

RESOLUTION NO. 17-147

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)

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

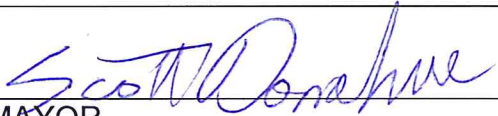
WHEREAS, because of these violations, the City Council finds that it is necessary to revoke the noise waiver, now, therefore, be it

RESOLVED, that the City Council of the City of Emeryville hereby finds that revocation of 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 Section 15061(b)(3) of the State CEQA Guidelines, which states that CEQA does not apply to projects which a public agency rejects or disapproves; 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 revokes the noise waiver to allow Saturday work in the vicinity of 5959 Shellmound Street granted on July 25, 2017 by Resolution No. 17-128.

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:	<u>4</u>	Vice Chair Bauters and Council Members Martinez, Medina and Patz
NOES:	<u>1</u>	Mayor Donahue
ABSTAIN:	<u>0</u>	
ABSENT:	<u>0</u>	


MAYOR

ATTEST:

APPROVED AS TO FORM:


CITY CLERK


CITY ATTORNEY