

Introduced by

\_\_\_\_\_  
Councilmember

OFFICE OF THE CITY CLERK  
Approved for Form and Legality

2005 MAY 26 PM 12:35  
*Farina*  
\_\_\_\_\_  
City Attorney

## OAKLAND CITY COUNCIL

Resolution No. 79319 C.M.S.

**RESOLUTION GRANTING A CONDITIONAL AND REVOCABLE ENCROACHMENT PERMIT TO THE UNITY COUNCIL FOR A FRUITVALE FARMERS' MARKET ON 34th AVENUE BETWEEN INTERNATIONAL BOULEVARD AND E 12th STREET EACH SUNDAY BETWEEN THE HOURS OF 6:00 A.M. AND 5:00 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 and are open to the public and sponsored by merchant associations representing the majority of merchants in the area; and

**Whereas**, the Unity Council desires to establish a farmers' market to stimulate the economic viability of, encourage the public's attendance in, and advance the pedestrian access throughout the Fruitvale business area; and

**Whereas**, the Unity Council has determined that a farmers' market in its business district would best serve the public by operating on the Sunday of each weekend of the month; and

**Whereas**, the Unity Council has determined that the general character and successful operation of a farmers' market and the universal expectation of the public necessitates reservation of a minimum amount of area for the exclusive display of goods and wares and the effective transactions of trade; and

**Whereas**, 34th Avenue was previously closed by resolution of the City Council to vehicular traffic for use as a pedestrian plaza, Avenida de la Fuente; and

**Whereas**, a companion market will occur near to Avenida de la Fuente and in the Fruitvale Village plaza; and

**Whereas**, the Unity Council has therefore requested temporary use of limited portion of the public right-of-way of 34th Avenue for a farmers' market; 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 use of the closed portion of 34th Avenue would not unsafely impede pedestrian circulation and emergency access within the area; and

**Whereas**, Oakland Municipal Code section 15.04.705 requires approval by the Council of the City of Oakland of a short-term encroachment in the public right-of-way that exceeds three days duration; and

**Whereas**, the intermittent use of a segment of the public right-of-way for private commercial activities is categorically exempt from the provisions of the California Environmental Quality Act (Title 14 of the California Code of Regulations, section 15301).

**Now, therefore, the Council of the City of Oakland does resolve as follows:**

**Resolved**, the Unity Council is hereby granted a conditional and revocable permit for the encroachment of a farmers' market on each Sunday of the month to commence not sooner than 6:00 am and conclude not later than 5:00 pm; and be it further

**Resolved**, that the following special conditions shall also govern the issuance of the encroachment and control the continuing operation of the farmer's market:

- 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 that
- the Unity Council and its successors and assigns shall disclaim any right, title, or interest in or to any portion of the public right-of-way underlying the encroachment or the air space above and agrees that the temporary use of the public right-of-way does not constitute abandonment on the part of the City of any of its rights for public street purposes and otherwise; and that
- the Unity Council shall maintain fully in force and effect at all times this revocable permit for an encroachment remains un-revoked good and sufficient public liability insurance in the amount not less than \$1,000,000 for each occurrence/ \$2,000,000 annual aggregate, and property damage insurance in the amount not less than \$250,000 for each occurrence both including contractual liability insuring the City of Oakland, its officers, employees, agents, and volunteers against any and all claims arising out of the existence of the encroachment in the public right-of-way; and that
- the Unity Council shall file a certificate of insurance and subsequent notices of renewal thereof with the City Clerk and the City Engineer of the City of Oakland and that the certificate shall state on its face that the insurance coverage shall not be canceled or be permitted to lapse without thirty (30) days written notice to the City Engineer; and that
- the City of Oakland may review annually the type and amount of insurance required and may require that the Unity Council increase the amount of and-or change the type of insurance coverage required; and that
- the Unity Council shall agree and promise to defend and hold harmless and indemnify the City of Oakland and its officers, employees, agents, 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 right-of-way, regardless of actual or alleged responsibility for negligence and that the Unity Council's liability insurance shall cover this contractual liability; and that
- the Unity Council shall make no changes to the use of the public right-of-way or to its infrastructure, including, but not limited to, pavement, street lights, structures, utility lines and hydrants, dimensions, 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; and that

- the Unity Council shall be fully responsible for any repair or replacement of any public infrastructure and fully liable for the direct and indirect costs the City may incur to cure the failure of or damage to public infrastructure resulting directly or indirectly from the operation of the farmers' market, to the extent that the failure or damage becomes or creates a menace or a hazard to the safety of the public; and that
- the Unity Council shall 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; and that
- the Unity Council shall provide and maintain methods and mechanisms approved by the City Engineer that assure the interception, removal, and proper disposal of all trash, debris, markings, graffiti, and other materials deleterious to the primary use of the street and its appurtenances and the environment; and that
- the Unity Council shall provide and maintain methods and mechanisms approved by the City Engineer for handicapped accessibility as required by the California Building Code and City ordinance; and that
- the Unity Council shall immediately terminate its activities for the farmers' market and expeditiously remove its encroachment from the public right-of-way upon the suspension of this revocable permit by the Chief of Police, the Chief of the Fire Department, or the City Engineer; and that
- the Unity Council 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
- the location and limits of the encroachment are subject to the review and approval of and subsequent adjustment for good cause by the Chief of Police or the City Engineer or both; and that
- that the Unity Council shall obtain and maintain current all other permits required for operation of a farmers' market, including, but not limited to the Alameda County Department of Environmental Health, the City of Oakland Finance and Management Agency, and the City of Oakland Fire Prevention Bureau, prior to commencing the installation of the encroachment; and that
- the Unity Council acknowledges that the City of Oakland makes no representations or warranties as to the conditions beneath the area of encroachment; and that
- the Unity Council shall use the public right-of-way at its own risk; and that
- the Unity Council shall be solely responsible for the proper coordination with all businesses participating in the farmers' market and for the proper coordination with all 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
- before issuance of this revocable permit, the Unity Council shall pay all fees as determined by the Chief of Police and the City Engineer and required by the Oakland Municipal Code and the Master Fee Schedule; and that

- the Unity Council shall continually maintain the general area surrounding the encroachment free of litter associated with and attributable to the activities of the Farmers' Market; and be it is further

**Resolved**, that this revocable permit for an encroachment shall become effective when all the conditions set forth hereinabove have been completed to the satisfaction of the City Attorney, the Chief of Police, and the City Engineer of the City of Oakland; and be it further

**Resolved**, that this revocable permit for an encroachment shall become void upon failure of the Unity Council to comply fully with the general and special conditions of this revocable permit for an encroachment or to cure fully and timely any violation associated with the use of the public right-of-way and the health and safety of the public; and be it further

**Resolved**, that the City Clerk is directed to file a certified copy of this resolution for recordation with the Recorder of the County of Alameda.

IN COUNCIL, OAKLAND, CALIFORNIA, JUN 21 2005

**PASSED BY THE FOLLOWING VOTE:**

AYES - **BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL,  
REID, QUAN, AND PRESIDENT DE LA FUENTE - 8**

NOES -  $\phi$

ABSENT -  $\phi$

ABSTENTION -  $\phi$

ATTEST:

  
LATONDA SIMMONS

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