA Guidelines as prescribed by the Secretary of Resources, and the provisions of the Statement of Objectives, Criteria and Procedures for Implementation of the California Environmental Quality Act: City of Oakland, have been satisfied, and that in accordance with CEQA Guidelines Section 15301 (existing facilities) the intermittent use of a section of the public right-of-way for public commercial activities is categorically exempted; now, therefore, be it

RESOLVED: That the City Council's action revoking said existing encroachment and approving said new encroachment, as conditioned herein, complies with the California Environmental Quality Act; and be it

FURTHER RESOLVED: That said conditional permit previously granted to the Rock Paper Scissors Collective is hereby revoked; and be it

FURTHER RESOLVED: That Oakland Art Murmur is hereby granted a conditional and revocable permit for an encroachment into the public right-of-way along 23rd Street between its intersections with Valley Street and Telegraph Avenue, as delineated in the attached *Exhibit A*, for the outdoor community fair First Friday Community Cultural Event on the first Friday of each month to commence not sooner than 5:00 p.m. and conclude not later than 10:00 p.m. local time; and be it

FURTHER RESOLVED: That the following special conditions shall also govern the issuance of the encroachment permit and control the continuing operation of the First Friday Community Cultural Event:

1. the permit for an encroachment in the public right-of-way shall be revocable at any time and at the sole discretion of the Council of the City of Oakland, as expressed by its resolution, and may be suspended for an indeterminate period of time for cause by the City Engineer; and that

2. the Oakland Art Murmur and its selected vendors and their successors and assigns shall disclaim any right, title, or interest in or to any portion of the public park underlying the encroachment or the air space above the public right-of-way and agrees that the temporary and recurring use of the public right-of-way does not constitute abandonment by the City of any of its rights for public right-of-way purposes and otherwise; and that
3. the Oakland Art Murmur shall maintain fully in force and effect at all times this conditional and revocable permit for an encroachment remains un-revoked good and sufficient General Liability insurance in the amount not less than \$1,000,000 for each occurrence/ \$2,000,000 annual aggregate, with a property damage sub-limit in the amount not less than \$250,000 for each occurrence both including contractual liability, and naming as additional insured the City of Oakland and its elected officials, officers, employees, representatives, agents, assigns, and volunteers against any and all claims arising out of the existence of the encroachment in the public right-of-way; and that
4. the Oakland Art Murmur shall file a certificate of insurance and subsequent notices of renewal thereof with the City Engineer of the City of Oakland and that the certificate shall reflect on its face that the insurance coverage shall not be canceled or be permitted to lapse without thirty (30) days written notice of the City Engineer; and that
5. the City of Oakland may review the type and amount of insurance required and may require that the Oakland Art Murmur increase the amount of and-or change the type of insurance coverage required; and that
6. the Oakland Art Murmur shall agree and promise to defend and hold harmless and indemnify the City of Oakland and its elected officials, officers, employees, representatives, agents, assigns, and volunteers from any and every claim, demand, lawsuit and judgment for damages of any kind and nature whatsoever arising out of or caused by the existence, installation, or maintenance of the encroachment in the public park or adjoining public right-of-way, regardless of actual or alleged responsibility for negligence and that the Oakland Art Murmur's liability insurance shall cover this contractual liability; and that
7. the Oakland Art Murmur shall be fully responsible for any protective devices, repairs, or replacement of any public infrastructure improvements and fully liable for the direct and indirect costs the City may incur to cure the failure of or damage to public infrastructure improvements resulting directly or indirectly from the operation of the First Friday Community Cultural Event, to the extent that the failure or damage becomes or creates a nuisance or a hazard to the safety of the public; and that
8. the Oakland Art Murmur and its selected vendors shall make no changes to the use of the public right-of-way or its infrastructure improvements, including, but not limited to, pavement and landscaping, electrical systems and lighting, structures and buildings, refuse containers, utility lines, irrigation and storm drainage systems, fire hydrants, dimensions, signage and striping, and traffic control devices without the written consent of the City Engineer and shall agree that the City may impose fees and considerations for processing

permits required for any proposed changes and shall further agree that the City is not obligated to grant any changes that maybe proposed; and that

9. the Oakland Art Murmur and its selected vendors shall in all cases begin the installation of its encroachment in the public right-of-way not sooner than and shall complete the removal of its encroachment from and the clean-up of the public right-of-way not later than the time interval set forth above for operation of the First Friday Community Cultural Event; and that
10. the Oakland Art Murmur and its selected vendors shall provide and continuously maintain methods and mechanisms approved by the City Engineer that assure the interception, removal, and proper disposal of all trash, debris, food-products and containers, markings, graffiti, fats/ oils/ grease (FOG), petroleum-based motor fuel, oils, and grease, and other materials deleterious to public health and safety and to the primary use of the public right-of-way and its appurtenances and the environment; and that
11. the Oakland Art Murmur shall provide and continuously maintain methods and mechanisms approved by the City Engineer for handicapped accessibility as required by the most current edition of the California Building Code and City ordinance; and that
12. upon determination by the Chief of Police, Fire Marshal, or City Engineer, or their designees, of an exigent circumstance, the Oakland Art Murmur and its selected vendors shall postpone or immediately terminate its activities for the day and expeditiously remove its encroachment from the public right-of-way and complete its clean-up of the premises; and that
13. upon determination by the Chief of Police, Fire Marshal, or City Engineer, or their designees, of a violation of the terms and conditions of this encroachment permit, the Oakland Art Murmur shall immediately abate the violation or terminate its activities for the day and expeditiously remove its encroachment from the public right-of-way and complete its clean-up of the premises; and that
14. the Oakland Art Murmur shall file with the City Engineer for recordation with the County of Alameda a disclaimer and agreement that it accepts and shall comply with and shall be bound by each and all of the terms, conditions, and provisions of this resolution and that this disclaimer and agreement shall be subject to the approval of the City Attorney; and that
15. the location and limits of the encroachment in the public street and sidewalk and other areas of the public right-of-way are subject to the review and approval of and subsequent adjustment by the Chief of Police, Fire Marshal, or the City Engineer individually or together; and that
16. the Oakland Art Murmur and its selected vendors shall obtain and maintain current all other permits and fully conform with all conditions required for operation of the First Friday Community Cultural Event, including, but not limited to the City of Oakland Finance and Management Agency, the City of Oakland Fire Prevention Bureau, the City of Oakland Public Works Agency, the Alameda County Department of Environmental Health, the California Department of Food and Agriculture, the California Franchise Tax Board, the

California Department of Consumer Affairs, and the California Department of Occupational Health and Safety prior to commencing the installation of the encroachment; and that

17. the Oakland Art Murmur and its selected vendors acknowledge that the City of Oakland makes no representations or warranties as to the conditions beneath the area of encroachment; and that
18. the Oakland Art Murmur and its selected vendors shall use the public right-of-way at its own risk; and that
19. the Oakland Art Murmur shall be solely responsible for the proper coordination with all businesses and private vendors participating in the First Friday Community Cultural Event and for the proper coordination with all city forces, public utilities, contractors, and workmen operating in the public right-of-way during the duration of the encroachment and for the safety of itself and any of its personnel; and that
20. as a condition of the issuance and continued validity of this conditional and revocable permit, the type, variety, content, volume, display, and exchanges of products, goods, wares, and services and the accounting for associated monetary transactions by the Oakland Art Murmur and its selected vendors shall be subject to review, audit, and approval by the Chief of Police, the Comptroller, the Fire Marshall, the City Engineer, the Alameda County Department of Environmental Health, the California Department of Food and Agriculture, the California Franchise Tax Board, the California Department of Consumer Affairs, and the California Department of Occupational Health and Safety; and that
21. as a condition of the issuance and continued validity of this revocable permit, the Oakland Art Murmur shall pay all fee as determined by the Chief of Police, the Fire Marshall, the Public Works Agency, and the City Engineer and required by the Oakland Municipal Code and the Master Fee Schedule; and that
22. the Oakland Art Murmur and its selected vendors shall continually maintain the general area within and surrounding the encroachment and the adjoining private property free of litter, trash, debris, accumulations and deposits of food-based products, substances, and fats/oils/grease (FOG), and petroleum-based motor fuel, oils, and grease associated with and attributable to the activities of the First Friday Community Cultural Event; and that
23. the Chief of Police, the Fire Marshal, and the City Engineer are authorized to issue companion permits for the operation of the First Friday Community Cultural Event and to condition said permits with requirements that clarify and refine the conditions as set forth herein; and that
24. the Oakland Art Murmur and its selected vendors shall be responsible for coordination and cooperation with all businesses and vendors not otherwise participating in the First Friday Community Cultural Event who have received valid permission from the City of Oakland to operate within the public right-of-way during the days and time intervals designated herein for operation of the First Friday Community Cultural Event; and be it

FURTHER RESOLVED: That this conditional and revocable permit for an encroachment shall become effective when all the conditions set forth herein have been completed to the satisfaction of the Chief of Police, the Fire Marshal, and the City Engineer; and be it

FURTHER RESOLVED: That this conditional and revocable permit for an encroachment shall become void upon failure of the Oakland Art Murrum and its selected vendors to comply fully with the general and special conditions of this revocable permit for an encroachment or to cure fully and in a timely manner any violation associated with the use of the public right-of-way and public health and safety; and be it

FURTHER RESOLVED: That the Council of the City of Oakland, at it sole discretion and at future date not yet determined, may impose additional and continuing fees as prescribed in the Master Fee Schedule, for use and occupancy of the public right-of-way; and be it

FURTHER RESOLVED: That the City Engineer is hereby authorized to file a certified copy of this resolution for recordation with the Clerk-Recorder of the County of Alameda.

IN COUNCIL, OAKLAND, CALIFORNIA, DEC 21 2010, 2010

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, and
PRESIDENT BRUNNER - 8

NOES - 0

ABSENT - 0

ABSTENTION - 0

ATTEST:

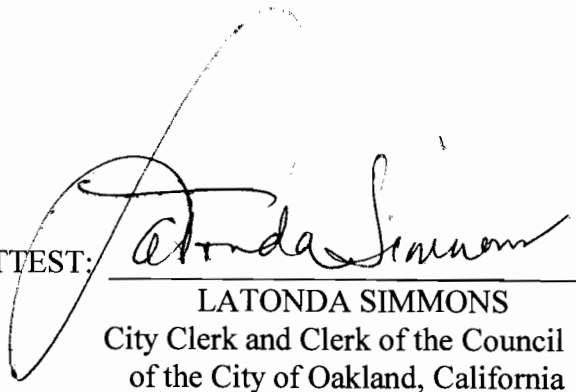

LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

EXHIBIT A

Limits of Encroachment of the First Friday Community Cultural Event

