



CITY OF LONG BEACH

DEPARTMENT OF FINANCIAL MANAGEMENT

ORD-28

333 West Ocean Blvd • Long Beach, California 90802

March 6, 2007

HONORABLE MAYOR AND CITY COUNCIL
City of Long Beach
California

RECOMMENDATION:

Receive and file supporting documentation and declare ordinance extending the Downtown Dining and Entertainment District Pilot Program (District) through December 31, 2007 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)

DISCUSSION

On December 19, 2006, the City Council adopted an ordinance extending the District through March 31, 2007. This short-term extension allowed time for City staff to continue to meet with the District's stakeholders to discuss outstanding operating issues before final standardized operating conditions for the District were recommended for adoption. On January 17, 2006, the City Council established a Downtown Dining and Entertainment District Pilot Program. The establishment of the Pilot Program followed six months of meetings and discussions with the Downtown Long Beach Associates (DLBA), homeowner associations, business owners and other stakeholders to develop consistent hours and operating conditions for the businesses required to have an entertainment permit in the District. In addition, conditions placed on businesses in the District were intended to promote a safe environment benefiting visitors and retail and entertainment venues, while ensuring quality of life for residents who might be impacted by the enhanced hours and operating conditions of the District.

Since the December 19, 2006 extension, meetings were held with entertainment venue operators on January 19, 2007 and a final community meeting was held on February 21, 2007.

Prior to the establishment of the District, the hours and conditions of operation varied from establishment to establishment, since each entertainment permit was authorized by a separate action of the City Council over a 22-year period. Some establishments could have entertainment until 2:00 a.m., while others were restricted to earlier hours. Some establishments were authorized to have outdoor entertainment, others were not. These differences appeared to have provided a competitive advantage to some establishments.

The District consists of the area bounded by Ocean Boulevard, Third Street, Pacific Avenue, and Long Beach Boulevard, and the areas known as the Pike at Rainbow Harbor and Shoreline Village. Hotels and retail stores that provide entertainment within the boundaries are excluded from the District's requirements. With the approval of the Pilot Program, all entertainment venues in the District have consistent hours and operating conditions (see **Attachment A** for a complete list of operating conditions). Some of the key conditions include:

- Indoor entertainment and outdoor non-amplified entertainment may be offered until 2 a.m., seven-days a week. Outdoor amplified entertainment is prohibited, except for a rooftop entertainment venue that was previously permitted.
- Noise emanating from permittee's premises shall not be audible from the middle of the street adjoining the property.
- Permittees shall be responsible for maintaining an adequate security staff.
- If a permittee fails to comply with the conditions of this permit, or if operations result in excessive police service, the permittee will be required to operate under more restrictive conditions (as described in **Attachment B**).

There are presently 22 entertainment venues in the District please see **Attachment C** for a complete list of permits in the District.

During the Pilot Program, additional police officer overtime has been allocated to deal with the popularity of the District during the extended-hours of operation, seven-days per week.

Pilot Period

As requested, staff has closely observed the District during the Pilot Program and held stakeholder meetings. These meetings were attended by entertainment permittees, retailers, residents, and City staff from police, traffic engineering, parking, economic development, and business license disciplines. Most discussions concerned traffic volume, traffic noise, traffic flow, pedestrian traffic, crowd control and minor disturbances. There was very little discussion concerning the entertainment and associated permits. During the pilot period, the City received few noise complaints regarding the entertainment within the District. Most noise complaints during this period concerned traffic noise and construction noise. It should be noted that the residential units being constructed on the Promenade, which would be most subject to entertainment noise, are not yet occupied.

City staff worked to mitigate traffic flow concerns identified during the stakeholder meetings, including prohibition of "cruising" on Pine Avenue, installation of left turn arrows, traffic signal timing changes, removing valet parking from Pine Avenue, and repainting curbs to eliminate Pine Avenue parking except in approved areas. Traffic noise was reduced by the Police Department placing enforcement emphasis on loud motorcycles and vehicles. Pedestrian flow has been enhanced with countdown timers at cross walks and removing sandwich board signs and other obstructions from sidewalks.

In an attempt to reduce the quantity of vehicle traffic, for a trial period at the end of the summer, Pine Avenue was closed between Broadway and Third Street on weekend nights. During these street closures, Passport buses were rerouted off of Pine Avenue, entertainment was provided by the DLBA in the middle of the closed street, and traffic officers were positioned at the Pine Avenue/Ocean Boulevard intersection. Although the street closure did reduce vehicle traffic and the associated noise from cruising, the trial period was cut short when the retail stores reported a reduction in customers.

The increased police presence and installation of surveillance cameras on Pine Avenue are anticipated to provide a greater sense of security to Pine Avenue patrons. The Police Department reports that overall the District has a very low crime rate and that no significant property or violent crime trends developed during the year. Individual incidents were quickly investigated and resolved. The Police Department efforts were mostly spent on traffic management, pedestrian management, crowd control and some crimes such as juvenile loitering, public intoxication, battery and fighting in public.

Planned Measures During the Pilot Program Extension Period

Based upon performance of the District during the Pilot and ongoing discussions with stakeholders, staff recommends extending the duration of the Downtown Dining and Entertainment District Pilot Program to December 31, 2007 and standardize District conditions of operations and tiered conditions during this time. During the extension period, staff further suggests topics be discussed during the next ten months, including:

- There has been some discussion of authorizing entertainment and dancing after alcohol service stops at 2:00 a.m. Food service, non-alcoholic beverage service, and entertainment might encourage patrons to stagger their departure times. This could have the effect of aiding pedestrian management and crowd control at the present 2:00 a.m. closing time. San Diego and Seattle are testing staggered entertainment closing times and City staff will follow these efforts closely. At this time staff does not recommend entertainment later than 2:00 a.m.
- Consider the benefits of extending the northern boundary of the District to 4th Street. This was discussed at several public meetings and would include the Vault 350 and the Backstage Jazz Club. Presently, the Vault 350 Entertainment Permit has conditions that are very similar to those in the District. The Backstage Jazz Club will come to City Council for approval of an entertainment permit in the near future.
- Some of the restaurants in the District are operating more like nightclubs than restaurants. They do not open for business until 8:00 p.m. or later and do not have regular meal service. These storefronts are closed most of the day and detract from the ambiance that many would like to see in the District. Staff will meet with the restaurant proprietors that have Entertainment Permits to discuss the options for their serving meals minimum of at least one full normal mealtime, 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.
- Review the appropriate age 18 or 21 years restrictions to enter or remain on the premises after 10:00 p.m.
- Staff will continue the Downtown Long Beach Visioning Process that includes the City Council, Downtown stakeholders, businesses and residents to ensure the City is "on the right track." The Planning and Building Department is leading this process and has included the Pilot Downtown Dining and Entertainment District in the visioning discussions.
- Periodic stakeholder meetings among retailers, residents and City staff will be conducted to address any challenges that may arise during the extended Pilot Program period.
- Staff along with the business owners will revisit the benefits and obstacles to street closures in the District.

- Consideration will be given to restructuring valet parking agreements both on Pine Avenue and at the Pike to ensure a more positive parking environment for the District patrons.

This item was reviewed by Deputy City Attorney, Lisa Malmsten on February 21, 2007 and Budget and Performance Management Bureau Manager, David Wodynski on February 20, 2007.

TIMING CONSIDERATIONS

The Downtown Dining and Entertainment District shall cease to be in effect on March 31, 2007, if not extended by the City Council.

FISCAL IMPACT

The Police Department has been allocated an additional one-time General Fund budget of \$905,000 in FY 07 for continued overtime support of the Downtown Dining and Entertainment District. The funding source for this budget is the repayment of Redevelopment Agency debt to the General Fund.

SUGGESTED ACTION:

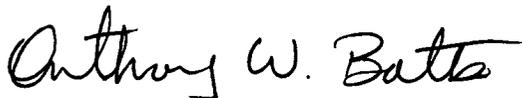
Approve recommendation.

Respectfully submitted,



MICHAEL A. KILLEBREW
DIRECTOR OF FINANCIAL MANAGEMENT

APPROVED:



ANTHONY W. BATTS
CHIEF OF POLICE


for
GERALD R. MILLER
CITY MANAGER

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 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 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 Marshal 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.

Attachment "C"
Establishments with Entertainment Permits in
the Downtown Dining and Entertainment District

Restaurant / Club	Street	Business License	Entertainment Permit	Previous Conditions	
				Hours	Outdoor Entertainment
Aladdin	200 Pine	Restaurant w/ alcohol	With Dancing	wk: 12:00, F/S:2:00	non-amp: dancers
Alegria	115 Pine	Restaurant w/ alcohol	With Dancing	wk: 11:30, F/S 1:15	no
Auld Dubliner	71 S. Pine	Restaurant w/ alcohol	Without Dancing	wk: 1:00, F/S: 1:30	no
Blue Café	210 Promenade	Restaurant w/ alcohol	With Dancing	wk: 12:00, F/S: 2:00	non-amplified
Café Sevilla	140 Pine	Restaurant w/ alcohol	With Dancing	none	none
Casa Vino	51 S. Pine	Restaurant w/ alcohol	Without Dancing	none	none
Club 49	49 S. Pine	Restaurant w/ alcohol	With Dancing	wk: 12:00, F/S:2:00	no
Cohiba	110 E. Broadway	Bar	With Dancing	wk: 12:00, F/S:2:00	no
Gameworks	10 Aquarium Way	Restaurant w/ alcohol	With Dancing	wk: 12:00, F/S: 2:00	non-amplified
Gladestone's	330 S. Pine	Restaurant w/ alcohol	With Dancing	none	none
Hush	217 Pine	Restaurant w/ alcohol	With Dancing	none	none
Kings	100 W. Broadway	Restaurant w/ alcohol	Without Dancing	Thur: 10:00, Sun: 7:00	no
Madison	102 Pine	Restaurant w/ alcohol	With Dancing	wk: 10:00, F/S: 12:00	no
Mai Tai Bar	97 Aquarium Way	Bar	With Dancing	wk: 2:00, F/S: 2:00	no
Mariposa	100 W. Broadway	Restaurant w/ alcohol	With Dancing	wk: 10:00, F/S: 2:00	no
Parker's Lighthouse	435 Shoreline	Restaurant w/ alcohol	With Dancing	wk: 2:00, F/S: 2:00	non-amplified
Rhythm Lounge	245 Pine	Bar	With Dancing	none	none
Rock Bottom Brewery	1 Pine	Restaurant w/ alcohol	Without Dancing	wk: 1:00, F/S: 1:00	no
Smooths	144 Pine	Restaurant w/ alcohol	With Dancing	wk: 2:00, F/S: 2:00	roof: amp. / patio: non-amp
Taco Beach	211 Pine	Restaurant w/ alcohol	Without Dancing	wk: 12:00, F/S: 2:00	non-amplified
V2O	81 Aquarium Way	Restaurant w/ alcohol	With Dancing	wk: 2:00, F/S: 2:00	non-amplified
Wasabi	200 Pine	Restaurant w/ alcohol	With Dancing	wk: 11:00, F/S 1:30	no

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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 TO
EXTEND 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 extend the duration of the
Downtown Entertainment Permit in order to review the comments of the stakeholders.

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 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 downtown
entertainment permits, which shall expire when the pilot program expires
or is terminated.

1 RESOLUTION NO.

2
3 A RESOLUTION OF THE CITY COUNCIL OF THE
4 CITY OF LONG BEACH EXTENDING CONDITIONS FOR
5 ENTERTAINMENT PERMITS UNDER THE DOWNTOWN
6 DINING AND ENTERTAINMENT DISTRICT PILOT
7 PROGRAM

8
9 WHEREAS, the City Council intends to extend its Downtown Dining and
10 Entertainment District pilot program (the "Downtown Pilot Program") for an additional three
11 months to consider and review the comments of stakeholders and staff; and

12 WHEREAS, the City Council intends that downtown entertainment permits,
13 including hours and conditions of entertainment, as defined in Section 5.72 of the
14 Municipal Code, continue to be standardized as part of the Downtown Pilot Program.

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

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

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

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

10 Sec. 3. The City Manager is directed to submit a report and
11 recommendations on the effectiveness of the pilot program prior to its expiration. This
12 report shall include comments and concerns expressed by pilot program area residents,
13 businesses and other interested members of the community.

14 Sec. 4. This resolution shall take effect concurrently with the effective date
15 of the ordinance extending the Downtown Dining and Entertainment District Pilot Program,
16 and shall remain in effect so long as said ordinance remains in effect. The City Clerk
17 shall certify the vote adopting this resolution.

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I hereby certify that the foregoing resolution was adopted by the City Council
of the City of Long Beach at its meeting of _____, 2007, by the following
vote:

Ayes: Councilmembers: _____

Noes: Councilmembers: _____

Absent: Councilmembers: _____

City Clerk

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

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 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 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 Marshal 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.