



CITY OF LONG BEACH R-26

DEPARTMENT OF DEVELOPMENT SERVICES

333 West Ocean Boulevard • Long Beach, CA 90802 • (562) 570-5237

December 2, 2014

HONORABLE MAYOR AND CITY COUNCIL
City of Long Beach
California

RECOMMENDATION:

Receive a report and approve the recommended revisions to the Downtown Dining and Entertainment District (District) outlined in Exhibit B; and

Request the City Attorney to draft an ordinance amending Title 5 of the Long Beach Municipal Code (LBMC), related to the District, and amending Title 21 of the LBMC related to the definition of nightclubs (District 2).

DISCUSSION

The Downtown Dining and Entertainment District (District) consists of the area bounded by the north side of Ocean Boulevard, the south side of Third Street, the east side of Pacific and the west side of Long Beach Boulevard, and the areas known as the Pike at Rainbow Harbor and Shoreline Village (Exhibit A – District Boundaries). In 2005, the City Council authorized a pilot program in the District to develop consistent hours and operating conditions for businesses requesting an entertainment permit. In December 2008, the District was established on a permanent basis.

On August 13, 2013, the City Council directed the City Attorney to draft an interim ordinance pursuant to LBMC Chapter 21.50 ("Interim Prohibition of Uses") initiating a moratorium against the issuance of entertainment permits in the District for businesses under a Type 48 Alcoholic Beverage Control (ABC) license for a period of one year. The City Council directed the City Manager, along with the Department of Development Services and the Planning Commission, to conduct an evaluation of the policies governing the issuance of entertainment permits in the District during the one-year moratorium. Council requested that the City Manager involve downtown stakeholders in the review process. On August 12, 2014, the City Council extended the moratorium for six-months to allow the downtown stakeholders to complete a public engagement process regarding proposed recommendations.

Following Council direction, the City Manager assembled a diverse task force of downtown stakeholders (task force) to evaluate the current policies and recommend changes. Task force members submitted applications and were selected based on a mix of criteria, including demonstrated commitment to downtown Long Beach, professional expertise, and familiarity with the downtown entertainment issues. The task force members include business owners, downtown residents, and property owners.

During the moratorium, the task force met regularly to consider adjustments to the District policies that would continue to promote a vibrant and dynamic downtown. The task force sought to balance the needs of a variety of users. In particular, the task force wished to stimulate business activity and incentivize entertainment venues to operate downtown, while also encouraging residential development in the District. City staff facilitated meetings and participated throughout the process.

Working together with staff, the task force held two public forums in August and October 2014, in order to inform the community of the proposed changes and to ensure that everyone had an opportunity to comment on the proposal. In addition, the public submitted comments via e-mail. After each forum, the task force met to consider how to best incorporate the feedback into the final recommendations. Staff also met with the Executive Committee of Downtown Long Beach Associates on two separate occasions throughout the process.

The task force last met on November 12, 2014 and came to consensus on the recommendations. A summary of those recommendations are attached (Exhibit B). In conducting a review of the LBMC, it became apparent that a definition of "nightclub" was needed in Title 21 (Zoning Code). Therefore, on November 20, 2014, the Planning Commission held a public hearing and adopted a definition of "nightclub". The City Council will consider adoption of this definition, which would be applicable citywide, when it considers amending Title 5 for the District.

The task force and City staff believe the recommended policies enhance the District and provide a platform that will encourage continued business development while diminishing quality of life concerns from residents.

This matter was reviewed by Deputy City Attorney Amy R. Webber on November 18, 2014 and by Budget Operations Officer Grace Yoon on November 17, 2014.

TIMING CONSIDERATIONS

The moratorium on Type 48 ABC licenses in the District expires on February 7, 2015. Council action is requested in order to prepare the ordinance, conduct the hearing, and adopt and implement the ordinance before the moratorium expires.

FISCAL IMPACT

The proposed action in Exhibit B recommends a requirement for nightclubs to obtain a Conditional Use Permit (CUP) and an Entertainment Permit in accordance with the Downtown Plan. The fees associated with these permits will cover the City's cost to issue the permits. In addition, it is recommended that the CUP fee for the one existing nightclub in the District be waived. With the waiver of this CUP fee, plus environmental clearance (approximately \$9,256), the City will not collect this one-time revenue due to the Development Services Fund (EF337), however, this will not impact the Fund's ability to cover the expense.

The proposed action recommends establishing a Noise Study Exemption Request and a Noise Study Exemption Hearing, with associated fees to cover the processing costs. The establishment of these fees will require an amendment to the City's fee schedule and will be presented to the City Council in March of 2015. Approval of this recommendation will provide continued support to the local economy.

SUGGESTED ACTION:

Approve recommendation.

Respectfully submitted,



AMY J. BODEK
DIRECTOR OF DEVELOPMENT SERVICES



JOHN GROSS
DIRECTOR OF FINANCIAL MANAGEMENT

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Attachments: Exhibit A – District Boundaries
Exhibit B – Recommendations

APPROVED:



PATRICK H. WEST
CITY MANAGER

EXHIBIT A – District Boundaries

DOwNTOWN DINING & ENTERTAINMENT DISTRICT: BOUNDARIES
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The Downtown Dining and Entertainment District (District) consists of the area bounded by the north side of Ocean Boulevard, the south side of Third Street, the east side of Pacific and the west side of Long Beach Boulevard, and the areas known as the Pike at Rainbow Harbor and Shoreline Village.

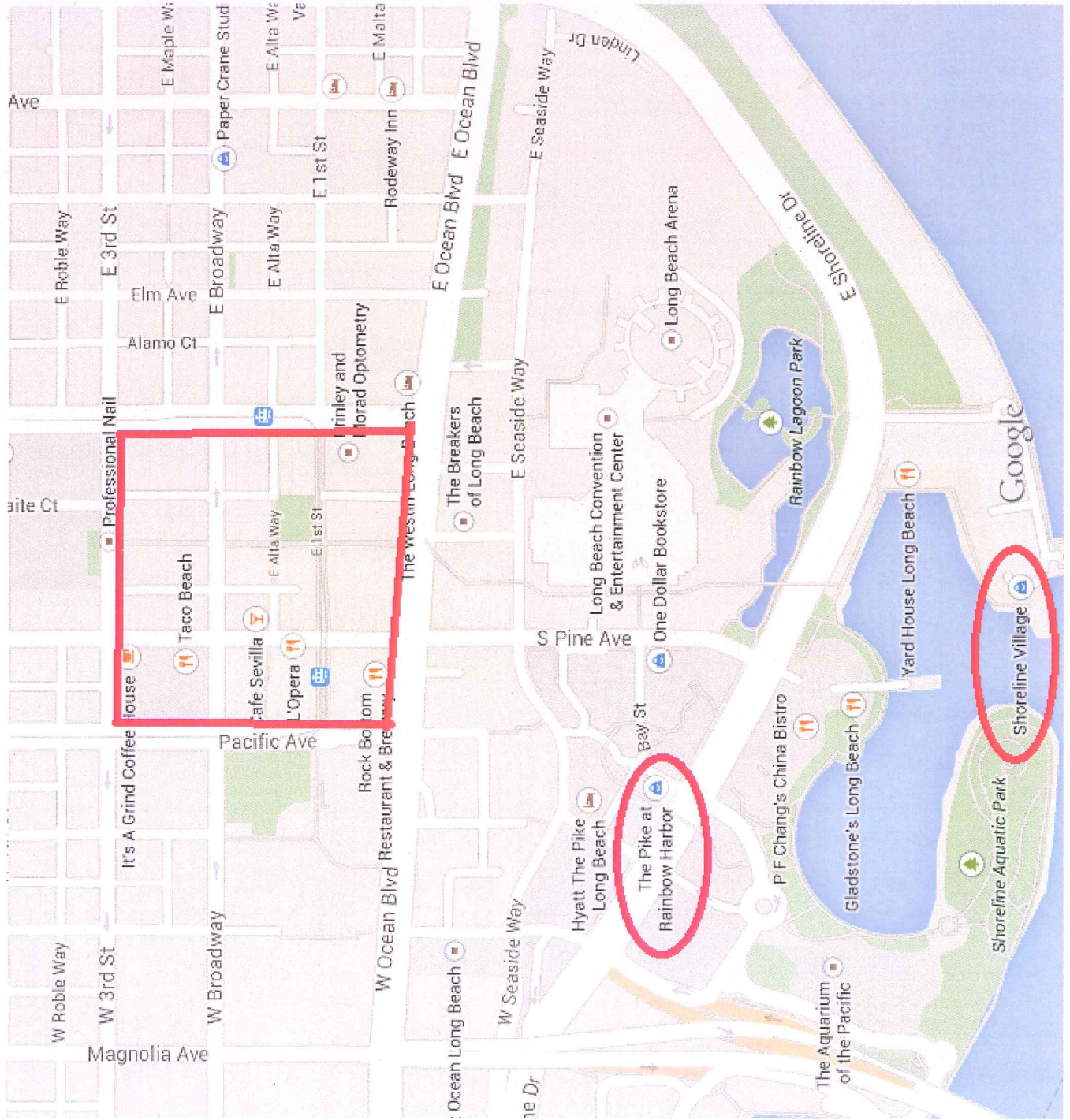


EXHIBIT B

Recommendations for the Downtown Dining & Entertainment District

In accordance with the Downtown Plan, require nightclubs to obtain a Conditional Use Permit (CUP) and an Entertainment Permit. A nightclub will be defined in Chapter 21 of the LBMC as “any bar, cocktail lounge, dance club or similar establishment with an entertainment permit for live, amplified music and dancing in conjunction with alcoholic beverage sales operating under a Type 48 ABC License.” The CUP requirement for nightclubs shall be effective immediately for all future nightclubs. Existing establishments categorized as nightclubs will have 6 months to apply for a CUP and 6 months to implement any mitigation required as part of the CUP. CUP fees would be waived for existing nightclubs. This recommendation will apply to the one (1) existing establishment in the District.

All new entertainment establishments in the mixed use portion of the District (north of Seaside Way) are required to obtain an entertainment permit under the new ordinance (Enhanced Entertainment Permit). Similar to the current permit in many ways, the Enhanced Entertainment Permit requires applicants to complete a sound attenuation study performed by a licensed and/or certified acoustical engineer and submit the study with their application. The study provides the operator with mitigation efforts that can be taken to ensure that sound emanating from the establishment does not exceed the acceptable levels as described in the sound ordinance (Chapter 8.80 of the LBMC). The sound study and the recommended mitigation measures are intended to protect residents and other downtown users as both residential and entertainment uses continue to grow within the District.

First-time or Change of owner Entertainment Permit applicants at locations without entertainment in the affected portions of the District, must complete the sound study and mitigation. Applicants can request that the sound study requirement be waived. The request shall be considered if the applicant meets one of the following criteria:

1. Entertainment previously permitted at same location, provided no more than one year (12 months) has passed since the permitted entertainment at that location ceased; or
2. Verifiable evidence that best sound mitigation practices were used in the construction or retrofitting of the location. The City shall publish a list of best sound mitigation practices.

A hearing will be conducted to determine if a sound study waiver is appropriate for the location. The hearing will consider the previous use, history of sound related complaints and violations at the location, proximity to residential development, the age of the building, and other elements. A staff level committee consisting of the Business License Manager, and Zoning Administrator, with input from the Noise Officer and Police Department as required, will consider the findings and determine if a waiver shall be granted. Applicants

can appeal the decision to a City hearing officer. The waiver application fees will reflect cost recovery for the City and be incorporated into an updated fee schedule.

Existing entertainment permit holders would not be required to perform a sound study in order to maintain a valid permit. Existing permit holders shall include those with valid entertainment permits at the time the ordinance goes into effect, as well as those who have submitted complete entertainment permit applications at the time the ordinance goes into effect. Any change of entertainment permit use (i.e. without dancing to dancing) requires a new application, which is consistent with current City practices. If, however, an establishment becomes “tiered” by the Police Department for violations of the conditions of operation, the City may require completion of a sound study and associated mitigation in order to return to the standard operating conditions. This arrangement rewards the good operators currently in the District, while promoting high-quality sound mitigating design in the future. Further it is anticipated that current operators will be incentivized to “self-monitor” or, perhaps, even perform their own sound study in the event of noise issues to avoid the Tier 2 requirement.

Modify the standard Conditions of Operation. The Task Force found a majority of the current operating conditions to be adequate. Recommended changes include:

- *Make standards clear to business owners by codifying the conditions and tiering in the municipal code.* Currently, the conditions exist as an attachment to the municipal code and are not easily found by potential applicants.
- *Modify the reasonable sounds standard, so that all “noise emanating from Permittee’s premises shall not be deemed a nuisance fifty (50) feet from the property.”* This standard provides law enforcement personnel with a tangible way to substantiate a complaint in real-time and without the use of decibel readers.
- *Incorporate the condition requiring permittees to install and maintain video surveillance systems on the exterior front and rear entrances and parking lots as standard for all permittees.* This condition has become standard on all Entertainment Permits granted in the City. The Police Department provides specific technical information regarding the surveillance systems.
- *Require Police review of Promoter’s License applications.* Once reviewed, promoters can become part of an approved promoters list. This can limit challenges the District faces related to unscrupulous promoters who frequently cause problems.
- *Provide Police Department discretion to implement tiering after one violent incident.* At present, three incidents must occur within a 30-day period before the Police Department can respond through the tiering system. This latitude will allow the Police Department to institute tiering after felony level incidents. Maintaining a District with a reputation for safety is important to all downtown stakeholders. The City must not tolerate violence.
- *Operators must place or post conditions on the premises in a place easily accessible by city staff, including law enforcement personnel.* With the Conditions of Operation on hand, city staff—whether from the Police Department, Code Enforcement, or

Business License—can easily understand an operator's responsibilities and restrictions.

Allow establishments to apply for outdoor amplified entertainment, including rooftop entertainment, as part of an Enhanced Entertainment Permit. Outdoor entertainment should be allowed Sunday to Thursday from 10 am to 10 pm, and Friday and Saturday from 10 am to midnight. The volume should remain within the limits of the sound ordinance and not violate the 50-foot standard. Outdoor entertainment can contribute to a festive and vibrant District that will attract visitors and provide an experience many residents appreciate. The ability to conduct outdoor entertainment would be requested when applying for an Entertainment Permit.

Clearly define ambient music in the LBMC. Many establishments throughout the City use ambient music to cultivate a particular atmosphere. Ambient music, though, is not intended to divert or entertain clientele. Ambient music does not require a permit. A clear definition will allow operators and the City to clearly distinguish the need for an Enhanced Entertainment Permit.

Maintain the tiering system, while enhancing enforcement through additional outreach. Under the current tiering system, a permittee who violates the terms of the permit is subjected to progressively more stringent regulations. The tiering system allows the City to alter the conditions of operation in order to maintain a safe and livable environment. Failure to comply can result in revocation of both the entertainment permit and the business license. The system has proven effective in changing the behavior of current permit holders, and has proven to be sufficient to eliminate egregious violators who threatened the safety of the District. Still, additional measures can provide more tools to City staff, and enhance the public's relationship with law enforcement, ultimately leading to an improved District.

Proposed enhancements include:

- *Establish a Community Liaison in the Police Department's Vice Unit, who is assigned to communicate with the public.* Officers responding to a call for service record the outcome of that call. The Vice Unit Liaison can field calls from complaining parties seeking to ascertain the outcome of a complaint.
- *Vice Unit will report quarterly to the downtown community, including residents and businesses.* This report will include a review of incidents in the District and responses to those incidents.
- *Business License and Police Department will review conditions in-person with new permittees.* A face-to-face review ensures permit holders understand the conditions and take them seriously.
- *Enhanced Entertainment Permits may be administratively reviewed by Business License w/in 6 months from the date of issuance and/or every 30 days thereafter to ensure compliance with standard operating conditions.* This enhancement allows Business License to check in with a new permit holder after 6 months. The review would reveal any calls for service or other violations associated with the operator. This

tool allows greater scrutiny to be placed on operators who consistently fail to adhere to the established conditions.

Evaluation

The task force members and City staff should meet periodically over the next year to evaluate the effectiveness of the recommendations. The evaluation should consider the number of incidents, establishments subjected to tiering of conditions, new entertainment permits granted, CUPs applied for and granted, and evaluations of the processes from applicants. The evaluation should not begin until the proposed processes have been implemented for six (6) months.

Future Consideration

Modifications to the sound ordinance are beyond the scope of this task force. Still, the City should consider adding standards for bass sound to the City's sound ordinance. Bass sounds are more accurately measured using a dBC scale; whereas the current sound ordinance uses the dBA scale. Adding specific standards for bass sound will prevent nuisance behavior by providing operators with clear limitations, ultimately protecting the rights of residents and businesses to emit sound.

The District's boundaries should be expanded. In particular, the task force members observed increasing development north of the current district. The area for expansion coincides with the height incentive area outlined in the Downtown Plan. Expanding the District provides benefits to establishments in these areas (such as operating until 2 am) and promotes competitive parity between businesses. The task force felt, however, that a discussion of boundaries should intentionally include residents and business owners from proposed expansion areas.