

RESOLUTION NO. 17-_____

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)

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 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; and

WHEREAS, on July 11, 2017, the City Council held a duly and properly noticed public hearing on the request and voted to continue the hearing to the next Council meeting on July 25, 2017 to allow the applicant additional time to conduct outreach to neighbors who had expressed concerns at the hearing; and

WHEREAS, at a duly and properly noticed public hearing held on July 25, 2017, the City 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.; and

WHEREAS, on July 29, 2017, a verified complaint was received of Saturday work starting before 10:00 a.m.; and

WHEREAS, on August 26, 2017, a second verified complaint was received of Saturday work starting before 10:00 a.m.; and

WHEREAS, 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,” and 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”; and

WHEREAS, on August 29, 2017 the City notified the applicant that, because of these violations, 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; and

WHEREAS, the City Council finds that it is necessary to add a condition requiring the applicant to pay for a City Inspector to be present continually between 9:00 a.m. and 10:00 a.m., and between 6:00 p.m. and 7:00 p.m. during Saturday work to ensure that

construction begins no earlier than 10:00 a.m. and ends no later than 6:00 p.m.; 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 adding a new condition of approval is necessary to provide adequate protection for nearby residents and businesses; and be it further

RESOLVED, that, pursuant to Condition 5 of Resolution 17-128, which states that “the City Council may revoke or modify this approval if the applicant fails to comply with any of these conditions of approval”, the City Council hereby modifies the noise waiver to allow Saturday work in the vicinity of 5959 Shellmound Street granted on July 25, 2017 by Resolution No. 17-128 by adding the following condition:

6. 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.

ADOPTED by the City Council of the City of Emeryville at a regular meeting held on Tuesday, September 19, 2017 by the following vote:

AYES: _____
NOES: _____
ABSTAIN: _____
ABSENT: _____

ATTEST:

CITY CLERK

MAYOR

APPROVED AS TO FORM:



CITY ATTORNEY