



# staff report

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TO: Honorable Mayor and Members of the City Council

ATTENTION: Jeffrey L. Stewart, City Manager

FROM: Art Bashmakian, Director of Planning and Building Services

SUBJECT: Consideration and possible action to authorize the City Manager to execute Agreement File No. 6.6, in a form approved by the City Attorney, with the Bellflower Chamber of Commerce for 1) the temporary use of the property located at 16512 Bellflower Boulevard (APN 7109-010-912); and 2) waiving of fees associated with the use of the subject property.

DATE: October 24, 2016

## **EXECUTIVE SUMMARY**

This action would authorize the City Manager to enter into an agreement with the Bellflower Chamber of Commerce for the temporary use of the property located at 16512 Bellflower Boulevard on Saturday, November 19, 2016. The agreement would grant Bellflower Chamber of Commerce access to the City-owned property, for eight (8) local restaurant and merchandise vendors' to set up their booths/canopies, tables, and chairs. The vendors are associated with an event titled "Art Walk & Shop Bellflower" taking place the same day.

## **RECOMMENDATION TO THE CITY COUNCIL**

- 1) Authorize the City Manager to execute Agreement File No. 6.6, in a form approved by the City Attorney;
- 2) Determine that the Art Walk & Shop Bellflower fulfills a public purpose by encouraging economic development and promotes the public welfare. Consequently, the Chamber of Commerce need not pay the City fees ordinarily associated with private events; or
- 3) Alternatively, discuss and take other action related to this item.

## **FISCAL IMPACT**

None

**DISCUSSION**

On October 10, 2016, staff received a Temporary Use Permit (TUP) application from the Bellflower Chamber of Commerce to use City-owned property located at 16512 Bellflower Boulevard on Saturday, November 19, 2016. The Chamber proposes to use the property for staging the “Art Walk & Shop Bellflower” Event which will include a total of eight (8) local restaurant and merchandise vendors and their equipment. In its entirety, the Art Walk & Shop Bellflower Event will take place on Bellflower Boulevard between Oak Street to the north and Flower Street to the south. It is expected that approximately 250 attendees will participate in the event.

**Requested time to use City property**

- 11 a.m. to 12 p.m. for set-up
- 12 p.m. to 6 p.m. for event time
- 6 p.m. to 7 p.m. for clean-up

The City does not yet have a permitting process that would allow for special events on public property; staff is currently drafting an ordinance that would address this need. Until the City Council considers such an ordinance, the City Attorney advised that the City could enter into a license agreement with the Chamber of Commerce that would allow the event to move forward.

Staff estimates that the fees that would ordinarily be owed for this type of event is approximately \$1,000. Based upon the number of anticipated attendees, the promotion of Bellflower downtown, and the City’s interest in growing small businesses, however, it appears that this event is in the public interest. Among other things, it will help promote economic development as contemplated by various programs already approved by the City Council including, without limitation, the Downtown Assistance Program. As a result, it is recommended that the City Council allow the Chamber of Commerce to use the property – after executing the license – without paying the fees ordinarily associated with such use.

**ATTACHMENT**

Agreement File No. 6.6 .....3

**AGREEMENT FILE NO. 6.6  
LICENSE AGREEMENT  
BETWEEN  
THE CITY OF BELLFLOWER AND  
THE BELLFLOWER CHAMBER OF COMMERCE  
FOR TEMPORARY USE OF PROPERTY LOCATED AT  
16512 BELLFLOWER BOULEVARD**

**THIS LICENSE AGREEMENT** is made and executed this \_\_\_ day of \_\_\_\_\_, 2016, between the CITY OF BELLFLOWER, a general law city and municipal corporation ("CITY"), and the BELLFLOWER CHAMBER OF COMMERCE, a California nonprofit corporation ("CHAMBER").

**1. LICENSE; DESCRIPTION OF PROPERTY.** CITY licenses CHAMBER to use, on the terms and conditions in this License, space located at the Southeast corner of Bellflower Boulevard and Oak Street (APN 7109-010-912), commonly referred to as "16512 Bellflower Boulevard" CITY's action is not, and cannot be construed to be, a conveyance of a property interest or a lease; it is a license to use property only.

**2. USE OF PROPERTY.**

- A. CHAMBER may temporarily use the property addressed 16512 Bellflower Boulevard on Saturday, November 19, 2016 for the purposes of staging 8 local restaurant and merchandisers to set up their booths/canopies, tables, trash recepticals and chairs. The vendors are associated with an event titled "Art Walk & Shop Bellflower" taking place on the same day. The property will also be utilized by the Public to purchase items from the vendors.
- B. CITY may change, amend, or terminate CHAMBER's use of 16512 Bellflower Boulevard at any time, and in its sole discretion, verbally or in writing.

**3. TERM.** Except as provided in Section 4, the term of this license will be for one day only on Saturday, November 19, 2016 from 11 a.m. to 7 p.m; this includes set-up and break down time. Upon mutual written agreement between the parties, this License may be renewed for additional time.

**4. TERMINATION.**

- A. As stated above, CITY may terminate this License at any time with or without cause. Termination will be effective immediately , unless CITY specifies otherwise.
- B. CHAMBER may terminate this License at any time in writing at least five days before the event.
- C. By executing this document, CHAMBER waives any and all claims for damages that might otherwise arise from CITY's termination under this Section.

- D. Upon termination, CHAMBER will remove all personal property and improvements from 16512 Bellflower Boulevard within one day from the day and time of the event end time. 16512 Bellflower Boulevard will be left in a clean and orderly fashion.

**5. ALTERATIONS.** CHAMBER will not make, or cause to be made, any alterations to 16512 Bellflower Boulevard, or any part thereof, without CITY's prior written consent.

**6. HAZARDOUS/TOXIC WASTE.** CITY has not, nor, to CITY's knowledge, has any third party used, generated, stored or disposed of, or permitted the use, generation, storage or disposal of, any Hazardous Material (as defined below) on, under, about or within 16512 Bellflower Boulevard in violation of any law or regulation. CHAMBER agrees that it will not use, generate, store or dispose of any Hazardous Material (as defined below) on, under, about or within 16512 Bellflower Boulevard in violation of any law or regulation. CHAMBER agrees to defend and indemnify CITY, to the extent stated in Section 9, against any and all losses, liabilities, claims or costs arising from any breach of any warranty or agreement contained in this Section. As used in this Section, "Hazardous Material" means any substance, chemical or waste that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation (including petroleum and asbestos).

**7. SIGNS.** CHAMBER will not place any permanent sign(s) upon 16512 Bellflower Boulevard without CITY's prior written consent. CHAMBER will comply with all applicable sign codes and ordinances.

**8. ASSIGNMENT.** CHAMBER will not be permitted to assign this License or any interest therein.

**9. INDEMNIFICATION.**

- A. CHAMBER will hold CITY harmless and free from any and all liability arising out of this License, or its performance. Should CITY be named in any suit, or should any claim be against it, by suit or otherwise, whether the same be groundless or not, arising out of this License, or its performance, pursuant to this License, CHAMBER will defend CITY (at CITY's request and with counsel satisfactory to CITY) and will indemnify it for any judgment rendered against it or any sums paid out in settlement or otherwise.
- B. For purposes of this section "CITY" includes CITY's officers, officials, employees, agents, representatives, and certified volunteers.
- C. CHAMBER expressly agrees that this release, waiver, and indemnity agreement is intended to be as broad and inclusive as is permitted by the law of the State of California and that if any portion is held invalid, it is agreed that the balance will, notwithstanding, continue in full legal force and effect.

- D. It is expressly understood and agreed that the foregoing provisions will survive termination of this License.
- E. The requirements as to the types and limits of insurance coverage to be maintained by CHAMBER as required by Section 10 below, and any approval of said insurance by CITY, are not intended to and will not in any manner limit or qualify the liabilities and obligations otherwise assumed by CHAMBER pursuant to this License, including but not limited to the provisions concerning indemnification.

**10. INSURANCE.**

- A. Before commencing performance under this License, and at all other times this License is effective, CHAMBER will procure and maintain the following types of insurance with coverage limits complying, at a minimum, with the limits set forth below:

<u>Type of Insurance</u>	<u>Limits (combined single)</u>
Commercial general liability:	\$2,000,000
Workers compensation	Statutory limits

- B. Commercial general liability insurance will meet or exceed the requirements of the most current ISO Forms. The amount of insurance set forth above will be a combined single limit per occurrence for bodily injury, personal injury, and property damage for the policy coverage. Liability policies must be endorsed to name CITY, its officials, and employees as "additional insureds" under said insurance coverage and to state that such insurance will be deemed "primary" such that any other insurance that may be carried by CITY will be excess thereto. Such insurance will be on an "occurrence," not a "claims made," basis and will not be cancelable except upon 30 days prior written notice to CITY except for nonpayment of premiums which may be cancelable upon ten day notice.
- C. CHAMBER will furnish to CITY duly authenticated Certificates of Insurance and Endorsements evidencing maintenance of the insurance required under this License and such other evidence of insurance or copies of policies as may be reasonably required by CITY from time to time. Insurance must be placed with insurers with a current A.M. Best Company Rating equivalent to at least a Rating of "A:VII." Certificate(s) must reflect that the insurer will provide thirty (30) day notice of any cancellation of coverage. CONTRACTOR will require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions.

- D. Should CHAMBER, for any reason, fail to obtain and maintain the insurance required by this License, CITY may obtain such coverage at CHAMBER's expense and charge the cost of such insurance to CHAMBER under this License or terminate pursuant to Section 4.

**11. COMPLIANCE WITH LAW.** CHAMBER will, at its sole cost and expense, comply with all of the requirements of all federal, state, and local authorities now in force, or which may hereafter be in force, pertaining to 16512 Bellflower Boulevard and will faithfully observe in the use of 16512 Bellflower Boulevard all applicable laws. The judgment of any court of competent jurisdiction, or the admission of CHAMBER in any action or proceeding against CHAMBER, whether CITY be a party thereto or not, that CHAMBER has violated any such ordinance or statute in the use of 16512 Bellflower Boulevard will be conclusive of that fact as between CITY and CHAMBER.

**12. POSSESSORY INTEREST TAXES.** This License is not intended to give CHAMBER a property interest in 16512 Bellflower Boulevard. However, CHAMBER is informed by CITY pursuant to Revenue & Taxation Code § 107.6 that any property interest in the Property may be subject to property taxation if created and that CHAMBER may be subject to the payment of property taxes levied on such interest. CHAMBER may not deduct such amount from payments to CITY.

**13. BREACH OF AGREEMENT.** The violation of any of the provisions of this License will constitute a breach of this License by CHAMBER, and in such event said License will automatically cease and terminate.

**14. WAIVER OF BREACH.** Any express or implied waiver of a breach of any term of this License will not constitute a waiver of any further breach of the same or other term of this License.

**15. ENTRY BY CITY AND PUBLIC.** This License does not convey any property interest to CHAMBER. Except for areas restricted because of safety concerns, CITY and the general public will have unrestricted access upon 16512 Bellflower Boulevard for all lawful acts.

**16. INSOLVENCY; RECEIVER.** Either the appointment of a receiver to take possession of all or substantially all of the assets of CHAMBER, or a general assignment by the CHAMBER for the benefit of creditors, or any action taken or offered by CHAMBER under any insolvency or bankruptcy action, will constitute a breach of this License by CHAMBER, and in such event said License will automatically cease and terminate.

**17. NOTICES.** Except as otherwise expressly provided by law, all notices or other communications required or permitted by this License or by law to be served on or given to either party to this License by the other party will be in writing and will be deemed served when personally delivered to the party to whom they are directed, or in lieu of the personal service, upon deposit in the United States Mail, certified or registered mail, return receipt requested, postage prepaid, addressed to CHAMBER at:

LESSEE at: Michele Moore  
16730 Bellflower Boulevard, Suite A  
Bellflower, CA 90706

or to CITY at: 16600 Civic Center Drive  
Attn: Planning Department  
Bellflower, CA 90706

Either party may change its address for the purpose of this Section by giving written notice of the change to the other party.

**18.ACCEPTANCE OF ELECTRONIC SIGNATURES.** The Parties agree that agreements ancillary to this License and related documents to be entered into in connection with this License will be considered signed when the signature of a party is delivered by electronic transmission. Such electronic signature will be treated in all respects as having the same effect as an original signature.

**19.GOVERNING LAW.** This License has been made in and will be construed in accordance with the laws of the State of California and exclusive venue for any action involving this License will be in Los Angeles County.

**20.PARTIAL INVALIDITY.** Should any provision of this License be held by a court of competent jurisdiction to be either invalid or unenforceable, the remaining provisions of this License will remain in effect, unimpaired by the holding.

**21.ENTIRE AGREEMENT.** This instrument and its Attachments constitute the sole agreement between CITY and CHAMBER respecting 16512 Bellflower Boulevard, the use of 16512 Bellflower Boulevard by CHAMBER, and the specified License term, and correctly sets forth the obligations of CITY and CHAMBER. Any agreement or representations respecting 16512 Bellflower Boulevard or its licensing by CITY to CHAMBER not expressly set forth in this instrument are void.

**22.CONSTRUCTION.** The language of each part of this License will be construed simply and according to its fair meaning, and this License will never be construed either for or against either party.

**23.AUTHORITY/MODIFICATION.** The Parties represent and warrant that all necessary action has been taken by the Parties to authorize the undersigned to execute this License and to engage in the actions described herein. This License may be modified by written agreement. CITY's city manager, or designee, may execute any such amendment on behalf of CITY.

**24.COUNTERPARTS.** This License may be executed in any number or counterparts, each of which will be an original, but all of which together will constitute one instrument executed on the same date.

**City of Bellflower  
Agreement File No. 6.6  
Chamber of Commerce  
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**IN WITNESS WHEREOF** the parties hereto have executed this contract the day and year first hereinabove written.

**CITY OF BELLFLOWER,  
a general law city.**

**BELLFLOWER CHAMBER OF COMMERCE,  
a California nonprofit corporation.**

\_\_\_\_\_  
**Jeffrey L. Stewart,  
City Manager**

\_\_\_\_\_  
\_\_\_\_\_,  
**President**

**ATTEST:**

\_\_\_\_\_  
\_\_\_\_\_,  
**Secretary**

\_\_\_\_\_  
**Mayra Ochiqui,  
City Clerk**

**APPROVED AS TO FORM:**

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**Karl H. Berger,  
City Attorney**