

CITY OF OAKLAND
Agenda Report

OFFICE OF THE CITY CLERK
2006 JUL 29 PM 7:08

TO: Office of the City Administrator
ATTN: Deborah Edgerly
FROM: Community and Economic Development Agency
DATE: July 11, 2006

RE: A Report and Resolution Granting The Marin County Farmers Market Association A Conditional And Revocable Encroachment Permit For A Farmers Market In The Grand Lake Splash Pad Public Park Each Saturday Between The Hours Of 6:00 a.m. And 4:00 p.m.

SUMMARY

A resolution has been prepared granting a conditional and revocable encroachment permit for an indeterminate period of time to the Marin County Farmers Market Association (MCFMA) to operate an open-air farmers' market in Splash Pad public park and to reserve designated curbside metered parking spaces along Grand Avenue and Lake Park Avenue for exclusive use by the Association's vendors during the hours of operation. 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 associations representing the majority of merchants in the area, and the Lakeshore/Lake Park Business Improvement Management District (LLPBIMD) continues to support the weekend activity.

The farmers' market would occupy the northwesterly portion of the park each Saturday of the month from 6:00 a.m. to 4:00 p.m. The early-morning start and late-afternoon close of the market will allow for set-up and removal of barricades, produce stands, goods, and materials and the clean-up of the area during non-peak hours of traffic and pedestrian activity. The adjoining street network will assure sufficient traffic circulation during peak hours and ample emergency vehicle access to the surrounding area. The permit may be suspended by the City Engineer for cause and revoked by the City Council by resolution. The Chief of Police, the Fire Marshal, and City Engineer may suspend or end the day's activities for emergency circumstances.

FISCAL IMPACT

Staff costs for processing the proposed encroachment permit will be covered by fees set by the Master Fee Schedule and will be deposited in the Development Service Fund (2415), Engineering Services organization (88432), Encroachment Permits account (42314), Engineering and Architectural Approval (PS30). The standard conditions of the encroachment permit require the permit holder to maintain liability and property damage insurance and to include the City as an additional insured on the policy.

Item No. _____
Public Works Committee
July 11, 2006

KEY ISSUES AND IMPACTS

Parking

The popularity of farmers' markets necessarily fosters added competition for the limited supply of parking in the adjoining business district and surrounding residential neighborhood. The success of the open-air venue generates increased automobile traffic from outlying areas, which vie for parking with residents, the business district customer base, and vendors' vehicles. The proposed resolution includes a provision for the City Traffic Engineer to reserve curbside parking along Grand Lake Avenue and Lakeshore Avenue for the exclusive use of MCFMA on Saturdays. The LLPBIMD has requested that MCFMA limit its request for reserved curbside parking and its unreserved use of the parkside public lot (beneath the overhead freeway). Staff will include a requirement in the encroachment permit that MCFMA manage its operations to limit any adverse parking impact in the surrounding neighborhood to the maximum extent practical (using the Lakeview Elementary School parking lot, etc.).

Pedestrian Access

The proposed resolution includes a provision that the location and limits of the encroachment in the public park are subject to the review and approval of and subsequent adjustment by the Chief of Police, Fire Marshall, and the City Engineer. Staff will include a requirement in the encroachment permit that MCFMA manage its operations to assure that all pathways in the park and adjoining public sidewalks are fully accessible by pedestrians at all times.

Infrastructure Use and Damage

The proposed resolution includes a provision that MCFMA will be responsible for any costs the City may incur to repair damage to public infrastructure improvements (turf, sprinkler system, etc.). The LLPBIMD has requested that MCFMA arrange its booths to discourage patron traffic and avoid vendor and vehicle traffic in landscaped areas. Staff will include a requirement in the encroachment permit that MCFMA manage its operations to assure that "softscape" areas are maintained "off limits" to the maximum extent practical.

Litter and Refuse

The proposed resolution includes a provision that MCFMA continually maintain the general area surrounding the encroachment and the adjoining public right-of-way free of litter, trash, debris, accumulations and deposits of food products, substances, and fats/oils/grease (FOG), and petroleum-based motor fuel, oils, and grease. The Public Works Agency will coordinate its Saturday refuse route to accommodate an early afternoon collection. LLPBIMD has requested that MCFMA use tarpaulins beneath warmed-food vending stands (requirement of Alameda County Environmental Health Department) and parked vehicles and equipment, remove litter and waste food products from the park at the close-of-business, and machine-clean impervious surfaces (sidewalk and pathways) twice a year. Staff will include a requirement in the encroachment permit that MCFMA manage its operations to assure a "broom-clean" area each

each Saturday evening, weekly dumpster service, and semi-annual steam cleaning of the sidewalk and park "hardscape".

Community Outreach

The LLPBIMD has requested that MCFMA provide areas at the park entrances for the dissemination of advertising and advocacy leaflets to enhance opportunities for informing the neighborhood and engaging the public with petitions and other issues of general interest. Staff will include a condition in the encroachment permit that requires MCFMA to designate such areas at the pathway entrances to the park.

DISABILITY AND SENIOR CITIZEN ACCESS

The conditions of the encroachment permit require that the applicant comply with City and State handicapped accessibility regulations.

SUSTAINABLE OPPORTUNITIES

Economic

The farmers' market will improve the economic vitality of the business district and the health of the neighborhood by supporting ready access to fresh and healthful food products, by attracting new customers and encouraging frequent return visits, by promoting increased pedestrian use of the public right-of-way and park, and by encouraging positive regional publicity. The farmers' market venue supports small family farms, acts as incubator for entrepreneurial agriculture, and decreases purchase prices while increasing profit margins.

Environmental Opportunities

The conditions of the encroachment permit require that the applicant:

- contain and remove litter, trash, and other deleterious materials from the park and the adjoining public sidewalks, and
- install affirmative methods to curtail the introduction of deleterious materials into the storm drain system (which drains to the bay), and
- provide protective devices (ground tarpaulins, etc.) to mitigate damage to landscaping and impervious surfaces in the park, and
- provide and maintain supplemental portable toilets for use by the patrons and vendors.

An outdoor market reduces fossil fuel consumption for lighting, heating, cooling, and ventilation. Direct-sales by producers to consumers reduces intermediary handling, storage, transportation, and packing requirements.

Social Equity

The farmers' market venue promotes attendance by and the continued patronage of a culturally diverse cross-section of the community.

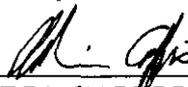
RECOMMENDATIONS

Staff recommends that the Committee accept this report and forwarded it to the City Council for adoption of the proposed resolution granting a conditional and revocable encroachment permit to the Marin County Farmers Market Association.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council adoption the proposed resolution granting a conditional and revocable encroachment permit to the Marin County Farmers Market Association to operate a farmers market in Grand Lake Splash Pad public park on each Saturday of the month between 6:00 a.m. and 4:00 p.m. for an indefinite period of time.

Respectfully submitted,



CLAUDIA CAPPIO

Development Director

Community and Economic Development Agency

Prepared by:

Raymond M. Derania

Interim City Engineer

Building Services Division

APPROVED FOR FORWARDING TO
THE PUBLIC WORKS COMMITTEE



OFFICE OF THE CITY ADMINISTRATOR

Introduced by OFFICE OF THE CITY CLERK
OAKLAND

Approved for Form and Legality

2006 JUN 29 PM 7:08
Councilmember

F. Faiz
City Attorney

OAKLAND CITY COUNCIL

Resolution No. _____ C.M.S.

RESOLUTION GRANTING A CONDITIONAL AND REVOCABLE ENCROACHMENT PERMIT TO THE MARIN COUNTY FARMERS MARKET ASSOCIATION FOR A FARMERS' MARKET IN THE GRAND LAKE SPLASH PAD PUBLIC PARK EACH SATURDAY BETWEEN THE HOURS OF 6:00 A.M. AND 4:00 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 Lakeshore/Lake Park Business Improvement Management District desires to establish and maintain a farmers' market to stimulate the economic viability of, encourage the public's attendance in, and advance the pedestrian access throughout the Grand Lake business area; and

WHEREAS, the Lakeshore/Lake Park Business Improvement Management District has determined that a farmers' market in its business district would continue to serve the public best by operating on each Saturday of the month; and

WHEREAS, the Lakeshore/Lake Park Business Improvement Management District 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, the Marin County Farmers Market Association, 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 farmer's market; and

WHEREAS, the Marin County Farmers Market Association has therefore requested temporary use of a limited portion of the Grand Lake Splash Pad public park for a farmer's 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 portion of the Grand Lake Splash Pad public park would not unsafely impede pedestrian circulation within the park and emergency access within the surrounding 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 that exceeds three days duration; and

WHEREAS, the intermittent use of a segment of the public park 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, be it

RESOLVED, that the Marin County Farmers Market Association is hereby granted a conditional and revocable permit for an encroachment in the Grand Lake Splash Pad public park, as delineated in the attached Exhibit A, for a farmers' market on each Saturday of the month to commence not sooner than 6:00 am and conclude not later than 4:00 pm local time; and be it

FURTHER RESOLVED, that upon designation by the Traffic Engineer of appropriate locations along Grand Avenue and Lake Park Avenue, the City Engineer may issue permits to the Marin County Farmers Market Association for its selected vendors and subsequently suspend and revoke said permits for its exclusive use of curbside metered parking spaces during the days and time intervals designated herein for operation of the farmers' market; 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 park 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 Marin County Farmers Market 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 park underlying the encroachment or the air space above or the adjoining public right-of-way and agrees that the temporary use of the public park does not constitute abandonment by the City of any of its rights for public park purposes and otherwise; and that
3. the Marin County Farmers Market Association 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 insureds 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 park and adjoining public right-of-way; and that
4. the Marin County Farmers Market Association 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 to the City Engineer; and that
5. the City of Oakland may review the type and amount of insurance required and may require that the Marin County Farmers Market Association increase the amount of and-or change the type of insurance coverage required; and that

6. the Marin County Farmers Market Association 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 Marin County Farmers Market Association's liability insurance shall cover this contractual liability; and that
7. the Marin County Farmers Market Association 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 farmers' market, 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 Marin County Farmers Market Association and its selected vendors shall make no changes to the use of the public park or adjoining 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; and that
9. the Marin County Farmers Market Association and its selected vendors shall in all cases begin the installation of its encroachment in the public park not sooner than and shall complete the removal of its encroachment from and the clean-up of the public park and adjoining public right-of-way not later than the time interval set forth above for operation of the farmers' market; and that
10. the Marin County Farmers Market Association 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 park and adjoining public right-of-way and its appurtenances and the environment; and that
11. the Marin County Farmers Market 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 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 Marin County Farmers Market Association and its selected vendors shall postpone or immediately terminate its activities for the day and expeditiously remove its encroachment from the public park and complete its clean-up of the premises and adjoining public right-of-way; 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 Marin County Farmers Market Association shall immediately abate the violation or terminate its activities for the day and expeditiously remove its encroachment from the public park and complete its clean-up of the premises and adjoining public right-of-way; and that
14. the Marin County Farmers Market 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; and that
15. the location and limits of the encroachment in the public park and the adjoining public sidewalk and other areas of the 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. that the Marin County Farmers Market Association and its selected vendors 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 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 Marin County Farmers Market Association 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 Marin County Farmers Market Association and its selected vendors shall use the public park and adjoining public right-of-way at its own risk; and that
19. the Marin County Farmers Market Association shall be solely responsible for the proper coordination with all businesses 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 park or adjoining 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 exchange of products, goods, wares, and services and the accounting for associated monetary transactions by the Marin County Farmers Market Association and its selected vendors 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; and that

21. as a condition of the issuance and continued validity of this revocable permit, the Marin County Farmers Market 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; and that
22. the Marin County Farmers Market Association and its selected vendors 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, and fats/oils/grease (FOG), and petroleum-based motor fuel, oils, and grease associated with and attributable to the activities of the farmers' market; and that
23. the Marin County Farmers Market 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 farmers' market to the satisfaction of the Alameda County Department of Environmental Health and the City Engineer; and that
24. 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 permit for an encroachment shall become effective when all the conditions set forth herein have been completed to the satisfaction of the City Attorney, 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 Marin County Farmers Market Association 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 park and adjoining 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, _____, 2006

PASSED BY THE FOLLOWING VOTE:

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

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

EXHIBIT A

