



# City of Emeryville

INCORPORATED 1896

1333 Park Avenue, Emeryville, CA 94608-3517  
t (510) 596-4300 | f (510) 658-8095

August 29, 2017

By U.S. Mail and Email to [Tim@ccrpilc.com](mailto:Tim@ccrpilc.com)

Mr. Tim Bacon  
AG-CCRP Public Market, L.P.  
170 Grant Avenue, 6<sup>th</sup> Floor  
San Francisco, CA 94108

## **STOP WORK ORDER**

Dear Mr. Bacon:

Emeryville City Council Member Christian Patz has reported that, for the second time, Saturday construction work at the Public Market Project has started before 10:00 a.m. Please see the attached photo of construction workers that he took at 9:45 a.m. last Saturday, August 26, 2017.

Following his first complaint of Saturday work starting before 10:00 a.m. on July 29, 2017, I sent you an email on August 1, 2017, that indicated: "if we become aware of work before 10 am or after 6 pm on a Saturday, we will either stop all work for the remainder of that Saturday (if we became aware of it on the same day), or will revoke your ability to work on the subsequent Saturday (if we become aware of it after the day that it occurs). We may also refer the matter back to the City Council for consideration of modification or revocation of the construction noise waiver." I am attaching that email for reference.

Condition 4 of the Noise Waiver (Resolution No. 17-128) that was granted by the City Council on July 25, 2017 stipulates that "if residents or local businesses complain, all work on the site and in the vicinity shall cease until the issue is resolved." Condition 5 states the "the City Council may revoke or modify this approval if the applicant fails to comply with any of these conditions of approval, or if any complaints are received and not satisfactorily resolved." This is to notify you that, pursuant to these conditions, we are scheduling a public hearing on your noise waiver for Tuesday, September 19, 2017, so that the City Council may consider revoking the noise waiver or modifying its conditions of approval, and that no further Saturday construction work is permitted before the September 19, 2017 public hearing. The hearing will take place starting at 7:16 p.m. at City Hall, 1333 Park Avenue, Emeryville, California.

Please let me know if you have any questions.

Sincerely,



Charles S. Bryant, AICP  
Community Development Director

Attachments: Photo of construction workers at 9:45 a.m. on Saturday, August 26, 2017  
Email from Charles S. Bryant to Tim Bacon on Tuesday, August 1, 2017  
Resolution No. 17-128

cc: Mark Stefan, City Center Realty Corporation  
Carolyn Lehr, City Manager  
Michael Guina, City Attorney  
Andrew Clough, Interim Public Works Director  
Jennifer Tejada, Chief of Police

**Attachment 2**





Construction workers at Emeryville Public Market site  
Saturday, August 26, 2017, 9:45 a.m.



## Charles S. Bryant

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**From:** Charles S. Bryant  
**Sent:** Tuesday, August 01, 2017 10:29 AM  
**To:** 'Tim Bacon'  
**Cc:** Carolyn Lehr; Miroo Desai; Michael Roberts; Andrew Clough; Victor Gonzales; Courtney Barrett; Mark Stefan  
**Subject:** RE: Noise waiver

Thanks Tim.

Actually, the pictures that were provided by Councilmember Patz, time-stamped 9:45 a.m. on Saturday, appear to show a backhoe dumping dirt on Shellmound Street in front of the Public Market Tower.

Please be warned that, in the future, if we become aware of work before 10 am or after 6 pm on a Saturday, we will either stop all work for the remainder of that Saturday (if we became aware of it on the same day), or will revoke your ability to work on the subsequent Saturday (if we become aware of it after the day that it occurs). We may also refer the matter back to the City Council for consideration of modification or revocation of the construction noise waiver.

Also, as a reminder, the resolution approving the noise waiver requires that "Two signs shall be posted indicating the name and telephone number of a person to contact for concerns or complaints. This telephone must be answered by a live person during construction hours (not by voice mail or answering machine). This person must have the authority to stop work. These signs must be clearly legible from Shellmound Street."

Let me know if you have any questions.

Charlie



**CHARLES S. BRYANT, AICP**

Community Development Director, City of Emeryville  
1333 Park Avenue, Emeryville, CA 94608-3517  
510-596-4361 (direct) 510-658-8095 (fax)  
[cbryant@emeryville.org](mailto:cbryant@emeryville.org)

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**From:** Tim Bacon [mailto:Tim@ccrpllc.com]  
**Sent:** Sunday, July 30, 2017 8:44 AM  
**To:** Charles S. Bryant  
**Cc:** Carolyn Lehr ; Miroo Desai ; Michael Roberts ; Andrew Clough ; Victor Gonzales ; Courtney Barrett ; Mark Stefan  
**Subject:** Re: Noise waiver

Thanks for the email, Charlie. I had heard of this as well and took immediate action to get to the bottom of what happened. I'll provide the details below.

Our superintendent was on-site yesterday morning and heard an excavator moving [at 9:40am](#) on South Market. It turned out to be an OC Jones service technician moving an excavator over to his service truck. The superintendent went out and put a stop to it immediately (as well as giving the service tech a stern rebuke). We had issued the noise waiver to OC Jones, but for whatever reason, it did not get passed to their service department. Plant Construction is fully aware of the start times and I am confident it will not be an issue again.

I am sorry for the miscommunication and will ensure that the rules are abundantly clear going forward. I hopeful that despite this minor transgression we are able to continue with our Saturday work.

Thanks - Tim

Tim Bacon  
415.655.7000

On Jul 30, 2017, at 8:10 AM, Charles S. Bryant <[cbryant@emeryville.org](mailto:cbryant@emeryville.org)> wrote:

Tim,

Please touch base with your contractors and remind them not to start work before 10 am on Saturdays.

Thanks.

Charlie

[[cid:image001.jpg@01D3090B.2BF14A00](#)]

Charles S. Bryant, AICP  
Community Development Director, City of Emeryville  
1333 Park Avenue, Emeryville, CA 94608-3517  
510-596-4361 (direct) 510-658-8095 (fax)  
[cbryant@emeryville.org](mailto:cbryant@emeryville.org)<<mailto:cbryant@emeryville.org>>

From: Carolyn Lehr  
Sent: Saturday, July 29, 2017 10:06 AM  
To: \*DL\_City\_Council <[DL\\_City\\_Council@emeryville.org](mailto:DL_City_Council@emeryville.org)>; Miroo Desai <[mdesai@emeryville.org](mailto:mdesai@emeryville.org)>; Charles S. Bryant <[cbryant@emeryville.org](mailto:cbryant@emeryville.org)>  
Subject: FW: Noise waiver

Council members and staff,

This notice is being shared at the request of Council member Patz. Please see below.  
Staff will follow up.

Thanks  
Carolyn

Sent from my Windows 10 phone

From: Christian Patz<<mailto:crpatz@gmail.com>>  
Sent: Saturday, July 29, 2017 9:54 AM  
To: Carolyn Lehr<<mailto:clehr@emeryville.org>>; Charles S. Bryant<<mailto:cbryant@emeryville.org>>  
Subject: Noise waiver

I was in the neighborhood of the public market this morning and saw that construction had started before 10. Please let the other council members know.

## RESOLUTION NO. 17-128

### **Resolution Of The City Council Of The City Of Emeryville Granting A Waiver From The Noise Ordinance To AG-CCRP Public Market, L.P. For Construction Work On All Saturdays Between July 29, 2017 And November 11, 2017 At the Public Market For Streetscape Work**

**WHEREAS**, on June 1, 2017, AG-CCRP Public Market requested a noise waiver to allow work from 9:00 a.m. to 6:00 p.m. on all Saturdays between July 15, 2017 and October 28, 2017 at the Public Market Project located in the vicinity of 5959 Shellmound Street; and

**WHEREAS**, the request is being made to facilitate the timely completion of construction of the new grocery store and associated parking, which in turn will allow construction of the redesigned and expanded Christie Avenue Park on a lot that is currently providing surface parking for the Public Market; and

**WHEREAS**, Chapter 13 of Title 5 of the Emeryville Municipal Code limits construction noise to 7:00 a.m. to 6:00 p.m. weekdays, but allows a developer or contractor to ask the City Council for a waiver of the construction noise restrictions subject to such conditions as the Council deems necessary to fulfill the purposes of the Noise Ordinance; and

**WHEREAS**, the City Council held a duly and properly noticed public hearing on the request on Tuesday, July 11, 2017, and continued the hearing to July 25, 2017 to allow the applicant more time to conduct outreach to neighbors; now, therefore, be it

**RESOLVED**, that the City Council of the City of Emeryville hereby finds that the noise waiver for construction associated with the streetscape work at the Public Market Project in the vicinity of 5959 Shellmound Street is exempt from the California Environmental Quality Act (CEQA) under the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment, as stated in Section 15061(b)(3) of the State CEQA Guidelines; and be it further

**RESOLVED**, that the City Council finds that the conditions of approval listed below provide adequate protection for nearby residents and businesses; and be it further

**RESOLVED**, that the City Council hereby approves the request of AG-CCRP Public Market, L.P. for a waiver of construction noise hours for Saturday work in the vicinity of 5959 Shellmound Street with the following conditions:

1. Work shall be allowed on all Saturdays from July 29, 2017 to November 11, 2017, inclusive, between 10:00 a.m. and 6:00 p.m. All work and equipment shall be limited to that described in the attached letter from AG-CCRP Public Market, L.P. dated July 24, 2017, and attached hereto as Exhibit A; except that no

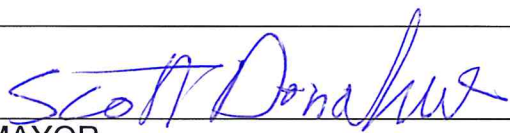


Saturday work shall occur on the entire length of Market Drive including South Market Drive.

2. Two signs shall be posted indicating the name and telephone number of a person to contact for concerns or complaints. This telephone must be answered by a live person during construction hours (not by voice mail or answering machine). This person must have the authority to stop work. These signs must be clearly legible from Shellmound Street.
3. The applicant shall notify all neighbors within 300 feet of the site, and the Emeryville Police, Fire and Public Works departments, prior to commencing weekend work.
4. If residents or local businesses complain, all work on the site and in the vicinity shall cease until the issue is resolved.
5. The City Council may revoke or modify this approval if the applicant fails to comply with any of these conditions of approval, or if any complaints are received and not satisfactorily resolved.

**ADOPTED** by the City Council of the City of Emeryville at a regular meeting held on Tuesday, July 25, 2017 by the following vote:

AYES:	<u>3</u>	Mayor Donahue, Vice Mayor Bauters and Council Member Martinez
NOES:	<u>2</u>	Council Members Medina and Patz
ABSTAIN:	<u>0</u>	
ABSENT:	<u>0</u>	

  
MAYOR

ATTEST:

APPROVED AS TO FORM:

  
DEPUTY CITY CLERK

  
CITY ATTORNEY

Exhibit A: Noise Ordinance Saturday Work Request Matrix dated July 24, 2017

## AG-CCRP Public Market, L.P.

June 1, 2017

Charles S. Bryant  
Director of Planning and Building  
1333 Park Avenue  
Emeryville, CA 94608

Re: Noise Ordinance Waiver Request  
Marketplace – Phase I Streetscape  
5959 Shellmound Street, Emeryville, CA

Dear Mr. Bryant:

On behalf of AG-CCRP Public Market, L.P., I am writing to request approval for a waiver to the City of Emeryville's Noise Ordinance for ongoing work at the Marketplace Phase I Streetscape project, located at 5959 Shellmound Street.

Saturday work is being requested in order to accelerate our construction schedule to achieve two major milestones sooner than currently expected.

- The first milestone we are hoping to achieve is the opening of the parking structure on Parcel C-1. The opening of this parking structure is the trigger which then allows us to take the Parcel E surface parking lot offline in order to begin construction on Christie Park. We believe that the opening of Christie Park is a tremendous community benefit and the sooner we are able to start work on it, the sooner we can deliver it to the citizens of Emeryville.
- The second milestone is the opening of New Seasons Market, which is currently scheduled for early November. If we fail to complete the surrounding streetscape work by late October, then the grocery store will likely not open until March of next year. Again, we believe that the opening of the store is of great benefit to the community and that the community has waited patiently through an arduous entitlement and construction process.

As both of these milestones require the same streetscape work to be completed, the request is for additional time to accelerate the work specifically on South Market Drive, the Parcel B portion of realigned Shellmound and 62<sup>nd</sup> Street. The attached matrix outlines the requested dates for the waiver along with a description of the scope and the location. In addition, the attached plans provide specific details on the location of each particular area of work.

Thank you for your consideration of this request. If there are any questions I can answer, please do not hesitate to let me know.

Regards,



Tim Bacon  
For AG-CCRP Public Market, L.P.



# Exhibit A

July 24, 2017

PLANT



## Noise Ordinance Saturday Work Request

### Emeryville Public Market Streetscape Project

Work hours	Date of Work	Description of Work	Type of Equipment	Location	Jobsite Contact
10am-6pm	7/29/2017	62nd Street - Installation of pavers Market Street (South end only) - Installation of flow through planters Shellmound Street (Lot B) - Excavation of soils	Excavator (Excl Market St.), Offhaul trucks, Backhoe, Saws	62nd Street Market Street (South end) Shellmound Street (Lot B)	Lloyd Berges (925) 628-3322
10am-6pm	8/5/2017	62nd Street - Installation of pavers Market Street (South end only) - Backfill to subgrade Shellmound Street (Lot B) - Construct Flow through planters	Excavator (Excl Market St.), Offhaul trucks, Backhoe, Saws, Compaction equipment (Excl Market St.)	62nd Street Market Street (South end) Shellmound Street (Lot B)	Lloyd Berges (925) 628-3322
10am-6pm	8/12/2017	62nd Street - Installation of pavers Market Street (South end only) - Backfill to subgrade Shellmound Street (Lot B) - Construct Flow through planters	Excavator (Excl Market St.), Offhaul trucks, Backhoe, Saws, Compaction equipment (Excl Market St.)	62nd Street Market Street (South end) Shellmound Street (Lot B)	Lloyd Berges (925) 628-3322
10am-6pm	8/26/2017	62nd Street - Installation of pavers Market Street (South end only) - Installation of base rock Shellmound Street (Lot B) - Backfill to subgrade	Excavator (Excl Market St.), Offhaul trucks, Backhoe, Saws, Compaction equipment (Excl Market St.)	62nd Street Market Street (South end) Shellmound Street (Lot B)	Lloyd Berges (925) 628-3322
10am-6pm	9/2/2017	62nd Street - Installation of pavers Market Street (South end only) - Installation of streetlighting/irrigation lines Shellmound Street (Lot B) - Installation of streetlighting/irrigation lines	Excavator (Excl Market St.), Offhaul trucks, Backhoe, Saws, Compaction equipment (Excl Market St.)	62nd Street Market Street (South end) Shellmound Street (Lot B)	Lloyd Berges (925) 628-3322
10am-6pm	9/9/2017	62nd Street - Installation of site furnishings Market Street (South end only) - Installation of curb, gutter, sidewalk Shellmound Street (Lot B) - Installation of base rock	Excavator (Excl Market St.), Offhaul trucks, Backhoe, Saws, Compaction equipment (Excl Market St.)	62nd Street Market Street (South end) Shellmound Street (Lot B)	Lloyd Berges (925) 628-3322
10am-6pm	9/16/2017	62nd Street - Installation of streetlights, planting, striping Market Street (South end only) - Installation of curb, gutter, sidewalk Shellmound Street (Lot B) - Installation of curb, gutter, sidewalk	Excavator (Excl Market St.), Backhoe, Saws, Gradall	62nd Street Market Street (South end) Shellmound Street (Lot B)	Lloyd Berges (925) 628-3322
10am-6pm	9/23/2017	Market Street (South end only) - Installation of curb, gutter sidewalk Shellmound Street (Lot B) - Installation of curb, gutter sidewalk	Saws, Gradall	Market Street (South end) Shellmound Street (Lot B)	Lloyd Berges (925) 628-3322
10am-6pm	9/30/2017	Market Street (South end only) - Installation of curb, gutter sidewalk Shellmound Street (Lot B) - Installation of curb, gutter sidewalk	Saws, Gradall	Market Street (South end) Shellmound Street (Lot B)	Lloyd Berges (925) 628-3322
10am-6pm	10/7/2017	Market Street (South end only) - Paving Shellmound Street (Lot B) - Installation of curb, gutter sidewalk	Trucks, Paving Machine, Saws, Gradall	Market Street (South end) Shellmound Street (Lot B)	Lloyd Berges (925) 628-3322
10am-6pm	10/14/2017	Market Street (South end only) - Set Trees and streetlighting Shellmound Street (Lot B) - Paver Installation	Saws, Gradall	Market Street (South end) Shellmound Street (Lot B)	Lloyd Berges (925) 628-3322
10am-6pm	10/21/2017	Market Street (South end only) - Set Trees and streetlighting Shellmound Street (Lot B) - Paver Installation	Saws, Gradall	Market Street (South end) Shellmound Street (Lot B)	Lloyd Berges (925) 628-3322
10am-6pm	10/28/2017	Shellmound Street (Lot B) - Paving	Trucks, Paving Machine	Shellmound Street (Lot B)	Lloyd Berges (925) 628-3322
10am-6pm	11/4/2017	Shellmound Street - Demolition and excavation (existing Shellmound St. tie in area) - Demolition and excavation (area against Tower building)	Excavator, Offhaul trucks, Backhoe, Saws	Shellmound Street (Existing Shellmound tie in area) Shellmound Street (Lot B)	Lloyd Berges (925) 628-3322
10am-6pm	11/11/2017	Shellmound Street - Install Flow through planters (Existing Shellmound tie in area) - Place base rock (area against tower building)	Compaction equipment, Excavator	Shellmound Street (Existing Shellmound tie in area) Shellmound Street (Lot B)	Lloyd Berges (925) 628-3322
10am-6pm	11/18/2017	Shellmound Street - Backfill to subgrade (Existing Shellmound tie in area) - Prep for sidewalk placement (against tower building)	Compaction equipment, Excavator, Offhaul Trucks	Shellmound Street (Existing Shellmound tie in area) Shellmound Street (Lot B)	Lloyd Berges (925) 628-3322
10am-6pm	11/25/2017	Shellmound Street - Install Storm drain lateral, place base rock (Existing Shellmound tie in area) - Placement of sidewalk (against tower building)	Compaction equipment, Excavator, Offhaul Trucks	Shellmound Street (Existing Shellmound tie in area) Shellmound Street (Lot B)	Lloyd Berges (925) 628-3322
10am-6pm	12/2/2017	Shellmound Street - Placement of curb, gutter, sidewalk (Existing Shellmound tie in area)	Saws, Gradall	Shellmound Street (Existing Shellmound tie in area)	Lloyd Berges (925) 628-3322
10am-6pm	12/9/2017	Shellmound Street - Signage and road striping (Existing Shellmound tie in area)	Striping Truck	Shellmound Street (Existing Shellmound tie in area)	Lloyd Berges (925) 628-3322



