

Daniel D. Anderson
Deputy City Attorney

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

RESOLUTION GRANTING MO' BETTER FOODS A CONDITIONAL REVOCABLE ENCROACHMENT PERMIT FOR A FARMERS' MARKET ON MANDELA PARKWAY BETWEEN 5TH STREET AND THE MANDELA PARKWAY BART ENTRANCE.

WHEREAS, the City is desirous to continue the Mandela Farmers' Market, a project of Mo' Better Foods ("Permittee"), which has been operating at 7th and Mandela Parkway since April of 2003, temporarily; and

WHEREAS, the Mandela Farmers' Market requires certain encroachments on Mandela Parkway at 5th Street and the Mandela Parkway BART entrance for vendor booths, as detailed in Exhibit "A" (the "Encroachment"); and

WHEREAS, Oakland Municipal Code Section 12.08.060 requires City Council Approval of a short term encroachment which exceeds three days.; and

WHEREAS, This resolution is categorically exempt from the provisions of the California Environmental Quality Act (Title 14 of the California Code of Regulations, section 15301).

RESOLVED: That Permittee is hereby granted a conditional revocable permit for the farmer's market Encroachment every Saturday between the hours of 10:00 a.m. and 4 p.m.

FURTHER RESOLVED: That the Council of the City of Oakland, in granting this permission, prescribes the following special conditions:

1. That, after notice to Permittee, this permit shall be revocable at the reasonable discretion of the Council of the City of Oakland, expressed by resolution of said Council.
2. That the Permittee, by the acceptance, either expressed or implied, of this revocable permit hereby disclaims any right, title, or interest in or to any portion of the public right-of-way area, underlying the said encroachment or the air space above and agrees that said temporary use of said area does not constitute an

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abandonment on the part of the City of Oakland of any of its rights for street purposes and otherwise.

3. The Permittee shall maintain in force and effect at all times that said encroachment occupies said public sidewalk area, good and sufficient public liability insurance in the amount of \$300,000 for each occurrence, and property damage insurance in the amount of \$50,000 for each occurrence both including contractual liability insuring the City of Oakland, its officers and employees, against any and all claims arising out of the existence of said encroachments in said right-of-way area, and that a certificate of such insurance and subsequent notices of the renewal thereof, shall be filed with the City Clerk and the Chief of Police of the City of Oakland and that such certificate shall state that said insurance coverage shall not be canceled or be permitted to lapse without thirty (30) days' written notice to the Chief of Police. The Permittee also agrees that the City may review the type and amount of insurance required every five (5) years and may require the Permittee to increase the amount of and/or change the type of insurance coverage required, if such is reasonably necessary as determined by the City.

4. That the Permittee, by the acceptance, either expressed or implied, of this revocable permit agrees and promises to defend and hold harmless and indemnify the City of Oakland, its agents, officers, and employees, 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 said encroachment to said right-of-way area and street area and regardless of responsibility for negligence. The liability insurance referred to in the preceding paragraph shall cover this contractual liability, provided that nothing herein shall be interpreted as limiting the Permittee's defense, hold harmless and indemnification obligations to the amount set forth in the preceding paragraph.

5. That Permittee shall make no changes to the encroachment hereby allowed either structurally, with regard to dimension, or with respect to use, without the written consent of the Chief of Police and understands that the City may impose reasonable fees and considerations for processing permits required for such proposed changes. Permittee also understands that the City is not obligated to grant any changes proposed by said Permittee.

6. That the Permittee, by the acceptance, either expressed or implied, of this revocable permit shall be solely and fully responsible for the repair or replacement of any portion or all of said improvements in the event that said improvements shall have failed or have been damaged to the extent of creating a menace or of becoming a hazard to the safety of the general public; and that the Permittee shall be liable for the expenses connected therewith.

7. That upon the termination of the permission herein granted, Permittee shall immediately remove said encroachment from the right-of-way area, and any damage resulting therefrom shall be repaired to the satisfaction of the Director of Building Services.

8. The Permittee shall file with the City of Oakland for recordation, a disclaimer and agreement that Permittee accepts and shall comply with and shall

be bound by each and all of the terms, conditions and provisions of this resolution. Said disclaimer and agreement shall be subject to the approval of the City Attorney and the Chief of Police.

9. That the plans and exact location of said encroachment hereby granted are subject to the review and approval of the Chief of Police and that the Permittees shall obtain all necessary permits prior to commencing said work. Generally, said encroachment shall be located as set forth in Exhibit "A".

10. That the Permittees acknowledge that the City makes no representations or warranties as to the conditions beneath said encroachment. By accepting this revocable permit, Permittees agree that it will use the encroachment area at its own risk, are responsible for the proper coordination of its activities with all other permittees, underground utilities, contractors, or workmen operating within the encroachment area and for the safety of itself and any of its personnel in connection with its entry under this revocable permit.

11. That Permittee shall prepay traffic control fees as determined by the Chief of Police, as required by Oakland Municipal Code section 12.08.060.

12. That Permittee shall be responsible for keeping the sidewalk and street clean and that any trash and debris be removed after each use.

FURTHER RESOLVED: That this resolution shall take effect when all the conditions hereinabove set forth shall have been complied with to the satisfaction of the City Attorney and the Chief of Police of the City of Oakland and shall become null and void upon the failure of the Permittee to comply with the conditions hereinabove set forth after notice and failure to cure such conditions in a reasonable manner.

FURTHER RESOLVED: The City Clerk is hereby directed to have a certified copy of this resolution recorded at the Office of the Alameda County Recorder.

IN COUNCIL, OAKLAND, CALIFORNIA, , 2004
PASSED BY THE FOLLOWING VOTE:

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

NOES-

ABSENT-

ABSTENTION-

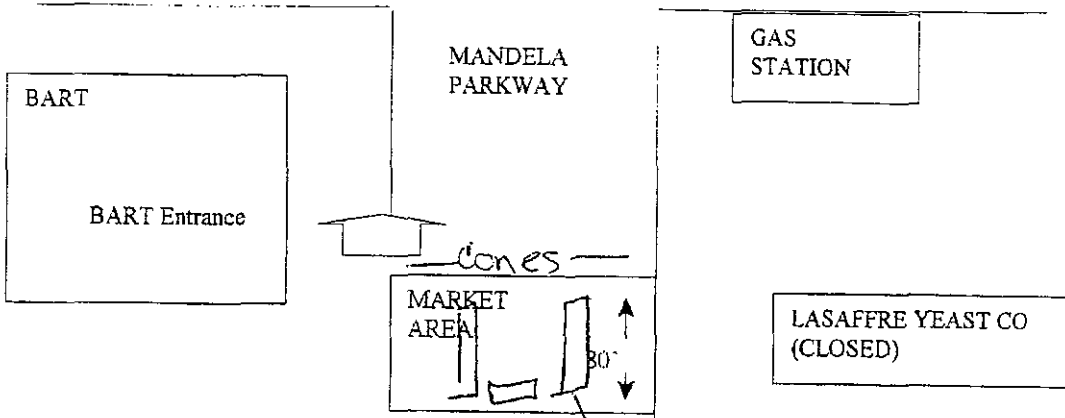
ATTEST:
CEDA FLOYD
City Clerk and Clerk of the Council
of the City of Oakland, California

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"EXHIBIT A"

7TH STREET

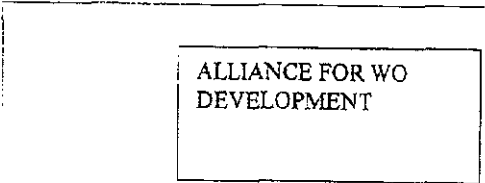
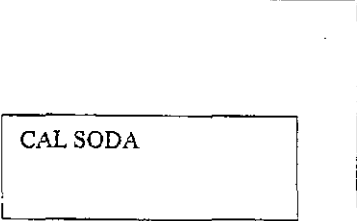


Cones

Cones

Vendor Booths

5TH STREET



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