

4/23/2008

61-0-08

AN ORDINANCE

**Amending Sections 3-25-1 and 3-25-6 of the Evanston City Code
Permitting the "Annual Home Grown Artist Event" in the
Farmers' Market to Become a Permanent Event**

WHEREAS, in 2006, the Administration & Public Works Committee of the City Council permitted a pilot art sale, the "Home Grown Artists," at the Farmers' Market allowing sales by local artists who either live or have a studio in Evanston for four (4) Saturdays during the summer; and

WHEREAS, for the past two years, the public has enthusiastically supported this opportunity to view and purchase art by Evanston artists;

THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF
THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS:

SECTION 1: That Section 3-25-1 of the Evanston City Code, 1979, as amended, is further amended as follows:

3-25-1: DEFINITIONS:

EVANSTON CHARITABLE ORGANIZATIONS: Any organization located in Evanston and which has qualified to be exempt from federal income tax under IRS code section 501c3.

FARMERS' MARKET: A designated area where on designated days and times, growers and producers may sell directly to the public in accordance with City regulations. The City shall have the right to relocate or discontinue the market, to specify the days and times of its use and to stipulate what goods may be sold. The Farmers' Market commission may allow during the season a maximum of three (3) different Evanston charitable organizations per market day to maintain a

refreshment stand to sell nonalcoholic beverages and home baked products not requiring refrigeration at a designated location within the Farmers' Market.

GROWERS AND PRODUCERS: Any person offering for sale articles for human consumption as defined herein, and nonedible articles as defined herein, which have been raised or prepared by an individual, or members of his family, or persons employed by the individual, whose principal source of income is realized by the sale of said articles.

HOME GROWN ARTISTS: Local artists who either live or have a studio in Evanston.

SALEABLE ITEMS:

(A) Items for sale shall have been raised or prepared by a grower or producer and shall include:

1. Articles for human consumption such as fruits or their juices; vegetables; edible grains; nuts and berries; apiary products; maple sugar; syrups; refrigerated eggs and natural cheeses; and home baked products not requiring refrigeration;

2. Nonedible articles such as cut or potted flowers or plants.

3. Artwork created by Evanston artists in the Annual Home Grown Artists Event.

(B) The sale of any type of meat, fish, poultry, or milk products, except natural cheese, is prohibited, provided that individuals may sell USDA prepackaged meat only from animals from their own farm. Such sale of meat must conform with the Illinois retail food store sanitation rules and regulations as adopted in subsection 8-8-1(A)2 of this code. No more than two (2) such licenses or permits may be issued.

Sale of any article may be prohibited by the Evanston director of public health by notice posted prominently at said market eight (8) days in advance of the effective date of said prohibition.

(C) The sale of bread shall be allowed by any licensed, food certified bakery establishment. Establishments must be licensed by the City of Evanston. The bread must have been made from all fresh ingredients and processed on site, including mixing, shaping, final proofing, and baking. No bread can be sold if the ingredients have been prepared off site but is baked on the premises. Eligible bakers shall be only those where the sale of breads and pastries are the

exclusive items for sale. No establishment will be eligible if bread is only an ancillary item for sale. The sale of bread is the only item which shall be allowed to be sold by the bakeries. The sale of pies, muffins, cookies or cakes shall be prohibited by the bakeries.

SECTION 2: That Section 3-25-6 of the Evanston City Code, 1979, as amended, is further amended as follows:

3-25-6: GENERAL REGULATIONS:

(A) No licensee, permittee, or artist shall:

1. Sell or offer any article according to weight except in accordance with the established standards for weight of the state of Illinois.
2. Sell apiary products, maple sugars and syrups or any processed food unless properly labeled in accordance with state standards for labeling.
3. Sell or offer any unwholesome or spoiled articles.
4. Attract attention to his/her goods by hawking or crying out.
5. Sell or offer any article without first obtaining an Illinois sales tax license of the current year or fail to prominently display the number of such license; provided, however, that when a temporary (daily) space is assigned, suitable evidence of application for such license may be presented to the market master.
6. Transport or display food without adequate protection against contamination. Delivery trucks and other equipment used for transportation and display shall be kept clean at all times.
7. Sell or offer any article of natural cheese without first obtaining written statement from the Evanston director of public health, that the product is in compliance with standards for storage and display.
8. Allow any waste, garbage or any other refuse to remain on or near his space after the closing hour of any market day.
9. Be selected to participate in the Evanston farmers' market without providing evidence that real estate and property taxes and Illinois sales taxes have been paid during the previous market season. First time vendors shall have all required licenses and must show evidence thereof.

(B) The Annual Home Grown Artists Event:

1. Shall be limited to six (6) Saturdays each summer to be determined in advance by the Human Services Committee of the City Council from recommendations by staff;
2. Shall be financially self-sufficient, and operate at no cost to the City;
3. Shall be limited to seven (7) tents per Saturday;
4. Shall be held in an area of the Farmers' Market designated by the City; and
5. Shall obtain approval from the Human Services Committee each year by presenting a budget for the event and fee.
6. Approval of Art Event: The Annual Home Grown Artists Event Organizer must present a budget to the Human Services Committee each year for review and approval.

(C) No animals or pets shall be allowed in the market.

(D) No motorized vehicles, other than those of the sellers and the market master, shall be allowed in the market.

SECTION 3: That the foregoing recitals are found as fact and made a part hereof.

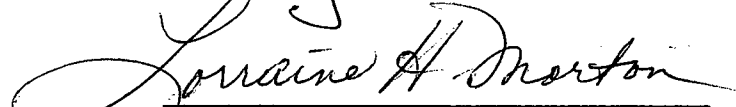
SECTION 4: That all ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 5: That this Ordinance 61-O-08 shall be in full force and effect from and after its passage, approval, and publication in the manner provided by law.

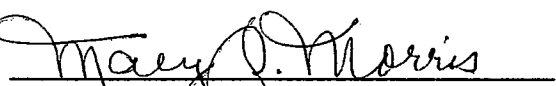
SECTION 6: That if any provision of this Ordinance 61-O-08 or application thereof to any person or circumstance is held unconstitutional or

otherwise invalid, such invalidity shall not affect other provisions or applications of this Ordinance 61-O-08 that can be given effect without the invalid application or provision, and each invalid application of this Ordinance is severable.

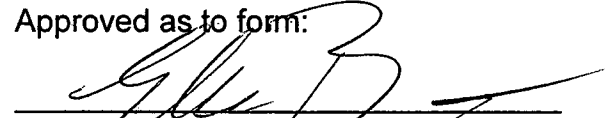
Introduced: April 28, 2008 Approved:
Adopted: May 12, 2008 May 13, 2008



Lorraine H. Morton, Mayor

Attest:


Mary Morris, City Clerk

Approved as to form:


Elke Tober-Purze, Interim
First Assistant Corporation Counsel



involved. No waiver made by any party with respect to any specific default by any other party under this Agreement shall be construed as a waiver of rights with respect to any other default by the defaulting party under this Agreement or with respect to the particular default except to the extent specifically waived in writing.

18. **Entire Agreement.** This Agreement sets forth all the promises, inducements, agreements, conditions and understandings between Developer and City relative to the subject matter hereof, and there are no promises, agreements, conditions or understandings, either oral or written, express or implied, between them, other than are herein set forth.

19. **Survival of Terms, Binding upon Successors.** The covenants, terms, conditions, representations, warranties, agreements and undertakings set forth in this Agreement (and specifically including, without limitation, those covenants, terms, conditions, representations, warranties, agreements and undertakings which survive the termination of this Agreement) shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives, and the covenants, provisions and agreements herein contained shall run with the Property.

20. **Term of Agreement and Redevelopment Plan.** The term of this Agreement shall commence as of the date of execution hereof and shall expire upon the earlier of the following (the "Expiration Date"): (i) twenty (20) years from the date hereof, subject to extension as provided in Section 8 hereof; or (ii) the date on which the aggregate amount of all payments received by Developer from the City pursuant to this Agreement, equals the lesser of (x) \$1,305,516 or (y) the actual amount of the Eligible Project Costs.

21. **Governing Law.** The validity, meaning and effect of this Agreement shall be determined in accordance with the laws of the State of Illinois (without giving effect to Illinois choice of law principles).

22. **Supplemental Agreements.** The parties agree to cooperate in order to execute such supplemental agreements, memoranda and similar documents as may be necessary to implement the terms of this Agreement.

23. **Force Majeure.** Performance by any party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, restrictive governmental laws and regulations, epidemics, quarantine restrictions, freight embargoes or lack of transportation. An extension of time for any such cause shall be for the period of the delay, which period shall commence to run from the time of the commencement of the cause, provided that written notice by the party claiming such extension is sent to the other party not more than twenty (20) days after the commencement of the cause or not more than twenty (20) days after the party claiming

such extension could have first reasonably recognized the commencement of the cause, whichever is later.

24. **Notices.** Any notice, request, demand or other communication made in connection with this Agreement shall be in writing and shall be deemed to have been duly given on the date of delivery, if delivered to the persons identified below in person, by courier service or by facsimile copy (with original copy mailed the same day in accordance with the provisions of this Paragraph), or five (5) business days after mailing if mailed by certified mail, postage prepaid, return receipt requested, addressed as follows:

If to the City:

City of Evanston
Civic Center
2100 Ridge Avenue
Evanston, IL 60201
Attention: City Manager
Facsimile: 847-448-8083

Copy to:

Ryan and Ryan
33 North Dearborn Street, Suite 402
Chicago, IL 60602
Attention: William E. Ryan and Arthur N. Christie
Facsimile: 312-236-1386

If to Developer:

Joseph Freed & Associates, Inc.
1400 S. Wolf Road
Bldg. 100
Wheeling, IL 60090
Attention: Dennis A. Harder and Thomas H. Fraerman
Facsimile: 847-215-5282

Copy to:

Krasnow Sanberg Cornblath & Hobbs
444 North Michigan Avenue
Suite 2050
Chicago, IL 60611
Attention: Glen R. Cornblath
Facsimile: 312-755-5720

25. **Severability.** If any provision, condition, covenant or other clause, sentence or phrase of this Agreement is held invalid by a court of competent jurisdiction, such provision shall be deemed to be excised and the invalidity thereof shall not affect any other provision, condition, covenant or other clause, sentence or phrase contained herein. Notwithstanding the foregoing, if any such invalid provision goes to the essence of this Agreement so that the purposes of the Agreement cannot be fulfilled, then this Agreement shall terminate as of the date of such judgment.

26. **City Approval.** A copy of the ordinance (or other City action) approving of the terms and conditions of this Agreement and authorizing and directing the City Manager to execute this Agreement on the City's behalf, certified by the City Clerk, shall be provided to Developer.

27. **Amendments; Recordation.** This Agreement may be amended from time to time with the written consent of the parties hereto. The parties shall cause a memorandum of this Agreement to be recorded in the Office of the Cook County Recorder of Deeds.


28. **Miscellaneous.** The parties hereto acknowledge and agree that the individuals who are members of the group constituting the corporate authorities of the City are entering into this Agreement in their corporate capacities as members of such group and shall have no personal liability in their individual capacities.

29. **Execution of this Agreement.** This Agreement shall be signed last by the City and the City Manager shall affix the date on which he signs and approves this Agreement on the first page hereof, which date shall be the effective date of this Agreement.

IN WITNESS WHEREOF this Agreement has been duly authorized and approved by the City Council of the City of Evanston, Cook County, Illinois, and duly authorized, approved and executed by ROGER CRUM as of the date and year first above set forth.

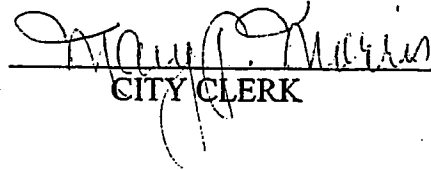
EVANSTON PLAZA L.L.C.

CITY OF EVANSTON

BY 
MANAGER
LAURANCE H. FREED

BY 
CITY MANAGER

ATTEST



CITY CLERK