

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LONG BEACH AMENDING THE LONG BEACH MUNICIPAL CODE BY AMENDING SECTION 5.72.200; BY ADDING SECTION 21.15.1855; AND BY REPEALING CITY COUNCIL RESOLUTION NOS. RES-06-0003 AND RES-14-0030, ALL RELATING TO THE DOWNTOWN DINING AND ENTERTAINMENT DISTRICT

The City Council of the City of Long Beach ordains as follows:

Section 1. Section 5.72.200 of the Long Beach Municipal Code is amended to read as follows:

5.72.200 Downtown Dining and Entertainment District.

The Downtown Dining and Entertainment District (the "DDED") shall be established to provide consistent standards for the co-existence of residential and entertainment uses in Downtown Long Beach.

The DDED's boundaries are set forth in Long Beach Municipal Code Section 5.72.210.

Portions of the DDED are within the boundaries of PD 30 (Downtown Plan), which establishes a mix of uses, including residential, office, commercial, restaurant, retail and entertainment uses (the "DT Plan").

A. Definitions.

"Ambient Music" shall mean low-level background music, whether amplified or not amplified, which is audible from a distance of no more than ten feet (10') from any portion of the exterior of the premises, and which is intended to create ambiance and is not intended to entertain. Ambient

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
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1 Music does not include music played by a disc jockey or DJ. An
2 entertainment permit is not required for Ambient Music.

3 "Amplified Music" shall mean electronically enhanced music which is
4 audible from a distance of no more than fifty feet (50') from any portion of
5 the exterior of the premises, and which is intended to entertain.

6 "Entertainment" as used here shall have the same definition as
7 "entertainment activity" contained in Long Beach Municipal Code Section
8 5.72.115.

9 "Nightclub" shall have the same definition as "nightclub" contained in
10 Long Beach Municipal Code Section 21.15.1855. A "nightclub" in the DT
11 area within the DDED must apply for and obtain a Conditional Use Permit
12 as required by Long Beach Municipal Code Section 21.25.206 and
13 consistent with the Downtown Plan. This does not include nightclubs south
14 of Ocean Boulevard as they are not in PD 30.

15 All other establishments desiring entertainment permits in the DDED
16 must, in addition to the requirements of Sections 5.72 and 21.15.110, agree
17 in writing to comply with the conditions of the DDED as set forth below.

18 B. Standard Conditions.

19 1. Individuals and business entities who apply for and
20 obtain entertainment permits ("Permittees") shall comply with all applicable
21 laws, regulations, ordinances and stated conditions. If Permittee fails to
22 comply with the conditions of this permit, or if his or her operations result in
23 excessive police service as defined below, Permittee will be required to
24 operate under the more restrictive conditions described in Paragraph C,
25 "Tiered Conditions," without further hearing.

26 2. When the Chief of Police determines that excessive
27 police services are required as the result of any incident or nuisance arising
28 out of or in connection with Permittee's operations, the cost of such

1 services shall be billed to Permittee as an expense of an emergency
2 response. "Expense of an emergency response" means those costs
3 incurred by the City of Long Beach in making any appropriate emergency
4 response to the incident, and shall be comprised of all costs directly arising
5 because of the response to the particular incident, including, but not limited
6 to, the costs of providing police, firefighting, rescue, and emergency
7 medical services at the scene of the incident, as well as the salaries of the
8 personnel responding to the incident.

9 3. Indoor entertainment and outdoor Ambient Music that
10 otherwise conforms with the requirements of state and local laws and
11 regulations may be offered until 2 a.m., seven (7) days a week.

12 4. Outdoor Amplified Music, including entertainment
13 activity on rooftop patios or areas with sidewalk-occupancy permits, must
14 be applied for and will be considered separately from indoor entertainment.
15 Outdoor amplified entertainment, if permitted, will be subject to the following
16 restrictions: a) sound amplifying equipment may be used only between 10
17 a.m. and 10 p.m. Sunday through Thursday, and 10 a.m. and midnight
18 Friday and Saturday; b) in conjunction with an Occasional Event Permit,
19 pursuant to Long Beach Municipal Code section 5.72.130; or c) in
20 conjunction with a special events permit. Permittee agrees that the
21 following standard is reasonable: Noise emanating from Permittee's
22 premises shall not be unreasonably loud or disturbing in light of the facts
23 and circumstances then prevailing within fifty feet (50') of the perimeter of
24 the premises in all directions.

25 5. Permittees shall place or post conditions on the
26 premises in a place easily accessible by City staff, including law
27 enforcement personnel.

28 6. Each holder of an existing entertainment permit within

1 the DDED and each new applicant for a DDED, including an applicant who
2 acquires an existing business through a change of ownership, shall, within
3 ninety (90) days of application, be required to acknowledge that he or she
4 has read, understood and agreed to the conditions of the permit. Each new
5 applicant for a DDED permit, including an applicant who acquires an
6 existing business through a change of ownership, shall, within ninety (90)
7 days of application, submit proof of attending the LEAD program offered by
8 the Department of Alcoholic Beverage Control.

9 7. Permittees shall be responsible for all entertainment
10 activities at the location, including those conducted by promoters. Each
11 Permittee and promoter conducting business within the City of Long Beach
12 shall obtain a City of Long Beach Business License prior to conducting
13 entertainment activities governed by a DDED permit. Permittee shall
14 provide all promoters and agents hired to conduct entertainment activities
15 with a copy of the approved permit, which shall include a copy of the
16 approved conditions of operation. In addition, promoters must have or
17 obtain a Promoter's License. Once the Promoter's License has been
18 approved, the promoter will be added to a list of approved promoters in the
19 City of Long Beach.

20 8. If Permittee utilizes an independent third party event
21 promoter to provide entertainment related services resulting in any public
22 safety call for service, the City reserves the right to remove and/or restrict
23 the use of independent third party promoters.

24 9. The operation of the establishment shall be limited to
25 those activities expressly indicated on the entertainment permit application
26 and approved by the City Council. Any change in the operation that
27 exceeds the conditions of the approved permit will require approval by City
28 Council.

1 10. Permittee shall conduct all aspects of his or her
2 operation, including before- and after-hours deliveries and maintenance, in
3 consideration of residences located nearby.

4 11. Permittee agrees that the following standard is
5 reasonable: Noise emanating from Permittee's premises shall not be
6 unreasonably loud or disturbing in light of the facts and circumstances then
7 prevailing within fifty feet (50') of the perimeter of the premises in all
8 directions. Sound and amplification equipment shall be monitored during
9 business hours to ensure that audible noise remains at acceptable levels in
10 accordance with Long Beach Municipal Code Chapter 8.80.

11 12. On and after the date this ordinance takes effect,
12 applicants for new entertainment permits in the DDED must cause an
13 acoustical study to be prepared by a qualified, certified acoustical engineer,
14 hired by the applicant and acceptable to the City, which shall demonstrate
15 the sound emanating from the applicant's establishment meets the sound
16 standards described in Long Beach Municipal Code section 8.8.0. The
17 study shall be reviewed and confirmed by the Health Department and the
18 Development Services Department during their review of the permit
19 application.

20 13. A new applicant for an entertainment permit in the
21 DDED, including an applicant who acquires an existing business through a
22 change of ownership, may be eligible to request a waiver of the requirement
23 to conduct a sound study if the applicant meets one of the following criteria:

24 a. The location had an entertainment permit, and
25 no more than twelve (12) months have elapsed since the permitted
26 entertainment at that location ceased; or

27 b. Verifiable evidence that best sound mitigation
28 practices were used in the construction or retrofitting of the location.

1 14. The waiver request shall be presented to a committee
2 comprised of representatives of the City's noise office, business license
3 bureau and zoning administration, who will conduct a hearing to determine
4 if the sound study waiver is appropriate for the location. The committee
5 shall consider but not be limited to the following: the previous use of the
6 location, the history of sound-related complaints and violations at the
7 location, proximity to residential development and the age and condition of
8 the building, including sounds mitigation efforts. The committee shall
9 determine if the waiver request shall be granted or denied.

10 15. Denial of a waiver request may be appealed to a City
11 hearing officer pursuant to Long Beach Municipal Code Section 2.93.050.

12 16. No adult entertainment, as defined by Long Beach
13 Municipal Code Section 5.72.115(B), shall be conducted on the permitted
14 premises. Permittees shall not allow, permit, procure, or encourage, anyone
15 to expose male or female genitals, cleft of the buttocks, the areola or any
16 portion of the female breast below the areola, while at or inside the
17 business.

18 17. Current occupancy loads shall be posted at all times,
19 and Permittee shall have an effective system to keep count of the number
20 of occupants present at any given time and provide that information to
21 public safety personnel upon request, as required by Long Beach Municipal
22 Code section 18.48.320.

23 18. If Permittee's operations give rise to a substantial
24 increase in complaints/calls for police service, Permittee shall increase
25 security staff, implement the use of electronic metal detection equipment,
26 increase outside lighting, or make other changes to the premises or
27 operation as the Chief of Police determines are necessary to protect the
28 safety of the public. In the event of a conflict on this issue between the

1 requirements of this permit and any permit issued by the Alcoholic
2 Beverage Commission, the more stringent regulation shall control.

3 19. Permittee shall be responsible for maintaining an
4 adequate security staff to supervise patrons and those waiting to enter.
5 Potential patrons awaiting entry in a defined "queue" shall be counted
6 toward the calculation of required security staffing levels. For up to fifty (50)
7 people inside (or in a defined queue waiting to enter) an establishment, the
8 Permittee shall provide a minimum of one (1) uniformed licensed security
9 guard per floor. There shall be one (1) additional guard for each
10 subsequent increment or each partial increment of fifty (50), plus one (1)
11 guard per each additional floor. The Chief of Police may relax these staffing
12 levels during daylight hours, or during hours in which the primary activity in
13 the establishment is dining, if he determines that a lower level of security
14 staffing is consistent with the protection of public health and safety. The
15 attire of each security guard shall clearly indicate the guard's affiliation with
16 the establishment by means of a pin, shirt, or other clearly-visible form of
17 identification.

18 20. Restaurants with alcohol and entertainment in the
19 DDED must be operated and maintained as bona fide eating places,
20 making actual and substantial sales of meals, during at least one (1) full
21 normal mealtime, at least five (5) days a week. Normal mealtimes are 6:00
22 a.m. - 9:00 a.m., 11:00 a.m. -2:00 p.m., and 6:00 p.m. - 9:00 p.m, or as
23 defined in the Permittee's ABC license. Minors are only allowed on the
24 premises during mealtime hours.

25 21. Persons under eighteen (18) years of age shall not be
26 permitted to enter nor permitted to remain on the premises after 10 p.m.,
27 unless accompanied by a parent or legal guardian.

28 22. Permittee shall establish a program to discourage

1 loitering and littering outside any of the entrance/exit doors at all times open
2 for business.

3 23. Permittee shall take steps to prevent patrons from
4 loitering in the immediate area, littering or making excessive noise at the
5 conclusion of each event and at closing time.

6 24. Permittee shall not distribute, post or attach, and shall
7 be responsible for ensuring that its promoters and or agents do not
8 distribute, post or attach, advertising matter on public property or on any
9 vehicle on public property.

10 25. Any graffiti painted or marked upon the premises or on
11 any adjacent area under the control of Permittee shall be removed or
12 painted over within 24 hours of being applied.

13 26. Permittee shall install and maintain a video surveillance
14 system that monitors no less than the front and rear of the business with full
15 view of the public right-of-ways and any parking lot under the control of the
16 permittee. The video system must be capable of delineating on playback
17 the activity and physical features of persons and areas within the premises.
18 Recordings shall be retained for a minimum of thirty (30) days and be
19 accessible via the Internet by the Long Beach Police Department. A Public
20 Internet Protocol (IP) address and user name/password is also required to
21 allow the Long Beach Police Department to view live and recorded video
22 from these cameras over the internet. All video security cameras shall be
23 installed to the satisfaction of the Chief of Police, Director of Technology
24 Services, and Director of Development Services. At the discretion of the
25 Chief of Police, Permittee may be required to add additional video cameras.

26 27. Insofar as is practicable, during the hours of operation,
27 the front door of the establishment, or any door fronting on a public right of
28 way, including an alley, shall remain closed at all times to minimize noise.

1 28. Windows shall not be obscured by the placement of
2 signs, including signs advertising alcoholic products, dark window tinting,
3 shelving, racks or similar obstructions.

4 29. Permittee shall install an alarm system at the exit
5 doors.

6 30. No publicly accessible telephones shall be maintained
7 on the exterior of the premise. Any existing publicly accessible telephones
8 shall be removed prior to the issuance of the Permit.

9 31. As a condition of any City approval, Permittee shall
10 defend, indemnify and hold harmless the City of Long Beach, its agents,
11 officers and employees from any claim, action or proceeding against the
12 City of Long Beach or its agents, officers or employees to attack, set aside,
13 void or annul the approval of the City concerning the processing of the
14 permit or any action relating to or arising out of such approval. At the
15 discretion of the City and with the approval of the City Attorney, a deposit of
16 funds by the permit applicant may be required in an amount sufficient to
17 cover the anticipated litigation costs.

18 32. Permits may be administratively reviewed by the City
19 within six (6) months from the date of issuance to monitor compliance with
20 Permit conditions.

21 C. Tiered Conditions. "Tiered Conditions" as set forth below
22 consist of progressively more stringent regulations on entertainment and
23 related activities in the DDED. By applying for an entertainment permit in
24 the DDED, the applicant must agree to the conditions set forth below and
25 must agree to waive a hearing if these conditions are applied. The City
26 Council may add further conditions not listed here, or revoke the permit, if
27 Permittee does not comply with the conditions imposed in this permit.

28 These conditions do not modify or limit in any way the authority of the Chief

1 of Police to enforce Penal Code Section 415 (disturbing the peace) against
2 any person, or of the Chief of Police or the Fire Marshal to immediately take
3 action in the event of an imminent threat to public health or safety.

4 1. Tier 1 Conditions:

5 a. Permittee may have entertainment on the
6 premises during the maximum hours permitted in the DDED, consistent with
7 the conditions imposed in the entertainment permit, ABC requirements and
8 with conditions imposed under a Conditional Use Permit (if applicable). As
9 long as the primary requirements for safety and noise are met (Conditions
10 1-29), Permittee may choose the methods of meeting those requirements.

11 b. Noncompliance with Tier 1 conditions: When the
12 City determines that Permittee has violated the terms of the permit,
13 including Permittee's obligation to comply with all other laws and
14 regulations, he or she may require Permittee to attend a meeting with the
15 involved departments to address community concerns and discuss how the
16 implementation of Tier 2 Conditions can be avoided.

17 2. Tier 2 Conditions:

18 a. Noise: Following the receipt of three (3) or more
19 noise complaints that require a response by the Police Department within a
20 30-day period and which are found to violate the noise standard prohibiting
21 unreasonably loud sound fifty feet (50') from the perimeter of the premises,
22 Permittee will be notified that his or her premises must comply with those
23 Tier 2 Noise Conditions which the City determines are necessary to protect
24 the public peace and to comply with the City's noise ordinance, from among
25 the following list:

26 (i) Permittee must keep all doors and
27 windows closed except while patrons are entering or exiting;

28 (ii) Permittees shall submit an acoustical

1 study, performed by a qualified, certified acoustical engineer, hired by the
2 applicant and acceptable to the City. The study shall be reviewed and
3 confirmed by the Health Department and the Development Services
4 Department. Based on the results of the acoustical study, appropriate
5 mitigation measures may be required so that the noise emanating complies
6 with the sound ordinance. Such measures must be completed and
7 approved by the City before outdoor amplified entertainment will be
8 permitted. If the Permittee did not previously perform and submit such an
9 acoustical study and mitigation measures, the Permittee shall do so. Once
10 a Permittee has been notified of Tier 2 status, the Permittee can no longer
11 qualify for a waiver pursuant to Paragraph 10.

12 (iii) Sound and amplification equipment shall
13 be monitored during business hours to ensure that audible noise remains at
14 acceptable levels in accordance with Long Beach Municipal Code Chapter
15 8.80.

16 (iv) No entertainment of any kind will be
17 permitted after 1 a.m.;

18 (v) No outdoor entertainment of any kind
19 (amplified or non-amplified) will be permitted after 10 p.m.

20 (vi) No queue will be permitted after midnight.
21 Any persons gathering outside the establishment shall be considered to be
22 loitering.

23 b. Security/Public Safety: For the purposes of this
24 section, an "incident" means a complaint or occurrence that requires a
25 Police or Fire Marshal response to Permittee's premises due to Permittee's
26 noncompliance with the terms and conditions of the Entertainment Permit.
27 Following 3 or more incidents within a 30-day period, or a single incident
28 involving violence, the Chief of Police or Fire Marshal may notify Permittee

1 of additional measures and conditions to be implemented. These additional
2 measures will be some or all of the following:

3 (i) Additional security personnel at hours
4 determined necessary by the Chief of Police to prevent Permittee's
5 operations from creating a public nuisance;

6 (ii) Additional security checks on incoming
7 patrons;

8 (iii) No entertainment of any kind will be
9 permitted after 1 a.m.;

10 (iv) No queue after midnight. Any persons
11 gathering outside the establishment shall be considered to be loitering;

12 (v) Any additional measures deemed
13 necessary by the Chief of Police or the Fire Marshall to protect health and
14 safety.

15 (vi) Upon the request of a Permittee who has
16 been required to implement Tier 2 conditions, the Chief of Police, in
17 consultation with the Fire Marshal and the Health Department, shall review
18 Permittee's recent compliance history and determine whether some or all
19 conditions can be returned to Tier 1 levels consistent with the protection of
20 public health and safety.

21 3. Tier 3 Conditions: The failure of a permittee to resolve
22 noise and/or security/public safety issues as directed by the City within a
23 period not to exceed thirty (30) days shall result in the implementation of
24 Tier 3 conditions:

25 a. Noise:

26 (i) No outdoor entertainment of any kind will
27 be permitted at any time.

28 (ii) Only Ambient Music will be permitted at

1 any time OR Amplified Music will only be permitted until 10 p.m. any night.

2 (iii) All noise must be contained within the
3 premises. No noise shall be audible outside the establishment.

4 (iv) Implement Health Department
5 recommendations to mitigate noise, including pre- and post-implementation
6 monitoring data collected by a certified noise expert approved by the Health
7 Department.

8 b. Security/Public Safety:

9 (i) Entertainment must cease not later than
10 10 p.m. on Sunday through Wednesday nights and no later than midnight
11 on Thursday through Saturday nights. The Chief of Police is authorized to
12 make adjustments of up to one hour in these times to protect the public
13 peace.

14 (ii) Permittee shall limit the queue outside the
15 establishment to no more than twenty (20) people. There shall be no queue
16 within two (2) hours of the lawful closing time. Any persons gathering
17 outside the establishment shall be considered to be loitering.

18 (iii) Any additional measures determined
19 necessary by the Chief of Police or the Fire Marshal may be imposed to
20 protect health and safety.

21 If the City determines that Permittee has not modified
22 his or her operations in compliance with Tier 3 conditions and Permittee
23 continues to fail to violate the terms and conditions of the Entertainment
24 Permit, the City shall begin revocation or suspension proceedings.
25 Permittee is entitled to a hearing to contest such revocation or suspension.

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Section 2. Section 21.15.1855 is added to the Long Beach Municipal Code to read as follows:

“Nightclub” means any bar, cocktail lounge, dance club or similar establishment with an entertainment permit for live amplified music and dancing in conjunction with alcoholic beverage sales operating under a Type 48 Department of Alcoholic Beverage Control license (On-sale General -- Public Premises). This also includes bars, taverns, karaoke bars and similar establishments with an entertainment permit for live amplified music and dancing where any food service is subordinate to the sale of alcoholic beverages.

Section 3. City Council Resolution No. RES-06-0003, adopted January 17, 2006 is repealed, effective on the date that this ordinance shall take effect.

Section 4. City Council Resolution No. RES-14-0030, adopted March 18, 2014 is repealed, effective on the date that this ordinance shall take effect.

Section 5. The City Clerk shall certify to the passage of this ordinance by the City Council and cause it to be posted in three (3) conspicuous places in the City of Long Beach, and it shall take effect on the thirty-first (31st) day after it is approved by the Mayor.

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I hereby certify that the foregoing ordinance was adopted by the City Council of the City of Long Beach at its meeting of _____, 20____, by the following vote:

Ayes: Councilmembers: _____

Noes: Councilmembers: _____

Absent: Councilmembers: _____

City Clerk

Approved: _____
(Date)

Mayor

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CHARLES PARKIN, City Attorney
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