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Office of the City Attorney

# OAKLAND CITY COUNCIL

86363

## RESOLUTION NO. \_\_\_\_\_ C.M.S.

INTRODUCED BY VICE MAYOR ANNIE CAMPBELL WASHINGTON

**RESOLUTION GRANTING A CONDITIONAL AND REVOCABLE ENCROACHMENT PERMIT TO DIMOND IMPROVEMENT ASSOCIATION TO ALLOW THE ART IN THE STREET EVENT ON CHAMPION STREET BETWEEN MACARTHUR BOULEVARD AND LINCOLN AVENUE ON THE SECOND SUNDAY OF EACH MONTH FROM APRIL 1ST UNTIL SEPTEMBER 30TH BETWEEN THE HOURS OF 12:00 P.M. AND 6:00 P.M.**

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

**WHEREAS**, Dimond Improvement Association, a local merchant association in the Dimond business district, has successfully operated four Art In The Street events over the course of the last year; and

**WHEREAS**, Dimond Improvement Association seeks to continue the Art In The Street event to build community involvement, awareness and cultural enhancement; and

**WHEREAS**, the merchants in the Dimond district desire to stimulate the economic viability of, encourage the public's attendance in, and advance pedestrian access throughout the Dimond business district; and

**WHEREAS**, said merchants have determined that the continued operation of an outdoor community fair for the sale of art by local artisans in this business district would continue to serve the public best by operating during a portion of day on the second Sunday of each month from April 1<sup>st</sup> until September 30<sup>th</sup>; and

**WHEREAS**, Dimond Improvement Association has determined that the general character and successful operation of the Art In The Street event and the universal expectation of the public necessitates reservation of a minimum amount of ground surface area for the exclusive display of goods and wares and the effective transactions of trade; and

**WHEREAS**, Dimond Improvement Association 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**, Dimond Improvement Association has therefore requested temporary use of a limited portion of the public right-of-way on Champion Street between MacArthur Boulevard and Lincoln Avenue; and

**WHEREAS**, Dimond Improvement Association has further requested intermittent closure of a one block segment of Champion Street between MacArthur Boulevard and Lincoln Avenue to support the proposed encroachment; and

**WHEREAS**, a majority of the tenants in the one block segment of Champion Street between MacArthur Boulevard and Lincoln Avenue support the proposed encroachment; 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**, the intermittent closure of the portion of Champion Street between MacArthur Boulevard and Lincoln Avenue would not unsafely impede pedestrian circulation on the street and emergency access within the surrounding area; and

**WHEREAS**, Oakland Municipal Code section 12.08.060 requires approval by resolution of the Council of the City of Oakland of a short-term encroachment permit that exceeds three days in duration; and

**WHEREAS**, intermittent closure of a segment of the public right-of-way is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines sections 15301 (existing facilities), 15183 (projects consistent with a community plan, general plan or zoning), and 15061(b)(3) (general rule); now, therefore, be it

**RESOLVED**: That the City Council's action approving said encroachment, as conditioned herein, complies with CEQA; and be it

**FURTHER RESOLVED**: That Dimond Improvement Association is hereby granted a conditional and revocable permit for an encroachment into the public right-of-way along Champion Street between its intersections with MacArthur Boulevard and Lincoln Avenue, as delineated in **Exhibit A**, attached hereto and incorporated herein, for the outdoor community fair known as the Art In The Street event on the second Sunday of each month from April 1<sup>st</sup> to September 30<sup>th</sup> to commence not sooner than 12:00 p.m. and conclude not later than 6:00 p.m.; and be it

**FURTHER RESOLVED:** That the following special conditions shall also govern issuance of the encroachment permit and control the continuing operation of the Art In The Street 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, expressed by its resolution, and may be suspended at any time, at the sole discretion of the City Engineer, upon failure of the Dimond Improvement Association to comply fully and continuously with each and all of the conditions set forth herein.
2. The Dimond Improvement Association and its selected vendors and their successors and assigns shall disclaim any right, title, or interest in or to any portion of the public right-of-way, including the sidewalk and street, and agrees that the encroachment is granted for an indeterminate period of time and that the use and occupancy by the Dimond Improvement Association and its selected vendors and their successors and assigns of the public right-of-way is temporary and does not constitute an abandonment, whether expressed or implied, by the City of Oakland of any of its rights associated with the statutory and customary purpose and use of and operations in the public right-of-way.
3. Unless a written waiver is obtained from the City's Risk Manager, the Dimond Improvement Association must provide the insurance listed in Schedule Q, Insurance Requirements. Schedule Q is attached and incorporated herein by reference.
4. The Dimond Improvement Association shall, and by the acceptance of this revocable permit agrees and promises to indemnify, defend, save and hold harmless the City of Oakland and its elected officials, officers, employees, representatives, agents, assigns, and volunteers, to the maximum extent permitted by law, from any and all suits, claims, demands, liabilities, damages, actions, causes of action, penalties, fines, liens, judgments, costs, or expenses whatsoever (including, without limitation, attorneys' fees and costs) (collectively referred to as "claims"), whether direct or indirect, known or unknown, foreseen or unforeseen, brought by any person for or on account of any bodily injuries, disease or illness or damage to persons and/or property arising out of or caused by the existence, installation, maintenance, use or occupancy of the encroachment in the public right-of-way, regardless of actual or alleged responsibility for negligence, and that the Dimond Improvement Association's liability insurance shall cover this contractual liability.

5. The Dimond Improvement Association shall be solely and fully liable and responsible for any protective devices, repairs, or replacement of any public infrastructure improvements constructed or installed in the public right-of-way, whether by cause, neglect, or negligence of the Dimond Improvement Association or others, and for the direct and indirect costs and expenses the City may incur to cure the failure of or damage to public infrastructure improvements resulting directly or indirectly from the operation of the Art In The Street events, to the extent that the failure or damage becomes or creates a nuisance or a hazard to the safety of the public, and shall not allow the encroachment to become a blight or a menace or a hazard to the health and safety of the general public.
6. The Dimond Improvement Association shall make no changes to the use of the public right-of-way or to 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 may be proposed.
7. The Dimond Improvement Association 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 Art In The Street events.
8. The Dimond Improvement Association and its selected vendors shall provide and continuously maintain, within the encroachment and the general area surrounding it, suitable methods and mechanisms approved by the City Engineer that assure the interception, removal, and proper disposal of all litter, trash, debris, accumulations and deposits of food-products, containers, and fats, grease/oils, markings, graffiti, petroleum-based motor fuels, oils, and grease associated with and attributable to the activities of the Art In The Streets events, 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.

9. The Dimond Improvement Association 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 local amendments.
10. Upon determination by the Chief of Police, Fire Marshal, or City Engineer, or their designees, of an exigent circumstance, the Dimond Improvement Association 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.
11. 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 Dimond Improvement Association 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.
12. The Dimond Improvement Association 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.
13. The location and limits of the encroachment, as delineated in Exhibit A, 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.
14. The Dimond Improvement Association shall obtain and maintain current all other permits and fully conform with all conditions required for operation of the Art In The Street events, including, but not limited to those required by the City of Oakland Finance and Management Agency, Oakland Fire Department, Public Works, Alameda County Department of Environmental Health, California Department of Food and Agriculture, California Franchise Tax Board, California Department of Consumer Affairs, and California Department of Occupational Health and Safety prior to commencing the installation of the encroachment.
15. The Dimond Improvement Association acknowledges that the City of Oakland makes no representations or warranties as to the conditions beneath the area of encroachment.

16. The Dimond Improvement Association shall use the public right-of-way at its own risk.
17. The Dimond Improvement Association shall be solely responsible for the proper coordination with all businesses, service providers, and private vendors participating in the Art In The Street events 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.
18. 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 Dimond Improvement Association shall be subject to review, audit, and approval by the Chief of Police, the Comptroller, the Fire Marshal, 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.
19. As a condition of the issuance and continued validity of this conditional and revocable permit, the Dimond Improvement Association shall pay all fees as determined by the Chief of Police, the Fire Marshal, the Public Works Agency, and the City Engineer and required by the Oakland Municipal Code and the Master Fee Schedule.
20. The Dimond Improvement Association shall continually maintain the general area within and surrounding the encroachment and the adjoining public right-of-way free of litter, trash, debris, accumulations and deposits of food-based products, substances, containers, and fats/oils/grease, and petroleum-based motor fuel, oils, and grease associated with and attributable to the activities of the Art In The Street events.
21. The Dimond Improvement Association shall provide, maintain, and remove supplemental portable toilet and hand washing facilities in the general area surrounding the encroachment for use by the public patrons and private vendors of the Art In The Streets events to the satisfaction of the Alameda County Department of Environmental Health and the City Engineer.

22. The Chief of Police, the Fire Marshal, and the City Engineer are authorized to issue companion permits for the operation of the Art In The Streets events and to condition said permits with requirements that further clarify and refine the conditions as set forth herein; and that

23. The Dimond Improvement Association shall be responsible for coordination and cooperation with all businesses and vendors not otherwise participating in the Art In The Street events 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 Art In The Street events; and be it

**FURTHER RESOLVED:** That this conditional and revocable encroachment permit 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 of the City of Oakland; and be it

**FURTHER RESOLVED:** That this conditional and revocable encroachment permit shall become void upon failure of the Dimond Improvement Association to comply fully with all conditions 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 its sole discretion and at a 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,

PASSED BY THE FOLLOWING VOTE: SEP 20 2015

AYES - BROOKS, CAMPBELL WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN, REID AND PRESIDENT GIBSON MCELHANEY - 7

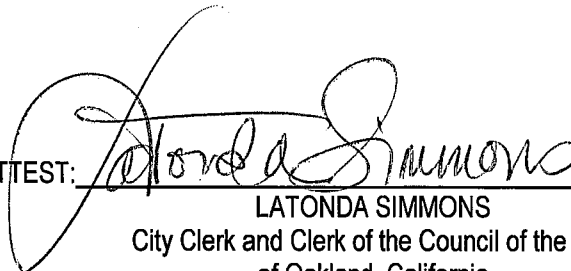
NOES - 0

ABSENT - 0

ABSTENTION - 0

Excused - Reid - 1

ATTEST:

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

## Schedule Q

### INSURANCE REQUIREMENTS

(Revised 07/08/15)

a. General Liability, Automobile, Workers' Compensation and Professional Liability

Contractor shall procure, prior to commencement of service, and keep in force for the term of this contract, at Contractor's own cost and expense, the following policies of insurance or certificates or binders as necessary to represent that coverage as specified below is in place with companies doing business in California and acceptable to the City. If requested, Contractor shall provide the City with copies of all insurance policies. The insurance shall at a minimum include:

- i. **Commercial General Liability insurance** shall cover bodily injury, property damage and personal injury liability for premises operations, independent contractors, products-completed operations personal & advertising injury and contractual liability. Coverage shall be at least as broad as Insurance Services Office Commercial General Liability coverage (occurrence Form CG 00 01)

Limits of liability: Contractor shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$2,000,000 each occurrence. If such CGL insurance contains a general aggregate limit, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

- ii. **Automobile Liability Insurance.** Contractor shall maintain automobile liability insurance for bodily injury and property damage liability with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos). Coverage shall be at least as broad as Insurance Services Office Form Number CA 0001.
- iii. **Worker's Compensation insurance** as required by the laws of the State of California, with statutory limits, and statutory coverage may include Employers' Liability coverage, with limits not less than \$1,000,000 each accident, \$1,000,000 policy limit bodily injury by disease, and \$1,000,000 each employee bodily injury by disease. The Contractor certifies that he/she is aware of the provisions of section 3700 of the California Labor Code, which requires every employer to provide Workers' Compensation coverage, or to undertake self-insurance in accordance with the provisions of that Code. The Contractor shall comply with the provisions of section 3700 of the California Labor Code before commencing performance of the work under this Agreement and thereafter as required by that code.



- iv. **Professional Liability/ Errors and Omissions insurance, if determined to be required by HRM/RBD**, appropriate to the contractor's profession with limits not less than \$1 million each claim and \$2 million aggregate. If the professional liability/errors and omissions insurance is written on a claims made form:
  - a. The retroactive date must be shown and must be before the date of the contract or the beginning of work.
  - b. Insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of the contract work.
  - c. If coverage is cancelled or non-renewed and not replaced with another claims made policy form with a retroactive date prior to the contract effective date, the contractor must purchase extended period coverage for a minimum of three (3) years after completion of work.

b. Terms Conditions and Endorsements

The aforementioned insurance shall be endorsed and have all the following conditions:

- i. Insured Status (Additional Insured): Contractor shall provide insured status naming the City of Oakland, its Councilmembers, directors, officers, agents, employees and volunteers as additional insured's under **the Commercial General Liability policy**. General Liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 (11/85) or both CG 20 10 and CG 20 37 forms, if later revisions used). If Contractor submits the ACORD Insurance Certificate, the insured status endorsement must be set forth on an ISO form CG 20 10 (or equivalent). A STATEMENT OF ADDITIONAL INSURED STATUS ON THE ACORD INSURANCE CERTIFICATE FORM IS INSUFFICIENT AND WILL BE REJECTED AS PROOF OF MEETING THIS REQUIREMENT; and
- ii. Coverage afforded on behalf of the City, Councilmembers, directors, officers, agents, employees and volunteers shall be primary insurance. Any other insurance available to the City Councilmembers, directors, officers, agents, employees and volunteers under any other policies shall be excess insurance (over the insurance required by this Agreement); and
- iii. Cancellation Notice: Each insurance policy required by this clause shall provide that coverage shall not be canceled, except with notice to the Entity; and
- iv. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the contractor, its employees, agents and subcontractors; and

- v. Certificate holder is to be the same person and address as indicated in the "Notices" section of this Agreement; and
- vi. Insurer shall carry insurance from admitted companies with an A.M. Best Rating of A VII, or better.

c. Replacement of Coverage

In the case of the breach of any of the insurance provisions of this Agreement, the City may, at the City's option, take out and maintain at the expense of Contractor, such insurance in the name of Contractor as is required pursuant to this Agreement, and may deduct the cost of taking out and maintaining such insurance from any sums which may be found or become due to Contractor under this Agreement.

d. Insurance Interpretation

All endorsements, certificates, forms, coverage and limits of liability referred to herein shall have the meaning given such terms by the Insurance Services Office as of the date of this Agreement.

e. Proof of Insurance

Contractor will be required to provide proof of all insurance required for the work prior to execution of the contract, including copies of Contractor's insurance policies if and when requested. Failure to provide the insurance proof requested or failure to do so in a timely manner shall constitute ground for rescission of the contract award.

f. Subcontractors

Should the Contractor subcontract out the work required under this agreement, they shall include all subcontractors as insured's under its policies or shall maintain separate certificates and endorsements for each subcontractor. As an alternative, the Contractor may require all subcontractors to provide at their own expense evidence of all the required coverages listed in this Schedule. If this option is exercised, both the City of Oakland and the Contractor shall be named as additional insured under the subcontractor's General Liability policy. All coverages for subcontractors shall be subject to all the requirements stated herein. The City reserves the right to perform an insurance audit during the course of the project to verify compliance with requirements.

g. Deductibles and Self-Insured Retentions

Any deductible or self-insured retention must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such

deductible or self-insured retentions as respects the City, its Councilmembers, directors, officers, agents, employees and volunteers; or the Contractor shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

h. Waiver of Subrogation

Contractor waives all rights against the City of Oakland and its Councilmembers, officers, directors, employees and volunteers for recovery of damages to the extent these damages are covered by the forms of insurance coverage required above.

i. Evaluation of Adequacy of Coverage

The City of Oakland maintains the right to modify, delete, alter or change these requirements, with reasonable notice, upon not less than ninety (90) days prior written notice.

J. Higher Limits of Insurance

If the contractor maintains higher limits than the minimums shown above, The City shall be entitled to coverage for the higher limits maintained by the contractor.

**EXHIBIT A**

**Street Encroachment Diagram for "Art In The Street" Event**

