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April 11, 2018

Derek Delacourt
Community Services Area Administrator
City of Ann Arbor
301 East Huron Street
PO Box 8647
Ann Arbor, Michigan 48107-8647

Re: Art Fair Zoning Compliance Permits
Objection to Proposed Resolution Regarding Special Event
Temporary Outdoor Sales During Art Fair

Dear Mr. Delacourt:

I am a principal member of Handicraft LLC, which owns the Handicraft Building and parking lot at 331 - 337 - 339 - 341 East Liberty Street at the corner of Liberty and Division. The surface parking lot adjoining the Handicraft Building has been managed and leased to Art Fair vendors in an orderly and controlled manner for more than 25 years. Virtually all of our vendors have been Art Fair exhibitors for many years and have an established customer base. The exhibitor area is monitored during Art Fair and all organizational and clean-up requirements have been in place and successfully implemented for many years without incident and without any burden to the City.

I received your attached notice of the proposed resolution banning use of private property by exhibitors through a neighboring property owner. I do not believe that a notice was sent to our office and do not know whether our building is "within the footprint of the art fair" as referenced in your letter of March 23, 2018. The Handicraft Building is not within the "footprint" of the three non-profit art fairs.

Handicraft objects to the proposed resolution and requests that City Council consider the following before moving forward on this matter:

A. Legal Considerations:

- Has the proposed Resolution been vetted by the City Legal Department to ensure that, despite general antitrust immunity for municipalities performing governmental services, the proposed action does not constitute an unlawful restraint of trade or selective interference with or preference of certain businesses, vendors, or property owners over others in a discriminatory

manner with no reasonable basis or justification? The courts may view this action as arbitrary and capricious or an illegal or discriminatory restraint of trade.

- Since temporary outdoor sales permits on private property are readily available at other times of the year, and have been obtained on a number of occasions in the past by Handicraft, it appears that the likely purpose of the proposed Resolution is to arbitrarily favor or provide a competitive advantage to some vendors over other vendors, rather than address a legitimate municipal concern.
- Many property owners and vendors have already entered into leases or other contractual arrangements for art fair booths for 2018. Since the timing of the notice of the proposed Resolution has been so short, the Resolution creates unanticipated legal and logistical problems for those parties.

B. Practical Considerations:

- The Ann Arbor Art Fair itself creates a burden on private property owners, such as Handicraft. Since Liberty Street is closed and the Handicraft parking lot is not accessible to vehicles during Art Fair, the property is not otherwise usable during Art Fair. The proposed Resolution would place an additional financial burden on property owners without any demonstrable benefit to the City. Large empty areas, such as the Handicraft parking lot, may pose problems and burdens on property owners related to monitoring, vandalism, unauthorized use or trespass, and trash collection and removal.
- Since the Resolution eliminates many established vendors, while favoring other vendors connected with other Art Fair organizations, the net reduction in vendors may negatively impact the number of Art Fair patrons, the options available to Art Fair patrons, and the general Art Fair experience.

C. Cost/Benefit Analysis Considerations:

It is my understanding that an argument has been made that private property exhibitors unfairly benefit from City services provided during the Art Fair without financial contribution, while the three non-profit Art Fair Associations contribute funds from booth rental to the City. It would seem that such a comparison is inappropriate and akin to comparing apples to oranges.

- The three non-profit Art Fairs pay no property taxes, but receive rental fees from exhibitors for booth spaces on publicly owned streets. They neither pay property taxes nor maintain the property where the booths are located.

- The street closure costs to the City and loss of parking meter revenue on the closed streets is strictly due to the City providing booth spaces on City streets. These are not costs that benefit private property owners.
- There appears to be no evidence that eliminating private property exhibitors within the Art Fair footprint will reduce City costs for the Art Fair. Thus, the Resolution appears to target specific properties, but serve no legitimate municipal purpose.

D. Lack of Research or Study Regarding Proposed Resolution:

I am not aware of any study, documentation, information, or independent or objective analysis of the costs or benefits related to the proposed Resolution. It would seem appropriate that prior to instituting such a significant change in permitting during Art Fair week aimed solely at property owners located within the Art Fair footprint, the City should conduct an analysis of the benefits and burdens that will result from the Resolution and determine whether there is a legal and sound basis for such discriminatory action.

Since the proposed Resolution appears to be aimed solely at eliminating exhibitors located on certain private property from participating in the Art Fair, while favoring exhibitors affiliated with certain other Art Fair organizations or located outside the "footprint", I would suggest that further consideration and study is appropriate before moving forward with the proposed Resolution.

Very truly yours,



Daniel J. Cramer

Enclosure

c: Mayor Christopher Taylor
City Council Members
DDA Board Members



CITY OF ANN ARBOR, MICHIGAN

301 East Huron, P.O. Box 8647, Ann Arbor, Michigan 48107-8647

www.a2gov.org

Community Services Area

(734) 794-6000 x42198

March 23, 2018

RE: Art Fair Zoning Compliance Permits

Dear Applicant/Property Owner:

Please be advised that a Resolution will be placed before City Council on April 16, 2018, that, if passed, will rescind all prior resolutions that currently allow special event temporary outdoor sales on private property during and within the footprint of the Art Fair. Pending Council approval of said Resolution and effective for the 2018 Art Fair and all Art Fairs thereafter, Zoning Compliance Permits for special event temporary outdoor sales during the Art Fair and within the footprint of the Art Fair will no longer be issued by the City.

This change will only apply to users that have previously been required to obtain a Zoning Compliance Permit for special event temporary outdoor sales during the Art Fair. Adjacent businesses and tenants will still be able to conduct private property outdoor sales of goods and materials that are sold on a regular basis from within the building on the property consistent with City Code Section 5:10.15(2)(f).

If you have any questions please feel free to contact me at 734.794.6000, Ext. 43902.

Sincerely,

Derek Delacourt
Community Services Area Administrator

Cc: Legal
File