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Council Meeting

F. Faiz

City Attorney

OAKLAND CITY COUNCIL

Resolution No. 79901 C.M.S.

RESOLUTION GRANTING A CONDITIONAL AND REVOCABLE ENCROACHMENT PERMIT TO THE TEMESCAL/ TELEGRAPH BUSINESS IMPROVEMENT DISTRICT FOR A FARMERS' MARKET IN THE PUBLIC RIGHT-OF-WAY ON 45th STREET AT THE INTERSECTION OF TELEGRAPH AVENUE EACH SUNDAY BETWEEN THE HOURS OF 7:00 A.M. AND 3:00 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 Temescal/ Telegraph Business Improvement 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 Temescal/ Telegraph business area; and

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

WHEREAS, the Temescal/ Telegraph Business Improvement 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 Temescal/ Telegraph Business Improvement District 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 Temescal/ Telegraph Business Improvement District has therefore requested temporary use by the Urban Village Farmers' Market, or such other farmers' market operator as the Temescal/ Telegraph Business Improvement District may select from time to time, of a limited portion of the public right-of-way on 45th Street at the intersection of Telegraph Avenue 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 public right-of-way would not unsafely impede pedestrian circulation on the street and sidewalk 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 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, be it

RESOLVED, that the Temescal/ Telegraph Business Improvement District is hereby granted a conditional and revocable permit for an encroachment in the public right-of-way on 45th Street at the intersection with Telegraph Avenue, as delineated in Exhibit A attached hereto, for a farmers' market on each Sunday of the month to commence not sooner than 7:00 am and conclude not later than 3:00 pm local time; and be it

FURTHER RESOLVED, that upon designation by the Traffic Engineer of appropriate locations along 45th Street and Telegraph Avenue, the City Engineer may issue permits to the Temescal/ Telegraph Business Improvement District and its selected farmers' market vendor and subsequently suspend and revoke said permits for its exclusive use of curbside metered and unmetered 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 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 Temescal/ Telegraph Business Improvement District and its selected farmers' market operator and their 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 by the City of any of its rights for public street purposes and otherwise; and that
3. the Temescal/ Telegraph Business Improvement District and its selected farmers' market operator 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 including contractual liability and naming as additional insureds the City of Oakland, 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 Temescal/ Telegraph Business Improvement District and its selected farmers' market operator shall file a certificate of insurance and subsequent notices of renewal thereof with the City Engineer and that the certificate shall reflect on its face that the insurance coverage shall not be canceled, materially changed, 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 Temescal/ Telegraph Business Improvement District and its selected farmers market operator increase the amount or change the type of insurance coverage required; and that
6. the Temescal/ Telegraph Business Improvement District and its selected farmers' market vendor 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 Temescal/ Telegraph Business Improvement District and its selected farmers' market vendor liability insurance shall cover this contractual liability; and that
7. the Temescal/ Telegraph Business Improvement District and its selected farmers' market vendor 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 Temescal/ Telegraph Business Improvement District and its selected farmers' market vendor 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; and that
9. the Temescal/ Telegraph Business Improvement District and its selected farmers' market vendor 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; and that
10. the Temescal/ Telegraph Business Improvement District and its selected farmers' market vendor 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 (FOG), markings, graffiti, petroleum-based

motor fuel, 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; and that

- 11.** the Temescal/ Telegraph Business Improvement District and its selected farmers' market vendor 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, Temescal/ Telegraph Business Improvement District and its selected farmers' market vendor, 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 Temescal/ Telegraph Business Improvement District and its selected farmers' market operator 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 Temescal/ Telegraph Business Improvement District and its selected farmers' market operator 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, 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; and that
- 16.** that the Temescal/ Telegraph Business Improvement District and its selected farmers' market operator 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 Temescal/ Telegraph Business Improvement District and its selected farmers' market operator acknowledges that the City of Oakland makes no representations or warranties as to the conditions beneath the area of encroachment; and that

18. the Temescal/ Telegraph Business Improvement District and its selected farmers' market operator shall use the public right-of-way at its own risk; and that
19. the Temescal/ Telegraph Business Improvement District and its selected farmers' market operator 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; 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 selected farmers' market operator 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, and the California Departments of Food and Agriculture, Consumer Affairs, and Occupational Health and Safety, and the California Franchise Tax Board; and that
21. as a condition of the issuance and continued validity of this revocable permit, the Temescal/ Telegraph Business Improvement District and its selected farmers' market operator 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 Temescal/ Telegraph Business Improvement District and its selected farmers' market operator 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 of and the private vendors participating in the farmers' market to the satisfaction of the Alameda County Department of Environmental Health and the City Engineer; 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 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 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 permit for an encroachment shall become void upon failure of the Temescal/ Telegraph Business Improvement District and its selected farmers' market operator 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 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, MAY 16 2006, 2006

PASSED BY THE FOLLOWING VOTE:

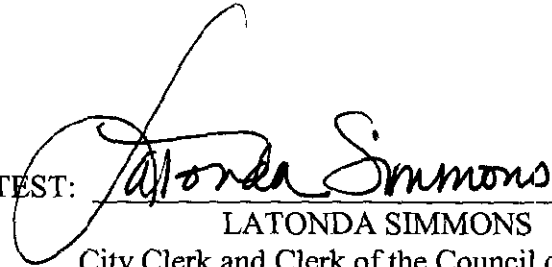
AYES - BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, and
PRESIDENT DE LA FUENTE - 8

NOES - 0

ABSENT - 0

ABSTENTION - 0

ATTEST:



LATONDA SIMMONS

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

EXHIBIT A

TEMESCAL FARMERS MARKET

