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Approved as to form & Legality

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CITY ATTORNEY

OAKLAND CITY COUNCIL

Resolution No. _____ C.M.S.

INTRODUCED BY COUNCIL MEMBER DESLEY BROOKS

**RESOLUTION GRANTING A CONDITIONAL AND REVOCABLE
ENCROACHMENT PERMIT TO OCCUR FOR A FARMERS' MARKET IN THE
PUBLIC RIGHT-OF-WAY AT 7700 MOUNTAIN BOULEVARD 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, OCCUR 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 area in the public right of way directly in front of Kaleo Christian Church located at 7700 Mountain Blvd.; and

WHEREAS, OCCUR has determined that a farmers' market in this area would continue to serve the public best by operating on each Saturday of the month; and

WHEREAS, OCCUR 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, OCCUR, 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, OCCUR has therefore requested temporary use of a limited portion of the public right of way directly in front of 7700 Mountain Blvd. 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 directly in front of 7700 Mountain Boulevard 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 reservation of a limited number of curbside parking spaces for the exclusive use of and without cost to OCCUR during the days and time intervals authorized for operation of the farmers' market is consistent with the policies and priorities of the Council of the City of Oakland for supporting this type of activity in the City and for assuring short-term access to public parking in commercial districts and for assuring the collection of fees as established in the Master Fee Schedule; and

WHEREAS, the intermittent use of a segment of the public street for private commercial activities is categorically exempt from the provisions of the Environmental Quality Act (Title the Code of Regulations, section 15301); now, therefore, be it

RESOLVED, that OCCUR is hereby granted a conditional and revocable permit for an encroachment in the public right of way directly in front of 7700 Mountain Blvd., 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 the public right of way in the 7700 block of Mountain Blvd., the City Engineer may issue permits without cost, and subsequently suspend and revoke said permits, to OCCUR for four (4) curbside parking spaces, or more as may be authorized from time to time by the Council of the City of Oakland, for exclusive use by 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 fanners' 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. OCCUR 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 street does not constitute abandonment by the City of any of its rights for public park purposes and otherwise; and that

3. OCCUR 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. OCCUR 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. OCCUR also agrees that the City Engineer, at his or her sole discretion, may review the type and amount of insurance required of OCCUR annually and may require OCCUR to increase the amount of and/or change the type of insurance coverage required as circumstances warrant.
4. OCCUR 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 OCCUR's liability insurance shall cover this contractual liability; and that
5. OCCUR 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
6. OCCUR and its selected vendors 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
7. OCCUR and its selected vendors 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
8. OCCUR 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

9. OCCUR 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 Building Code and City ordinance; and that

10. upon determination by the Chief of Police, Fire Marshal, or City Engineer, or their designees, of an exigent circumstance, OCCUR 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

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, OCCUR 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

12. OCCUR 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

13. the location and limits of the encroachment in the 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

14. that OCCUR 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 Department of Food and Agriculture, the Franchise Tax Board, the Department of Consumer Affairs, and the Department of Occupational Health and Safety prior to commencing the installation of the encroachment; and that

15. OCCUR 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

16. OCCUR shall use the public right-of-way at its own risk; and that

17. OCCUR 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

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 OCCUR 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 Department of Food and Agriculture, the Franchise Tax Board, the Department of Consumer Affairs, and the Department of Occupational Health and Safety; and that

19. as a condition of the issuance and continued validity of this revocable permit, OCCUR 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

20. OCCUR 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

21. OCCUR 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

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 that

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 OCCUR 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 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, _____ 2017

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL-WASHINGTON, GALLO, GIBSON-MCELHANEY,
GIULLEN, KALB, KAPLAN, and
PRESIDENT REID

NOES -

ABSENT -

ABSTENTION -

ATTEST:

LATONDA SIMMONS

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