

PERMIT  
**29258**

Pursuant to a minute order adopted by the City Council of the City of Long Beach at its August 2, 2005 meeting, the CITY OF LONG BEACH, a municipal corporation ("City"), hereby grants permission to DEVINDER PAL SARIN, an individual, dba MEL-O-DEE ICE CREAM ("Permittee"), to sell ice cream products from those mobile ice cream vehicles listed on Exhibit "A", attached hereto and by this reference made a part hereof, at the locations listed on Exhibit "B", attached hereto and by this reference made a part hereof ("permit areas"). The permit areas shall be used and occupied by Permittee subject to the following terms, conditions, and limitations:

1. The term of this Permit shall commence on August 3, 2005 and shall terminate July 31, 2008 ("initial term"). This Permit may be executed for two (2) one (1) year terms at the sole discretion of the City Manager, provided Permittee shall have notified the Director of the Department of Parks, Recreation and Marine of the City of Long Beach ("Director"), prior to April 1, 2008. Permittee acknowledges and agrees that nothing contained in this Permit shall vest in it any right to extend the term.

2. The permit areas shall be used for the purpose of selling ice cream products and for no other purpose without the prior written consent of the City Manager.

3. Permittee shall pay to the City compensation in the form of a "percentage fee" or a "guaranteed annual fee" in the amounts, manner and at the times as follows:

a. During the initial term and any extended term, Permittee shall pay to the City twenty-eight percent (28%) of the gross receipts from its operations under this Permit or a guaranteed annual fee of Four Thousand Seven Hundred Dollars (\$4,700.00), whichever is greater, at the end of each calendar year of the Permit term.

b. Any guaranteed annual fee or any percentage fee not paid when due shall bear interest at the maximum rate allowed by law until paid. Payments shall

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City Attorney of Long Beach  
333 West Ocean Boulevard  
Long Beach, California 90802-4664  
Telephone (562) 570-2200

1 be paid in United States Dollars at the City's Department of Parks, Recreation and  
2 Marina, 2760 Studebaker Road, Long Beach, California 90815 and, if paid by  
3 check, shall be deemed paid if the check is honored upon first presentation. All  
4 payments to the City shall be net and Permittee shall not have any right of  
5 deduction, set off, prior notice or demand.

6 c. Permittee shall keep or cause to be kept full accurate and complete  
7 books of account and other records reflecting the results of all business transactions  
8 conducted in, on or from the permit areas in order to enable the City to ascertain the  
9 percentage fee due it hereunder. Permittee's records and books of account shall  
10 reflect only those transactions conducted in, on or from the permit areas and shall  
11 not be maintained on a consolidated basis with other activities conducted by  
12 Permittee. Said records and books shall be kept and maintained on an accrual  
13 basis. City's duly authorized representatives shall have access to Permittee's  
14 records and books of account at all reasonable times for the purpose of examining  
15 the same and, if the City elects, of auditing same. Permittee shall cooperate fully  
16 with the City's representatives in the making of an audit. The City shall provide  
17 Permittee with a copy of the results of its audit. If the audit discloses that there is  
18 a deficiency in the payment of percentage fees due the City, the deficiency shall  
19 become immediately due and payable together with interest thereon at the  
20 maximum rate allowed by law from the date of the City's demand for payment of the  
21 deficiency. If the amount of any deficiency exceeds three percent (3%) of the  
22 percentage fee paid, Permittee shall pay the cost of the audit; otherwise, the cost  
23 thereof shall be paid by the City. If it is determined by an audit that there is an  
24 overpayment of percentage fees, a refund shall become immediately due from City,  
25 together with interest thereon at the maximum rate allowed by law from the date of  
26 Permittee's demand for such refunds.

27 d. The City shall not become or be deemed a partner or joint venturer  
28 with Permittee by reason of the provisions of this Permit.

1 e. Permittee shall prepare and deliver or cause to be prepared and  
2 delivered to the Department of Parks, Recreation and Marine Accounting section  
3 at 2760 Studebaker Road, Long Beach, CA 90815, on the fifteenth (15th) day of  
4 each month a financial statement showing in reasonable detail Permittee's gross  
5 sales for the preceding calendar month and a computation of the percentage fee.  
6 The form of the monthly financial statements and the accounting procedure for  
7 verification of sales shall be approved by the Director and, when submitted, shall be  
8 certified to be correct by the Permittee.

9 4. Upon execution of this Permit, Permittee shall submit to the Director,  
10 Permittee's price schedule and thereafter any proposed changes thereto. The Director will  
11 have the right to approve items being offered for sale and their prices.

12 5. During the initial term and any extension thereof, Permittee shall  
13 continuously cause the permit areas to be operated in such a manner as to maximize  
14 income consistent with the permitted uses specified in paragraph 2. Upon execution of this  
15 Permit, Permittee shall furnish the Director with a schedule of operating hours, attached  
16 hereto and marked as Exhibit "C". The Director shall have the right to approve changes  
17 in the hours of operation of Permittee's concession. Permittee acknowledges that at those  
18 locations listed in Exhibit "B" which are identified with an asterisk there are permanent  
19 concession stands. Permittee agrees that it shall not sell or offer for sale from mobile ice  
20 cream vending trucks or otherwise any ice cream products during such times as said  
21 permanent concession stands are open for business as said locations operate under a  
22 separate permit issued by the City.

23 6. The City shall provide no facilities for this concession and no additional  
24 improvements or equipment will be furnished by the City. The Permittee will be allowed  
25 to operate a mobile ice cream concession at those areas designated by the Director and  
26 as listed in Exhibit "B".

27 7. The City shall not be responsible for any loss suffered by the Permittee  
28 as a result of maintenance or repairs being done by the City. The City also reserves the

1 right to do any and all work of any nature, necessary for preservation, maintenance and  
2 operation of the areas. Permittee shall be given reasonable notice when such work may  
3 become necessary and will adjust concession operations in such a manner that the City  
4 may proceed expeditiously.

5           8. All furnishings, fixtures, and equipment necessary for operation shall  
6 be provided by the Permittee at its sole cost and expense. All furnishings, fixtures, and  
7 equipment used in this operation shall be subject to prior written approval of the Director.

8           9. No utility services are provided with this concession.

9           10. All refuse and waste materials created by Permittee's operation shall  
10 be disposed of daily by Permittee in plastic trash bags 10 mil or thicker. Waste food and  
11 garbage shall be deposited into City provided, large container trash bins. The City shall  
12 be responsible for the emptying of trash container bins on a schedule established by the  
13 Director. The Permittee shall keep areas around the vehicles within the permit areas free  
14 of trash and litter to the satisfaction of the Director. The Director reserves the right to  
15 inspect the vehicles within the permit areas at any time.

16           11. Except as provided in paragraph 5, Permittee shall have the exclusive  
17 right to operate mobile ice cream vending vehicles at the permit areas.

18           12. Permittee, during its use and occupancy of the permit areas shall at  
19 all times comply with all laws, ordinances, rules and regulations of and obtain all required  
20 permits from all federal, state and local governmental authorities having jurisdiction over  
21 the permit areas and Permittee's activities thereon.

22           13. Permittee may, at the discretion of the Director, be held responsible  
23 for any damage or loss which may occur to the premises, equipment, merchandise or  
24 receipts, including but not limited to, that damage or loss resulting from burglary, fire, theft  
25 or vandalism.

26           14. Permittee shall not assign this Permit or any interest herein nor allow  
27 the transfer thereof (whether by operation of law or otherwise) without first obtaining the  
28 Director's written consent. Any attempted transfer or assignment without such prior written

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1 consent, shall be void and shall confer no rights whatsoever upon the transferee or  
2 assignee. If Permittee shall be adjudicated bankrupt or become insolvent or any interest  
3 in this Permit be taken by virtue of attachment, execution or receivership, the City may  
4 terminate this Permit upon five (5) days' written notice to Permittee.

5           15. Permittee shall defend, indemnify and hold the City, its officials,  
6 employees and volunteers harmless from all claims, demands, damages, causes of action,  
7 losses, liability, costs or expenses (including reasonable attorneys' fees) of any kind arising  
8 from or connected with the alleged acts or omissions of Permittee, its officers, agents,  
9 employees, business visitors, or invitees in connection with the permitted concession  
10 including, but not limited to, the sale of products, food or beverages. Permittee shall pay  
11 any settlement or satisfy any judgment that may be rendered against the City, its officials,  
12 agents, and employees in connection with the permitted concession.

13           16. Required Insurance Coverages

14           The Permittee shall obtain and maintain at its expense, until completion of  
15 the Permit, the following insurance requirements:

16           Concurrent with the execution of this Permit and as a condition of its  
17 continuance, Permittee shall procure and maintain the following types of insurance at  
18 Permittee's sole expense for the duration of this Permit, including any extensions,  
19 renewals, or holding over thereof, from insurance companies that are admitted to write  
20 insurance in the State of California or from authorized non-admitted insurers that have  
21 ratings of or equivalent to an A:VIII by A.M. Best Company:

- 22           a. Commercial general liability insurance equivalent in coverage scope  
23 to ISO form CG 00 01 10 93 in an amount not less than One Million Dollars  
24 (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) annual  
25 aggregate. Such coverage shall include, but is not limited to, broad form contractual  
26 liability coverage, cross liability protection and products and completed operations.  
27 The City of Long Beach, its officials, employees, and agents shall be added as  
28 additional insureds by endorsements equivalent in coverage scope to ISO form CG

1 20 26 11 85 and such endorsements shall protect the City, its officials, employees,  
2 and agents from and against claims, demands, causes of action, expenses, costs,  
3 or liability for injury to or death of persons, or damage to or loss of property arising  
4 out of activities performed by or on behalf of the Permittee or from maintenance use  
5 of the permit areas. The coverage shall contain no special limitations on the scope  
6 of protection afforded to the City, its officials, employees, and agents, and Permittee  
7 agrees to obtain and furnish evidence to City of the waiver of Permittee's liability  
8 insurance carrier of any right of subrogation against the City.

9 b. Commercial automobile liability insurance equivalent in scope to ISO  
10 CA 00 01 06 92 covering symbol 1 (Any Auto) in an amount not less than One  
11 Million Dollars (\$1,000,000) combined single limit.

12 c. Workers' compensation insurance required by the State of California  
13 and employer's liability insurance in an amount not less than One Million Dollars  
14 (\$1,000,000) per accident or occupational illness. Permittee agrees to obtain and  
15 furnish evidence to City of the waiver of Permittee's workers' compensation  
16 insurance carrier of any right of subrogation against the City.

17 d. With respect to damage to property, City and Permittee hereby waive  
18 all rights of subrogation, one against the other, but only to the extent that collectible  
19 commercial insurance is available for said damage.

20 e. Any self-insurance program or self-insured retention must be  
21 approved separately in writing by City and shall protect the City of Long Beach, its  
22 officials, employees, and agents in the same manner and to same extent as they  
23 would have been protected had the policy or policies not contained retention  
24 provisions.

25 f. Each insurance policy shall be endorsed to state that coverage shall  
26 not be cancelled, nonrenewed or changed by either party except after thirty (30)  
27 days' prior written notice to City and shall be primary to City. Any insurance or self-  
28 insurance maintained by City shall be excess to and shall not contribute to

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insurance or self-insurance maintained by Permittee.

g. Permittee shall deliver to City certificates of insurance and the required endorsements for approval as to sufficiency and form prior to commencement of this Permit. The certificates and endorsements for each insurance policy shall contain the original signature of a person authorized by that insurer to bind coverage on its behalf. Permittee shall, at least thirty (30) days prior to expiration of such policies, furnish City with evidence of renewals. City reserves the right to require complete certified copies of all said policies at any time.

h. Such insurance as required herein shall not be deemed to limit Permittee's liability relating to performance under this Permit. The procuring of insurance shall not be construed as a limitation on liability or as full performance of the indemnification and hold harmless provisions of this Permit. Permittee understands and agrees that, notwithstanding any insurance, Permittee's obligation to defend, indemnify, and hold City, its officials, agents, and employees harmless hereunder is for the full and total amount of any damage, injuries, loss, expense, costs, or liabilities caused by the condition of the permit areas or in any manner connected with or attributed to the acts or omissions of Permittee, its officers, agents, contractors, employees, licensees, vendors, patrons, or visitors, or the operations conducted by or on behalf of Permittee, or the Permittee's use, misuse, or neglect of the permit areas.

i. Not more frequently than every three (3) years, if, in the opinion of City, the amount of the foregoing insurance coverages is not adequate, vendor shall amend the insurance coverage as required by City's Risk Manager or designee.

j. Any modification or waiver of the insurance requirements herein shall be made only with the written approval of the City's Risk Manager or designee.

17. This Permit may create a possessory interest subject to property taxation and Permittee may be liable for the payment of property taxes levied on such possessory interest. Permittee shall pay or cause to be paid prior to delinquency, all taxes,

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1 assessments and other governmental district charges that may be levied or assessed upon  
2 its property and/or upon possessory interest created by this Permit. Satisfactory evidence  
3 of such payments shall be delivered to the City by Permittee upon demand therefore.

4 18. Permittee shall coincidentally with the execution of this Permit execute  
5 and deliver to the City a good and sufficient Bond for Faithful Performance in an amount  
6 equal to the guaranteed minimum annual fee which shall be used to reimburse the City for  
7 any and all costs or losses due to default of this Permit, including the failure to pay monthly  
8 percentage fees on gross sales or the guaranteed minimum annual fee. The City will  
9 accept a cash deposit or certificate of deposit in lieu of the Faithful Performance Bond.

10 19. Permittee shall be in default of this Permit if it fails or refuses to  
11 perform any provision of this Permit that it is obligated to perform. If the failure to perform  
12 is not cured within thirty (30) days after notice of default has been given by the City to  
13 Permittee, this Permit shall terminate and be of no further force or effect as to the  
14 expiration of said thirty (30) day period. The Faithful Performance Bond will be used to  
15 reimburse City for any and all costs or loss it may incur due to a default by Permittee and  
16 to meet the guaranteed annual fee.

17 20. Any notice, demand, request, consent or communication that either  
18 party desires or has been required to give to the other party shall be in writing and either  
19 served personally or sent by prepaid first-class mail addressed as follows:

20 To City: City Manager  
21 City of Long Beach  
22 333 West Ocean Boulevard, 13th Floor  
Long Beach, California 90802

23 With a copy to: Director  
24 Department of Parks, Recreation and Marine  
25 2760 Studebaker Road  
Long Beach, California 90815

26 To Permittee: Devinder Pal Sarin  
27 dba Mel-O-Dee Ice Cream  
28 2649 W. First Street  
Santa Ana, CA 92703



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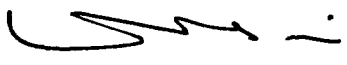
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Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within twenty-four (24) hours from the time of mailing, if mail is provided in this paragraph.

21. Permittee may be required to provide mobile ice cream service for selected special events along beaches and waterways. This will be done at the direction of the Director and at a level satisfactory to the Director.

DEVINDER PAL SARIN, an individual,  
doing business as MEL-O-DEE ICE  
CREAM

8/9, 2005

By 

Title 

\_\_\_\_\_, 2005

By \_\_\_\_\_

Title \_\_\_\_\_

"Permittee"

CITY OF LONG BEACH, a municipal  
corporation

SEPT. 6, 2005

By   
City Manager

"City"

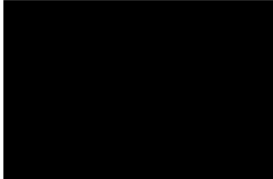
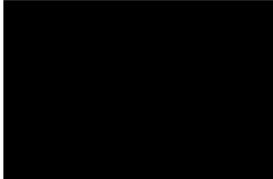
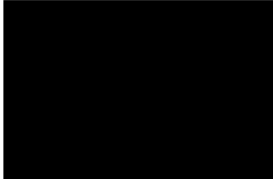
The foregoing Permit is hereby approved as to form this 11<sup>th</sup> day of August, 2005.

ROBERT E. SHANNON, City Attorney

By   
Deputy

JCP:sek:et  
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**VEHICLES TO BE USED IN OPERATION**

<u>MAKE</u>	<u>MODEL</u>	<u>YEAR</u>	<u>LICENSE</u>	<u>VIN</u>
Chevy	Step Van	77	3Y48281	
GMC	Step Van	69	5V66860	
Dodge	Step Van	77	5M16309	

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**EXHIBIT "A"**

## **MOBILE ICE CREAM LOCATIONS**

- 72nd Street Parking Lot - Ocean Boulevard and 72nd Street
- Marine Park - San Marco Drive and Appian Way
- Alamitos Parking Lot - Shoreline Drive and Alamitos Avenue
- Davies Street Bridge Launch Ramp
- Granada Avenue Parking Lot - Ocean Boulevard and Granada Avenue
- \*Junipero Beach Parking Lot - Ocean Boulevard and Junipero Avenue
- \*Marine Stadium
- \*Leeway Sailing Center - 5347 East Ocean Boulevard
- \*Bay Shore Avenue - Ocean Boulevard at 45th Place
- \*Colorado Lagoon - Nieto Avenue and East Colorado Street
- \*Selected Special Events

Other locations within selected beach areas and approved in writing by the Director of Parks, Recreation and Marine.

- \* ONLY WHEN THE EXISTING PERMANENT AND/OR EVENT CONCESSIONS ARE CLOSED.

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**EXHIBIT "B"**

## **SCHEDULE OF OPERATING HOURS**

Twelve (12) months per year  
Seven (7) days per week  
Hours 10:00 a.m. to 6:00 p.m.

Special reasons for Mel-O-Dee modifying this schedule will be:

- Weather conditions such as rain, fog, or cold weather
- Employer or Supplier strikes
- Equipment malfunctions
- Vandalism or theft
- Employee sickness
- An act of God, e.g., earthquakes, floods, or other circumstances beyond the vendors' control