

Callahan

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2014 JUN 26 PM 4:15 OAKLAND CITY COUNCIL

RESOLUTION NO. 85100 C.M.S.

INTRODUCED BY COUNCILMEMBER: Rebecca Kaplan

RESOLUTION GRANTING A CONDITIONAL AND REVOCABLE ENCROACHMENT PERMIT TO PHAT BEETS PRODUCE FOR A CERTIFIED FARMERS MARKET ON GRACE AVENUE BETWEEN LOWELL STREET AND LOS ANGELES STREET EACH SATURDAY BETWEEN THE HOURS OF 8:00 A.M. AND 4:00 P.M.

WHEREAS, increasing healthful food availability in neighborhood stores and other outlets is a priority for the Oakland City Council; and

WHEREAS, farmers' markets can play an important part of the strategy to bring affordable, healthy food options; and

WHEREAS, farmers' markets offer a powerful alternative for effectively providing quality produce and healthy, affordable food choices; and

WHEREAS, farmers' markets can serve as a community gathering space with social as well as health benefits; and

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, Phat Beets Produce, a local community organization in good standing and active in the neighborhood in which the farmer's market is occurring, in partnership with Destiny Arts Center, seeks to establish a farmers' market to stimulate the economic viability of, encourage the public's attendance in, and advance the pedestrian access throughout the Santa Fe/Golden Gate neighborhood; and

WHEREAS, Phat Beets Produce has determined that a farmers' market in its business district would best serve the public by operating each Saturday of the month; and

WHEREAS, Phat Beets Produce 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 ground surface area for the exclusive display of goods and wares and the effective transactions of trade; and

WHEREAS, Phat Beets Produce, as operator of the farmers' market, has no practical alternative site on privately owned property that would satisfy the companion requirements of maintaining public parking, permitting pedestrian circulation, and providing adequate square footage for a farmers' market; and

WHEREAS, Phat Beets Produce has therefore requested temporary use of a limited portion of the public right-of-way on Grace Avenue between Lowell Street and Los Angeles Street for a farmers' market; and

WHEREAS, Phat Beets Produce has further requested the intermittent closure of a one block segment of Grace Avenue between Lowell Street and Los Angeles Street; 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 Grace Avenue between Lowell Street and Los Angeles Street 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 the Council of the City of Oakland of a short-term encroachment that exceeds three days in duration; and

WHEREAS, the intermittent closure of a segment of the public right-of-way is categorically exempt from the provisions 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 Phat Beets Produce is hereby granted a conditional and revocable permit for an encroachment in the public right-of-way on Grace Avenue between Lowell Street and Los Angeles Street, as delineated in Exhibit A attached hereto, for a farmers' market on each Saturday of the month to commence not sooner than 8:00 a.m. and conclude not later than 4:00 p.m.; 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 farmers' market:

1. The permit for an encroachment in the public right-of-way shall be revocable at any time and for any reason, at the sole discretion of the City Council, expressed by resolution, or may be suspended at any time, at the sole discretion of the City Engineer, upon failure of Phat Beets Produce to comply fully and continuously with each and all of the conditions set forth herein.
2. Phat Beets Produce and its selected farmers' market vendors and their successors and assigns hereby 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 Phat Beets Produce 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. Phat Beets Produce shall maintain fully in force and effect, at its own expense, at all times during the period for which the permit is in effect, good and sufficient public liability insurance in a face amount not less than \$2,000,000.00 for each occurrence, and property damage insurance in a face amount not less than \$1,000,000.00 for each occurrence, both including contractual liability, insuring the City of Oakland, its officers, agents, employees, and volunteers against any and all claims arising out of the existence of the encroachment in the public right-of-way, as respects liabilities assumed under this permit. The policy shall contain an endorsement declaring the policy as primary coverage on said liabilities. Phat Beets Produce shall submit a written certificate of such insurance or copy of the policy to the City Engineer showing that insurance is in effect in compliance with this section, and shall file subsequent notices of the renewal thereof with the City Engineer. Such certificate shall state that the insurance coverage shall not be canceled, amended or be permitted to lapse without thirty (30) days' prior written notice to the City Engineer. Phat Beets Produce also agrees that the City Engineer, at his or her sole discretion, may review the type and amount of insurance required of Phat Beets Produce annually and may require Phat Beets Produce to increase the amount of and/or change the type of insurance coverage required as circumstances warrant.
4. Phat Beets Produce shall, and by the acceptance of this revocable permit agrees and promises to indemnify, defend, save and hold harmless the City of Oakland, its elected officials, officers, agents, employees, representatives, 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 Phat Beets Produce's liability insurance shall cover this contractual liability.
5. Phat Beets Produce 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 Phat Beets Produce or others, and for the associated 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 farmers' market, to the extent that the failure or damage becomes or creates a nuisance or 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. Phat Beets Produce 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. Phat Beets Produce 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 farmers' market.
8. Phat Beets Produce 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 farmers' market 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. Phat Beets Produce 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, Phat Beets Produce 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, Phat Beets Produce 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. Phat Beets Produce 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. Phat Beets Produce shall obtain and maintain current all other permits and fully conform with all conditions required for operation of a farmers' market, 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 the California Department of Occupational Health and Safety prior to commencing the installation of the encroachment.
15. Phat Beets Produce acknowledges that the City of Oakland makes no representations or warranties as to the conditions beneath the area of encroachment.

16. Phat Beets Produce shall use the public right-of-way at its own risk.
17. Phat Beets Produce shall be solely responsible for the proper coordination with all neighborhood businesses, service providers, and private vendors participating in the farmers' market 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 exchange of products, goods, wares, and services and the accounting for associated monetary transactions by Phat Beets Produce 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, California Department of Food and Agriculture, California Franchise Tax Board, 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, Phat Beets Produce 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. Phat Beets Produce shall continuously 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/grease/oils, and petroleum-based motor fuels, oils, and grease associated with and attributable to the activities of the farmers' market.
21. Phat Beets Produce 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 farmers' market 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 farmers' market and to condition said permits with requirements that further clarify and refine the conditions as set forth herein; and be it

FURTHER RESOLVED: That this conditional and revocable encroachment permit shall become effective when all the conditions set forth hereinabove have been completed to the satisfaction of the City Attorney, 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 null and void upon the failure of Phat Beets Produce 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 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,

JUL 15 2014

PASSED BY THE FOLLOWING VOTE:

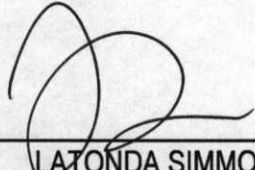
AYES - BROOKS, GALLO, GIBSON MCELHANEY, KALB, KAPLAN, REID, SCHAAF, AND PRESIDENT
KERNIGHAN - 8

NOES - 0

ABSENT - 0

ABSTENTION - 0

ATTEST: _____


LATONDA SIMMONS

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

for