



# CITY OF LONG BEACH

DEPARTMENT OF FINANCIAL MANAGEMENT

## H-2

333 West Ocean Blvd • Long Beach, California 90802

December 9, 2008

HONORABLE MAYOR AND CITY COUNCIL  
City of Long Beach  
California

### RECOMMENDATION:

Receive and file supporting documentation and declare the Ordinance amending Long Beach Municipal Code Chapter 5.72 establishing permanent conditions for the Downtown Dining and Entertainment District Program read the first time and laid over to the next regular meeting of the City Council for final reading; and adopt a Resolution establishing standardized entertainment district conditions of operation and tiered conditions. (District 1 and 2)

### DISCUSSION

On June 21, 2005, City Council directed City staff to work with the Downtown Long Beach Associates (DLBA), resident homeowner associations and other stakeholders to develop a dining and entertainment district for the downtown Pine Avenue area to benefit businesses on Pine Avenue while ensuring the quality of life for residents that are impacted by the creation of the entertainment district with new hours and/or conditions of operation.

On November 1, 2005, City Council approved the recommendation to draft an ordinance for a one-year Downtown Dining and Entertainment District Pilot Program (Pilot Program) to standardize entertainment hours and establish tiered operating conditions in a Downtown Dining and Entertainment District (District).

On December 19, 2006, City Council adopted an ordinance to extend the Pilot Program for one year and on December 18, 2007, again extended the Pilot Program for one additional year through December 31, 2008. The Pilot Program has successfully established consistent hours and operating conditions for businesses requiring an entertainment permit in the downtown area. The Pilot Program has also set conditions to promote a safe environment benefiting visitors, retail and entertainment venues, while ensuring quality of life for residents who might be impacted by the enhanced hours and operating conditions.

The Pilot Program consisted of the area bounded by Ocean Boulevard, Third Street, Pacific Avenue, Long Beach Boulevard, and the areas known as the Pike at Rainbow Harbor and Shoreline Village. Hotels and retail stores providing entertainment within these boundaries were excluded from the program requirements.

PILOT PERIOD

During 2008, City departments closely monitored activity within the Pilot Program area and conducted stakeholder meetings. These meetings were attended by entertainment permittees, retailers, residents and City staff including police, traffic engineering, health, economic development, and business license employees. Based upon the performance of the Pilot Program during the pilot period and feedback from all concerned stakeholders, staff recommends replacing the Pilot Program with a permanent Downtown Dining and Entertainment District (District) as set forth in the amended Ordinance. Staff shall continue to enforce all existing standardized and tiered conditions of operations within the District.

This matter was reviewed by Deputy City Attorney Cristyl Meyers on November 18, 2008 and Budget and Performance Management Manager David Wodynski on November 17, 2008.

TIMING CONSIDERATIONS

City Council action on December 9, 2008 is recommended as the Downtown Dining and Entertainment District Pilot Program shall cease to be in effect on December 31, 2008.

FISCAL IMPACT

There is no fiscal impact associated with this item.

SUGGESTED ACTION:

Approve recommendation.

Respectfully submitted,



LORI ANN FARRELL  
DIRECTOR OF FINANCIAL MANAGEMENT/CFO

APPROVED:



PATRICK H. WEST  
CITY MANAGER

OFFICE OF THE CITY ATTORNEY  
ROBERT E. SHANNON, City Attorney  
333 West Ocean Boulevard, 11th Floor  
Long Beach, CA 90802-4664

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REDLINE VERSION  
ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE  
CITY OF LONG BEACH AMENDING THE LONG BEACH  
MUNICIPAL CODE BY AMENDING SECTIONS 5.72.200,  
5.72.210 and 5.72.220 RELATING TO THE DOWNTOWN  
DINING AND ENTERTAINMENT DISTRICT PILOT  
PROGRAM

WHEREAS, the development of a vital and lively downtown is a matter of  
concern for the City Council of the City of Long Beach; and

WHEREAS, the City Council enacted a one-year pilot program to regulate  
entertainment in the downtown area in a manner which balances the needs of  
businesses, residents, and visitors ("the Downtown Entertainment Permit"); and

WHEREAS, the City Council now desires to permanently extend the  
duration of the Downtown Entertainment Permit ~~in order to review~~ based on input from  
~~the comments of the stakeholders and City staff;~~

NOW, THEREFORE, 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 ~~pilot~~ program area.

A The Downtown Dining and Entertainment District shall be  
established as a ~~pilot~~ program known as the Downtown ~~Pilot~~ Program.

Business operators presently holding entertainment permits in good  
standing who agree in writing to comply with the requirements of the

Downtown Dining and Entertainment District ~~pilot~~ Program shall be issued

1 downtown entertainment permits, ~~which shall expire on December 31,~~  
2 2008.

3 5.72.210 Boundaries of the Downtown ~~plet~~ Program.

4 The Downtown ~~plet~~ Program area consists of the area bounded by the  
5 north side of Ocean Boulevard, the south side of Third Street, the east side of  
6 Pacific and the west side of Long Beach Boulevard, and the areas known as the  
7 Pike at Rainbow Harbor and Shoreline Village, as shown on maps on file in the  
8 Office of the City Clerk. Hotels within the boundaries are excluded from the  
9 requirements of the Downtown ~~plet~~ Program but continue to be subject to all other  
10 provisions of this Chapter and shall continue to operate under the conditions of  
11 their previously-issued entertainment permits.

12  
13 5.72.220 Standard conditions.

14 The City Council shall adopt standard conditions which shall become part of  
15 each Downtown Entertainment Permit. These conditions shall be in addition to  
16 those set forth in Sections 5.72.110 through 5.72.150 of this Chapter, in any  
17 conditional use permit issued by the City, any other requirement of the Municipal  
18 Code, or any Department of Alcoholic Beverage Control license. In the event of a  
19 conflict between the requirements of the Downtown ~~plet~~ Program and the more  
20 general provisions of this Chapter, the requirements of the Downtown ~~plet~~ Program  
21 shall control within the program area. In the event of a conflict between a downtown  
22 entertainment permit and a license issued by the Department of Alcoholic Beverage  
23 Control, the more stringent regulation shall govern.

24  
25 Section 2. The City Clerk shall certify to the passage of this ordinance by  
26 the City Council of the City of Long Beach and cause it to be posted in three (3)  
27 conspicuous places in the City of Long Beach, and it shall take effect on the thirty-first  
28 (31st) day after it is approved by the Mayor.

OFFICE OF THE CITY ATTORNEY  
ROBERT E. SHANNON, City Attorney  
333 West Ocean Boulevard, 11th Floor  
Long Beach, CA 90802-4664

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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

OFFICE OF THE CITY ATTORNEY  
ROBERT E. SHANNON, City Attorney  
333 West Ocean Boulevard, 11th Floor  
Long Beach, CA 90802-4664

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RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE  
CITY OF LONG BEACH ESTABLISHING PERMANENT  
CONDITIONS FOR ENTERTAINMENT PERMITS UNDER  
THE DOWNTOWN DINING AND ENTERTAINMENT  
DISTRICT PROGRAM

WHEREAS, the City Council intends to establish a permanent Downtown  
Dining and Entertainment District Program (the "Downtown Program"); and

WHEREAS, the City Council intends that downtown entertainment permits,  
including hours and conditions of entertainment, as defined in Section 5.72 of the  
Municipal Code, be standardized as part of the Downtown Program;

NOW, THEREFORE, the City Council of the City of Long Beach resolves as  
follows:

Section 1. The Conditions of Operation for Downtown Entertainment  
Permits, attached hereto as Attachment "A" (the "Standard Conditions") shall be  
incorporated into and become a part of each downtown entertainment permit. Written  
acceptance of the Standard Conditions by the permittee shall be a specific condition of  
the issuance of each downtown entertainment permit.

Section 2. The Tiered Conditions, attached hereto as Attachment "B"  
(the "Tiered Conditions") shall be incorporated into and become a part of each downtown  
entertainment permit but shall not be implemented provided the business is operated in  
conformance with the terms of the entertainment permit, including the Standard  
Conditions, and all other applicable laws and regulations. In the event that the permittee  
fails to comply with the terms of the entertainment permit or any other applicable law or  
regulation, the Chief of Police may instruct the permittee to implement those conditions  
listed among the Tiered Conditions which the Chief of Police determines are necessary to

1 protect the public health, safety, or peace. In making a determination to implement the  
2 Tiered Conditions, the Chief of Police may consider, among other information, comments  
3 and concerns submitted by Downtown Program area residents, businesses and other  
4 interested members of the community. Written acknowledgment by the permittee that the  
5 Tiered Conditions may be implemented without opportunity for further hearing shall be a  
6 condition of the issuance of each downtown entertainment permit. This provision is not  
7 intended to modify the permit revocation or suspension provisions of Chapter 5.72 of the  
8 Municipal Code.

9 Section 3. This resolution shall take effect concurrently with the effective  
10 date of the ordinance amending the Downtown Dining and Entertainment District  
11 Program, and shall remain in effect so long as said ordinance remains in effect. The City  
12 Clerk shall certify the vote adopting this resolution.

13  
14 I hereby certify that the foregoing resolution was adopted by the City  
15 Council of the City of Long Beach at its meeting of \_\_\_\_\_, 20\_\_ by the  
16 following vote:

17  
18 Ayes: Councilmembers: \_\_\_\_\_  
19 \_\_\_\_\_  
20 \_\_\_\_\_

21  
22 Noes: Councilmembers: \_\_\_\_\_  
23 \_\_\_\_\_

24 Absent: Councilmembers: \_\_\_\_\_  
25 \_\_\_\_\_

26  
27  
28 \_\_\_\_\_  
City Clerk

## **Attachment "A"**

### **Downtown Entertainment District Conditions of Operation**

"Entertainment" as used here shall have the same definition as "entertainment activity" contained in LBMC Section 5.72.115:

- A. "Entertainment activity" means any activity conducted for the primary purpose of diverting or entertaining a clientele in premises open to the general public. Said activity shall include, but shall not be limited to, dancing, whether by performers or patrons of the establishment, live musical performances, instrumental or vocal, when carried on by more than two (2) persons or whenever amplified; musical entertainment provided by a disc jockey or karaoke, or any similar entertainment activity involving amplified, reproduced music.

Permittee understands and agrees that the conditions attached here are in addition to the requirements of LBMC Sections 5.72 and 21.115.110. In the event of a conflict between the permittee's ABC license and this permit, or between a conditional use permit and this permit, the more stringent conditions shall apply.

Permittee understands and agrees that he or she is excused from complying with the Tiered Conditions set forth in Attachment "B" so long as his or her operation complies with all of the conditions in this permit as well as all other applicable laws and regulations. Failure to comply will result in the enforcement of increasingly more stringent Tiered Conditions and may result in a decision to suspend or revoke the Entertainment Permit.

This permit does not modify or limit in any way the authority of the Chief of Police to enforce Penal Code Section 415 (disturbing the peace) against any person or entity, or of the Chief of Police or the Fire Marshal to immediately take action in the event of an imminent threat to public health or safety.

1. Indoor entertainment and outdoor non-amplified entertainment that otherwise conforms with the requirements of state and local laws and regulations may be offered pursuant to permit the until 2 a.m., seven days a week.

Outdoor amplified entertainment is prohibited except for rooftop entertainment that was permitted on or before February 3, 2007, or except in conjunction with a special events permit.

2. Each holder of an existing entertainment permit within the entertainment district and each new applicant for a downtown area entertainment permit, including an applicant who acquires an existing business through a change of ownership,



shall, within ninety (90) days of application, attend a permit orientation session conducted by or at the direction of the City. Each new applicant for a downtown area entertainment permit, including an applicant who acquires an existing business through a change of ownership, shall, within ninety (90) days of application, submit proof of attending the LEAD program offered by the Department of Alcoholic Beverage Control.

3. The permittee shall comply with all applicable laws, regulations, ordinances and stated conditions. It is the intent of the City that each permittee make his or her own business decisions as to how to implement compliance; however, if the permittee fails to comply with the conditions of this permit, or if his or her operations result in excessive police service as defined below, the permittee will be required to operate under the more restrictive conditions described in Attachment "B" and made a permanent part of this permit without further hearing.
4. The permittee shall be responsible for all entertainment activities at the location, including those conducted by promoters. Each permittee and promoter conducting business within the City of Long Beach must have or obtain a City of Long Beach Business License prior to conducting entertainment activities governed by this permit. The permittee shall provide all promoters and agents hired to conduct entertainment activities with a copy of the approved permit, which shall include a copy of the approved conditions of operation.
5. The operation of the establishment shall be limited to those activities expressly indicated on the entertainment permit application and approved by the City Council. Any change in the operation that exceeds the conditions of the approved permit will require approval by City Council.
6. The permittee shall comply with the requirements of LBMC Sec. 8.80 (Noise) at all times. In addition, in response to a complaint, the Police Department will enforce Penal Code Section 415 (disturbing the peace) and all other state and local provisions related to the "public peace." Permittee shall conduct all aspects of his or her operation, including before- and after-hours deliveries and maintenance, in consideration of residences located nearby. Permittee agrees that the following standard is reasonable: Noise emanating from Permittee's premises shall not be audible from the middle of the street adjoining the premises.
7. No adult entertainment, as defined by section 5.72.115(B) LBMC shall be conducted on the permitted premises. The permittee shall not allow, permit, procure, or encourage, anyone to expose male or female genitals, cleft of the buttocks, the areola or any portion of the female breast below the areola, while at or inside the business.
8. Current occupancy loads shall be posted at all times, and the permittee shall have an effective system to keep count of the number of occupants present at any given time and provide that information to public safety personnel upon request. (LBMC section 18.48.320)

9. Should the permittee's operations give rise to a substantial increase in complaint/calls for police service, the permittee shall increase security staff, implement the use of electronic metal detection equipment, increase outside lighting, or make other changes to the premises or operation as the Chief of Police determines are necessary to protect the safety of the public. In the event of a conflict on this issue between the requirements of this permit and any permit issued by the Alcoholic Beverage Commission, the more stringent regulation shall control.
10. The permittee shall be responsible for maintaining an adequate security staff to supervise patrons and those waiting to enter. Potential patrons awaiting entry in a defined "queue" shall be counted toward the calculation of required security staffing levels. For up to fifty (50) people inside (or in a defined queue waiting to enter) an establishment, the permittee shall provide a minimum of one (1) uniformed licensed security guard per floor. There shall be one additional guard for each subsequent increment or each partial increment of 50, plus one guard per each additional floor. (Example: a one-story establishment with 75 patrons present must have two guards. A two-story establishment with 75 patrons present must have three guards.) Potential patrons awaiting entry in a defined "queue" shall be counted toward the calculation of required security staffing levels. The Chief of Police may relax these staffing levels during daylight hours, or during hours in which the primary activity in the establishment is dining, if he determines that a lower level of security staffing is consistent with the protection of public health and safety.

The attire of each security guard shall clearly indicate the guard's affiliation with the establishment by means of a pin, shirt, or other clearly-visible form of identification.

11. To operate a restaurant with alcohol and entertainment in the Downtown Dining and Entertainment District, the proprietor must operate and maintain the licensed premises as a bona fide eating place. He or she must make actual and substantial sales of meals, during at least one full normal mealtime, at least five days a week. Normal mealtimes are 6:00 a.m. - 9:00 a.m., 11:00 a.m -2:00 p.m., and 6:00 p.m. - 9:00 p.m. Minors are only allowed on the premises during mealtime hours.
12. Persons under eighteen (18) years of age shall not be permitted to enter nor permitted to remain on the premises after 10 p.m., unless accompanied by a parent or legal guardian.
13. The permittee shall establish a program to discourage loitering and littering outside any of the entrance/exit doors at all times open for business. This should be done by use of security guards and/or signs near all exits that encourage patrons to "respect our neighbors" and the provision of trash receptacles.

14. At the conclusion of each event and at closing time, the permittee's staff shall remind patrons to refrain from loitering in the immediate area, littering or making excessive noise. Patrons should be reminded to use trash receptacles and to walk directly and quietly to their cars or other transportation.
15. The permittee shall not distribute, post or attach, and shall be responsible for ensuring that its promoters and or agents do not distribute, post or attach, advertising matter on public property or on any vehicle on public property.
16. Any graffiti painted or marked upon the premises or on any adjacent area under the control of the permittee shall be removed or painted over within 24 hours of being applied.
17. When the Chief of Police determines that excessive police services are required as the result of any incident or nuisance arising out of or in connection with the permittee's operations, the cost of such services shall be billed to the permittee as an expense of an emergency response. "Expense of an emergency response" means those costs incurred by the city of Long Beach in making any appropriate emergency response to the incident, and shall be comprised of all costs directly arising because of the response to the particular incident, including, but not limited to, the costs of providing police, firefighting, rescue, and emergency medical services at the scene of the incident, as well as the salaries of the personnel responding to the incident."

REDLINED VERSION

Attachment "A"

**Downtown Entertainment District  
Conditions of Operation**

"Entertainment" as used here shall have the same definition as "entertainment activity" contained in LBMC Section 5.72.115:

- A. "Entertainment activity" means any activity conducted for the primary purpose of diverting or entertaining a clientele in a premises open to the general public. Said activity shall include, but shall not be limited to, dancing, whether by performers or patrons of the establishment, live musical performances, instrumental or vocal, when carried on by more than two (2) persons or whenever amplified; musical entertainment provided by a disc jockey or karaoke, or any similar entertainment activity involving amplified, reproduced music.

Permittee understands and agrees that the conditions attached here are in addition to the requirements of LBMC Sections 5.72 and 21.115.110. In the event of a conflict between the permittee's ABC license and this permit, or between a conditional use permit and this permit, the more stringent conditions shall apply.

Permittee understands and agrees that he or she is excused from complying with the Tiered Conditions set forth in Attachment "B" so long as his or her operation complies with all of the conditions in this permit as well as all other applicable laws and regulations. Failure to comply will result in the enforcement of increasingly more stringent Tiered Conditions and may result in a decision to suspend or revoke the Entertainment Permit.

This permit does not modify or limit in any way the authority of the Chief of Police to enforce Penal Code Section 415 (disturbing the peace) against any person or entity, or of the Chief of Police or the Fire Marshal to immediately take action in the event of an imminent threat to public health or safety.

1. Indoor entertainment and outdoor non-amplified entertainment that otherwise conforms with the requirements of state and local laws and regulations may be offered pursuant to the permit until 2 a.m., seven days a week.

Outdoor amplified entertainment is prohibited ~~during the period of the pilot program~~, except for rooftop entertainment that was permitted on or before February 3, 2007, ~~at the time of the creation of this pilot program~~, or except in conjunction with a special events permit.

2. Each holder of an existing entertainment permit within the entertainment district and each new applicant for a downtown area entertainment permit, including an applicant who acquires an existing business through a change of ownership,

shall, within ninety (90) days of application, attend a permit orientation session conducted by or at the direction of the City. Each new applicant for a downtown area entertainment permit, including an applicant who acquires an existing business through a change of ownership, shall, within ninety (90) days of application, submit proof of attending the LEAD program offered by the Department of Alcoholic Beverage Control.

3. The permittee shall comply with all applicable laws, regulations, ordinances and stated conditions. It is the intent of the City that each permittee make his or her own business decisions as to how to implement compliance; however, if the permittee fails to comply with the conditions of this permit, or if his or her operations result in excessive police service as defined below, the permittee will be required to operate under the more restrictive conditions described in Attachment "B" and made a permanent part of this permit without further hearing.
4. The permittee shall be responsible for all entertainment activities at the location, including those conducted by promoters. Each permittee and promoter conducting business within the City of Long Beach must have or obtain a City of Long Beach Business License prior to conducting entertainment activities governed by this permit. The permittee shall provide all promoters and agents hired to conduct entertainment activities with a copy of the approved permit, which shall include a copy of the approved conditions of operation.
5. The operation of the establishment shall be limited to those activities expressly indicated on the entertainment permit application and approved by the City Council. Any change in the operation that exceeds the conditions of the approved permit will require approval by City Council.
6. The permittee shall comply with the requirements of LBMC Sec. 8.80 (Noise) at all times. In addition, in response to a complaint, the Police Department will enforce Penal Code Section 415 (disturbing the peace) and all other state and local provisions related to the "public peace." Permittee shall conduct all aspects of his or her operation, including before- and after-hours deliveries and maintenance, in consideration of residences located nearby. Permittee agrees that the following standard is reasonable: Noise emanating from Permittee's premises shall not be audible from the middle of the street adjoining the premises.
7. No adult entertainment, as defined by section 5.72.115(B) LBMC shall be conducted on the permitted premises. The permittee shall not allow, permit, procure, or encourage, anyone to expose male or female genitals, cleft of the buttocks, the areola or any portion of the female breast below the areola, while at or inside the business.
8. Current occupancy loads shall be posted at all times, and the permittee shall have an effective system to keep count of the number of occupants present at any given time and provide that information to public safety personnel upon request. (LBMC section 18.48.320)

9. Should the permittee's operations give rise to a substantial increase in complaint/calls for police service, the permittee shall increase security staff, implement the use of electronic metal detection equipment, increase outside lighting, or make other changes to the premises or operation as the Chief of Police determines are necessary to protect the safety of the public. In the event of a conflict on this issue between the requirements of this permit and any permit issued by the Alcoholic Beverage Commission, the more stringent regulation shall control.
10. The permittee shall be responsible for maintaining an adequate security staff to supervise patrons and those waiting to enter. Potential patrons awaiting entry in a defined "queue" shall be counted toward the calculation of required security staffing levels. For up to fifty (50) people inside (or in a defined queue waiting to enter) an establishment, the permittee shall provide a minimum of one (1) uniformed licensed security guard per floor. There shall be one additional guard for each subsequent increment or each partial increment of 50, plus one guard per each additional floor. (Example: a one-story establishment with 75 patrons present must have two guards. A two-story establishment with 75 patrons present must have three guards.) Potential patrons awaiting entry in a defined "queue" shall be counted toward the calculation of required security staffing levels. The Chief of Police may relax these staffing levels during daylight hours, or during hours in which the primary activity in the establishment is dining, if he determines that a lower level of security staffing is consistent with the protection of public health and safety.

The attire of each security guard shall clearly indicate the guard's affiliation with the establishment by means of a pin, shirt, or other clearly-visible form of identification.

11. To operate a restaurant with alcohol and entertainment in the Downtown Dining and Entertainment District, the proprietor must operate and maintain the licensed premises as a bona fide eating place. He or she must make actual and substantial sales of meals, during at least one full normal mealtime, at least five days a week. Normal mealtimes are 6:00 a.m. - 9:00 a.m., 11:00 a.m -2:00 p.m., and 6:00 p.m. - 9:00 p.m. Minors are only allowed on the premises during mealtime hours.
12. Persons under eighteen (18) years of age shall not be permitted to enter nor permitted to remain on the premises after 10 p.m., unless accompanied by a parent or legal guardian.
13. The permittee shall establish a program to discourage loitering and littering outside any of the entrance/exit doors at all times open for business. This should be done by use of security guards and/or signs near all exits that encourage patrons to "respect our neighbors" and the provision of trash receptacles.

14. At the conclusion of each event and at closing time, the permittee's staff shall remind patrons to refrain from loitering in the immediate area, littering or making excessive noise. Patrons should be reminded to use trash receptacles and to walk directly and quietly to their cars or other transportation.
15. The permittee shall not distribute, post or attach, and shall be responsible for ensuring that its promoters and or agents do not distribute, post or attach, advertising matter on public property or on any vehicle on public property.
16. Any graffiti painted or marked upon the premises or on any adjacent area under the control of the permittee shall be removed or painted over within 24 hours of being applied.
17. When the Chief of Police determines that excessive police services are required as the result of any incident or nuisance arising out of or in connection with the permittee's operations, the cost of such services shall be billed to the permittee as an expense of an emergency response. "Expense of an emergency response" means those costs incurred by the city of Long Beach in making any appropriate emergency response to the incident, and shall be comprised of all costs directly arising because of the response to the particular incident, including, but not limited to, the costs of providing police, firefighting, rescue, and emergency medical services at the scene of the incident, as well as the salaries of the personnel responding to the incident."

## **Attachment "B"**

### **Tiered Conditions**

**This page contains progressively more stringent regulations on entertainment and related activities in the Dining and Entertainment District. By applying for a permit, the applicant agrees to the conditions contained here and understands that he or she is not entitled to a public hearing if these conditions are applied. The City Council may add further conditions not listed here, or revoke the permit, if the permittee does not comply with the conditions imposed in this permit.**

**The conditions on this attachment do not modify or limit in any way the authority of the Chief of Police to enforce Penal Code Section 415 (disturbing the peace) against any person, or of the Chief of Police or the Fire Marshal to immediately take action in the event of an imminent threat to public health or safety.**

#### **Tier 1 Conditions:**

Permittee may have entertainment on the premises during the maximum hours permitted in the district, consistent with ABC requirements and conditions imposed under a Conditional Use Permit. As long as the primary requirements for safety and noise are met (Conditions 1-17), Permittee may choose the methods of meeting those requirements.

Noncompliance with Tier 1 conditions: when the Chief of Police determines that Permittee has violated the terms of the permit, including the Permittee's obligation to comply with all other laws and regulations, but believes those violations can be remedied through education and/or minor modifications to Permittee's operation, Permittee will be asked to attend a meeting with the involved departments, pilot program area residents and businesses, and other interested persons to address community concerns and discuss how the implementation of Tier 2 Conditions can be avoided.

#### **Tier 2 Conditions:**

##### **Noise:**

Following the receipt of 3 or more noise complaints that require a response by the Police Department within a 30-day period and which are found to violate the "middle of the street" standard for noise, Permittee will be notified that his or her premises must comply with those Tier 2 Noise Conditions which the Chief of Police determines are necessary to protect the public peace and to comply with the City's noise ordinance, from among the following list:



- Permittee must keep all doors and windows closed except while patrons are entering or exiting.
- Meet with Health Department staff to discuss best practices to be implemented to mitigate noise.
- No outdoor entertainment of any kind will be permitted after 10 p.m.
- No queue after midnight. Any persons gathering outside the establishment shall be considered to be loitering.

**Security/Public Safety:**

For the purposes of this section, an “incident” means a complaint or occurrence that requires a police or Fire Marshal response to Permittee's premises due to Permittee's noncompliance with the terms and conditions of the Entertainment Permit. Following 3 or more incidents within a 30-day period, the Chief of Police or Fire Marshal will notify Permittee of additional measures and conditions to be implemented. These additional measures will be some or all of the following:

- Additional security personnel at hours determined necessary by the Chief of Police to prevent Permittee's operations from creating a public nuisance.
- Additional security checks on incoming patrons.
- No queue after midnight. Any persons gathering outside the establishment shall be considered to be loitering.
- Any additional measures deemed necessary by the Chief of Police or the Fire Marshall to protect health and safety.

NOTE: upon the request of a permittee who has been required to implement Tier 2 conditions, the Chief of Police, in consultation with the Fire Marshal and the Health Department, shall review the permittee's recent compliance history and determine whether some or all conditions can be returned to Tier 1 levels consistent with the protection of public health and safety.

**Tier 3 Conditions:**

The failure of a permittee to resolve noise and/or security/public safety issues as directed by the Chief of Police or the Fire Marshal within a reasonable period, not to exceed 30 days in any case, shall result in the implementation of Tier 3 conditions:

**Noise:**

- No outdoor entertainment of any kind will be permitted at any time.
- Only non-amplified entertainment will be permitted at any time OR amplified entertainment will only be permitted until 10 p.m. any night.
- Contain all noise within the premises. No noise audible outside the establishment.
- Implement Health Department recommendations to mitigate noise. Provide pre- and post-implementation monitoring data collected by a certified noise expert approved by the Health Department.

Security/Public Safety:

- The establishment must cease entertainment not later than 10 p.m. on Sunday through Wednesday nights and no later than midnight on Thursday through Saturday nights. The Chief of Police is authorized to make adjustments of up to one hour in these times to protect the public peace.
- Permittee shall limit the queue outside the establishment to no more than 20 people. There shall be no queue within 2 hours of the lawful closing time. Any persons gathering outside the establishment shall be considered to be loitering.
- Any additional measures determined necessary by the Chief of Police or the Fire Marshal to protect health and safety.

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