



# City of Emeryville

CALIFORNIA

## MEMORANDUM

**DATE:** September 19, 2017

**TO:** Carolyn Lehr, City Manager

**FROM:** Charles S. Bryant, Community Development Director

**SUBJECT:** **Revocation Or Modification Of Public Market Noise Waiver**

**Resolution Of The City Council Of The City Of Emeryville Revoking A Waiver From The Noise Ordinance (Resolution No. 17-128) Granted By The City Council On July 25, 2017 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; CEQA Determination: Exempt Pursuant to CEQA Guideline 15061(b)(3)**

**OR**

**Resolution Of The City Council Of The City Of Emeryville Modifying Conditions of Approval Of A Waiver From The Noise Ordinance (Resolution 17-128) Granted By The City Council On July 25, 2017 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: Exempt Pursuant to CEQA Guideline 15061(b)(3)**

## RECOMMENDATION

Staff recommends that the City Council either revoke the Noise Waiver in its entirety or modify the Conditions of Approval of the waiver to require the applicant, AG-CCRP Public Market, L P, to pay for presence of a Public Works Inspector on all Saturdays to ensure that the construction begins and ends within the times outlined in the Conditions of Approval.

## BACKGROUND

On October 22, 2015, the Planning Commission approved a Tentative Map that included realignment of Shellmound Street and construction of new 62<sup>nd</sup> and 63<sup>rd</sup> Streets and Market Drive. Construction on Parcel C (the New Seasons grocery store and associated parking) and Parcel D (residential building at the former Theater site) is currently underway in accordance with the approved Final Development Plans.

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.

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

The City Council held a public hearing on the request on Tuesday, July 11, 2017 and voted to continue the hearing to the next Council meeting on Tuesday, July 25, 2017 to allow the applicant additional time to conduct outreach to neighbors who had expressed concerns at the hearing. Subsequently, on July 25, 2017, the Council approved Resolution No. 17-128 granting the noise waiver request with modified dates between July 29, 2017 and November 11, 2017 and modified hours from 10:00 a.m. to 6:00 p.m.

Staff received a complaint from Council Member Christian Patz of Saturday work starting before 10:00 a.m. on July 29, 2017; he provided photographs time-stamped 9:45 a.m. In response, staff sent an email to the applicant 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."

Subsequently, on August 26, 2017, Council Member Patz again reported that, for the second time, Saturday construction work at the Public Market project had started before 10:00 a.m. He again provided a photograph of construction workers time-stamped 9:45 a.m. In response, staff sent a letter to the applicant on August 29, 2017 indicating that a public hearing on the noise waiver was being scheduled 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 was permitted before the September 19, 2017 public hearing.

## **DISCUSSION**

Condition 4 of the noise waiver 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."

Pursuant to these conditions of approval, staff has prepared two resolutions for the Council's consideration: one resolution revoking the noise waiver entirely, and a second resolution modifying the conditions of approval by adding the following condition: "A Public Works Inspector shall be present continually from 9:00 a.m. to 10:00 a.m. and from 6:00 p.m. to 7:00 p.m. on all Saturdays when work is performed between September 23, 2017 and November 11, 2017. The inspector shall have the authority to stop any work occurring before 10:00 a.m. or after 6:00 p.m., and may call the Emeryville Police Department for enforcement action if his/her directive to stop work is not heeded. The cost of having a Public Works Inspector on these Saturdays shall be borne by the applicant."

### **FISCAL IMPACT**

None.

### **STAFF COMMUNICATION WITH THE PUBLIC**

A written notification was sent to both owners and tenants of buildings within 300 feet of the project site including owners and residents of the Pacific Park Plaza, Avenue 64 and Artistry Apartments, and a notice was also published in the Oakland Tribune.

### **CONFLICT OF INTEREST**

There are no conflicts of interest regarding Council members' residences or work.

### **CONCLUSION**

Staff recommends that the Council either revoke the noise waiver or modify the conditions of approval to add a new condition of approval as outlined above. A resolution revoking the noise waiver and a resolution modifying the conditions of approval are attached.

**PREPARED BY:** Miroo Desai, Senior Planner

**APPROVED AND FORWARDED TO THE  
CITY COUNCIL OF THE CITY OF EMERYVILLE:**



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Carolyn Lehr, City Manager

**ATTACHMENTS**

1. Noise Waiver, Resolution No. 17-128
2. Letter to applicant dated August 29, 2017
3. Response email from applicant dated August 29, 2017
4. Draft Resolution Revoking Noise Waiver
5. Draft Resolution Modifying Conditions of Approval