

32228

PUBLIC WALKWAYS OCCUPANCY PERMIT

(WITH CANOPY)

This Public Walkways Occupancy Permit ("Permit") is granted this 23<sup>rd</sup> day of June, 2011, pursuant to minute order adopted by the City Council of the City of Long Beach at its meeting held on May 17, 2011, to HOGS AND HOPS, LLC, a California limited liability company ("Permittee"), whose address is 13361 Partridge Street, Garden Grove, California 92843, as the operator of the BEACHWOOD BBQ & BREWING restaurant and lessee of premises at 210 E. Third Street, Suite B, Long Beach, California 90802.

Permission is granted to Permittee to occupy the public right-of-way with the following obstructions: **low barrier, twenty-three (23) tables, sixty-six (66) chairs, six (6) 8'0" AFF heaters** at 210 E. Third Street, Suite B, Long Beach, California 90802. Dimensions and location of the area to be occupied are as shown on Exhibit "A", incorporated by reference and made a part of this Permit; provided that all obstructions are placed only within the permit area shown on Exhibit "A".

Permittee is further granted permission to occupy part or all of the area described on Exhibit "A" with a Canopy Windbreak Sidewalls, pursuant to the conditions set forth on Exhibit "D", incorporated by reference and made a part of this Permit. The canopy shall be considered part of the "obstructions" as that term is used throughout this Permit, unless otherwise specified.

This Permit is granted with reference to the following facts:

1. Permittee proposes to occupy the public right-of-way as shown on Exhibit "A"; and
2. The proposed occupancy will not now or at any time interfere with continued public use of the public street right-of-way; and
3. There is no present or foreseeable conflicting public need for the proposed use of the public street right-of-way area and its temporary withdrawal from public use will not be injurious or detrimental to the public; and

1           4.       This use of a portion of the public street right-of-way is consistent  
2 with proper and lawful street uses and the use is approved; and

3           5.       The City Engineer has determined that this use is in compliance with  
4 Chapter 14.14 of the Long Beach Municipal Code, all related to temporary use of the  
5 public rights-of-way.

6           The use of the public street right-of-way is granted upon and subject to the  
7 following terms and conditions:

8           1.       The minimum width of the public walkway shall be ten (10) feet, or as  
9 otherwise approved by the City Council pursuant to Chapter 14.14 of the Long Beach  
10 Municipal Code, and any obstruction must permit at least five (5) feet of unobstructed  
11 area of public walkway.

12          2.       The obstruction shall abut the property and not be located in a  
13 manner which interferes with the flow of pedestrian or other traffic.

14          3.       The maximum height of any such obstruction shall be six (6) feet and  
15 all such obstructions shall be entirely portable, except as specifically authorized by the  
16 City Engineer. This height limit shall not apply to a Canopy, the height of which shall be  
17 determined by the City Engineer in consultation with the Fire Marshall and the Building  
18 Official in conformity with all state and local laws and regulations.

19          4.       This Permit may be immediately suspended for a designated time  
20 period at any time in the event that, in the discretion of the City Council or City Manager,  
21 such obstruction would interfere with street improvement activities, construction activities,  
22 cleaning efforts or other similar activities.

23          5.       The obstruction shall be kept in a good state of repair and in a safe,  
24 sanitary, and attractive condition.

25          6.       Such obstructions may not be located within twenty (20) feet from an  
26 intersection (measured to the prolongation of the near curb of the intersecting street) or  
27 within ten (10) feet from a driveway or alley (measured to the near end of the fully  
28 depressed portion of an apron-type driveway or to the prolongation of the near curb of the

1 driveway) unless otherwise approved by the City Council pursuant to the considerations  
2 specified in Chapter 14.14 of the Municipal Code.

3 7. The public street right-of-way shall be used by Permittee only for the  
4 obstructions described above and in the area shown on Exhibit "A".

5 8. The area in front of the entrance to the business shall not be  
6 obstructed by barricades, chairs, tables or other furniture.

7 9. The Permittee shall place all obstructions, and any accessories or  
8 equipment located within a dining or entertainment area, in strict accordance with Fire  
9 Department and Health and Human Services Department standards and contained within  
10 Chapter 14.14 of the City of Long Beach Municipal Code, as amended from time to time.  
11 If the area that is the subject of this Permit is within a redevelopment area, Permittee  
12 must also comply with all limitations imposed by the Redevelopment Agency as part of an  
13 approved master plan or design guidelines.

14 10. No surface improvements, included but not limited to special paving  
15 surfaces, may be removed or altered by the Permittee unless approved in advance in  
16 writing by the City Engineer.

17 11. The Permittee shall not allow cleaning chemicals, or other foreign  
18 matter to flow into the parkway tree well, and shall otherwise protect the health of  
19 adjacent street trees, and shall likewise prevent the discharge of litter, cleaning chemicals  
20 and all other foreign matter to the storm drain system.

21 12. The Permittee shall protect any parkway trees in the immediate  
22 vicinity of the permit area from damage due to the Permittee's cleaning or other activities  
23 on the public walkway. The Permittee shall not interfere with City's access to parkway  
24 trees for maintenance purposes. Any special maintenance of the parkway trees is the  
25 responsibility of the Permittee and must be performed by a qualified landscape contractor  
26 acting under a permit from the City's Street Landscaping Division. City shall not be held  
27 financially responsible for damage to Permittee's sidewalk furniture or awnings occurring  
28 in the course of regular street tree maintenance.

1           13. Upon any termination of this Permit, whether by revocation or  
2 otherwise, Permittee shall remove the obstructions authorized by this Permit at the sole  
3 discretion of the City Engineer and shall otherwise restore the public street right-of-way to  
4 a condition substantially the same as existed immediately prior to the occupancy  
5 provided for by this Permit. Should Permittee fail or refuse to remove the obstructions,  
6 City may do so and, in such event, the security deposit paid by Permittee shall be applied  
7 to City's costs. Permittee shall reimburse City for any costs in excess of the security  
8 deposit. In the event of removal by City of all or any portion of the obstructions, City shall  
9 not be liable for any damage to or loss of any property of Permittee.

10           14. The following additional conditions shall apply to public walkway  
11 occupancy permits for dining or entertainment areas:

12           A. Any dining or entertainment area shall be defined by  
13 placement of sturdy fencing or other suitable barriers, not to exceed forty-eight (48)  
14 inches in height, as approved by the City Engineer. Such barriers may only be affixed to  
15 public property with the prior approval of the City Engineer.

16           B. All accessories to dining or entertainment uses such as plants  
17 or planter boxes, umbrellas, podiums, menu boards, musical equipment and heaters may  
18 not exceed those enumerated on Exhibit "A", and must be located inside the barrier, as  
19 shown on Exhibit "A".

20           C. All dining and entertainment which takes place on the public  
21 right-of-way shall conform to the requirements of Chapter 8.80 of the municipal code  
22 regarding noise. Complaints regarding noise shall be logged by city staff and may be the  
23 basis for suspension, cancellation, or non-renewal of a permit.

24           D. The Permittee shall be responsible for cleaning the public  
25 walkway occupied by a dining or entertainment area.

26           15. Any permit issued within the Downtown Area as defined on Exhibit  
27 "B" and made a part of this Permit shall comply with all of the foregoing requirements and  
28 the following additional requirements:

1                   A.     Except as authorized as a Canopy pursuant to the terms and  
2 conditions set forth on Exhibit "D", if any is attached, no tents or windbreaks may be used  
3 in, over, or around any portion of the public right-of-way, including but not limited to the  
4 area that is the subject of this Permit.

5                   B.     Temporary banners, not exceeding the height of the barrier  
6 and attached to the barrier are permitted for a two (2) week period no more than four (4)  
7 times per year.

8                   C.     Menu boards must be portable, located within the dining area,  
9 and must not exceed five (5) feet, six (6) inches tall. Menu boards may be either a single  
10 pole pedestal of painted metal or a board attached to the inside of the barrier, parallel to  
11 the barrier.

12                   D.     The following are prohibited on the public walkway in the  
13 downtown area: television monitors, canopies and A-frame signs.

14                   Upon expiration, a new permit must be obtained on the basis of a new  
15 application and payment of a new fee and any security deposit amount due. Renewal of  
16 the Permit is not automatic and there is no right or entitlement to any use of the public  
17 right-of-way. Security deposits may be adjusted from year to year based on permit  
18 compliance and enforcement cost history. This Permit shall never be construed as the  
19 grant by City of any right to permanently use or occupy all or any portion of the public  
20 right-of-way; nor shall it ever be construed as a waiver on the part of City, or as an  
21 estoppel against it, which would in any manner whatsoever bar or limit, or otherwise  
22 prejudice, its right to at any time whatsoever require a discontinuance of the use or  
23 occupancy of all or any part of the public street right-of-way, the removal therefrom of all  
24 or any obstructions erected or maintained under this Permit and the restoration of such  
25 public street right-of-way to a clean condition, all at the sole cost and expense of  
26 Permittee.

27                   Notices of violation of any of the terms and conditions of this Permit may be  
28 issued by the City of Long Beach. Within the downtown area as defined on Exhibit "B",

1 preliminary informal notices may be issued by Downtown Long Beach Associates. The  
2 enforcement process is set forth on Exhibit "C", attached hereto, and made a part of this  
3 Permit. Notwithstanding the above, City may revoke this Permit at any time by giving  
4 thirty (30) days written notice to Permittee or cancel the Permit for noncompliance with its  
5 terms. Such notice shall be signed by the City Manager, postage pre-paid, and  
6 addressed to Permittee at its address provided above.

7 Permittee accepts this public right-of-way in its present condition and  
8 agrees to maintain the same in a safe, clean, and orderly condition. Any and all uses  
9 made of the public right-of-way shall be at the sole risk, cost, and expense of Permittee.  
10 Permittee, by its acceptance of this Permit, agrees to indemnify, defend, save and keep  
11 City, its officers, agents and employees free and harmless from and against any and all  
12 liability as well as from and against any and all loss, claims, demands, damages,  
13 expenses and costs of whatsoever nature arising out of or in any manner resulting,  
14 directly or indirectly, from Permittee's operations on or the condition, use or misuse of the  
15 public street right-of-way, including liability, claims or damages to or as a result of any  
16 structures or fixtures on the public street right-of-way or appurtenances to it.

17 In partial performance of this obligation, Permittee shall obtain and keep in  
18 full force and effect such public liability insurance and property damage insurance as  
19 required by the Long Beach Municipal Code.

20 Nothing in this Permit shall be construed to excuse compliance by  
21 Permittee with any and all of the laws and ordinances of the City and State; neither shall  
22 this Permit be deemed to obviate the necessity of Permittee's obtaining such other  
23 permits or licenses as are required to conduct specific activities within the area, including  
24 but not limited to entertainment or the sale, service or consumption of alcoholic  
25 beverages.

26 16. The terms of this Permit shall be enforced by the procedure set forth  
27 on Exhibit "C", attached and made a part of this Permit.

28 In case suit shall be brought for the recovery of possession of all or any

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

1 portion of the public right-of-way or because of the breach of any covenant contained in  
2 this Permit to be kept and performed on the part of Permittee, Permittee shall pay to City  
3 reasonable attorneys' fees which shall be fixed by the court.

4 Permittee shall not assign this Permit, or any interest in it, nor shall this  
5 Permit, or any interest in it, be subject to transfer or assignment by order of any court.  
6 Any such transfer or assignment shall not create any right whatsoever in the transferee or  
7 assignees and shall entitle the City Manager, at his discretion, to terminate this Permit.

8 The acceptance of this Permit by Permittee shall be endorsed on this  
9 Permit and shall be an acceptance by Permittee of all of the terms and conditions of this  
10 Permit and an agreement to abide and comply with it. Permittee further acknowledges  
11 that Permittee is aware of the requirements of Long Beach Municipal Code Chapter  
12 14.14, and that Permittee shall conduct all activities hereunder in compliance with such  
13 chapter.

HOGS AND HOPS, LLC, a California  
limited liability company

\_\_\_\_\_, 2011

By Gabriel Gordon  
Managing Member  
Gabriel Gordon  
Type or Print Name

"PERMITTEE"

CITY OF LONG BEACH, a municipal  
corporation

6.23, 2011

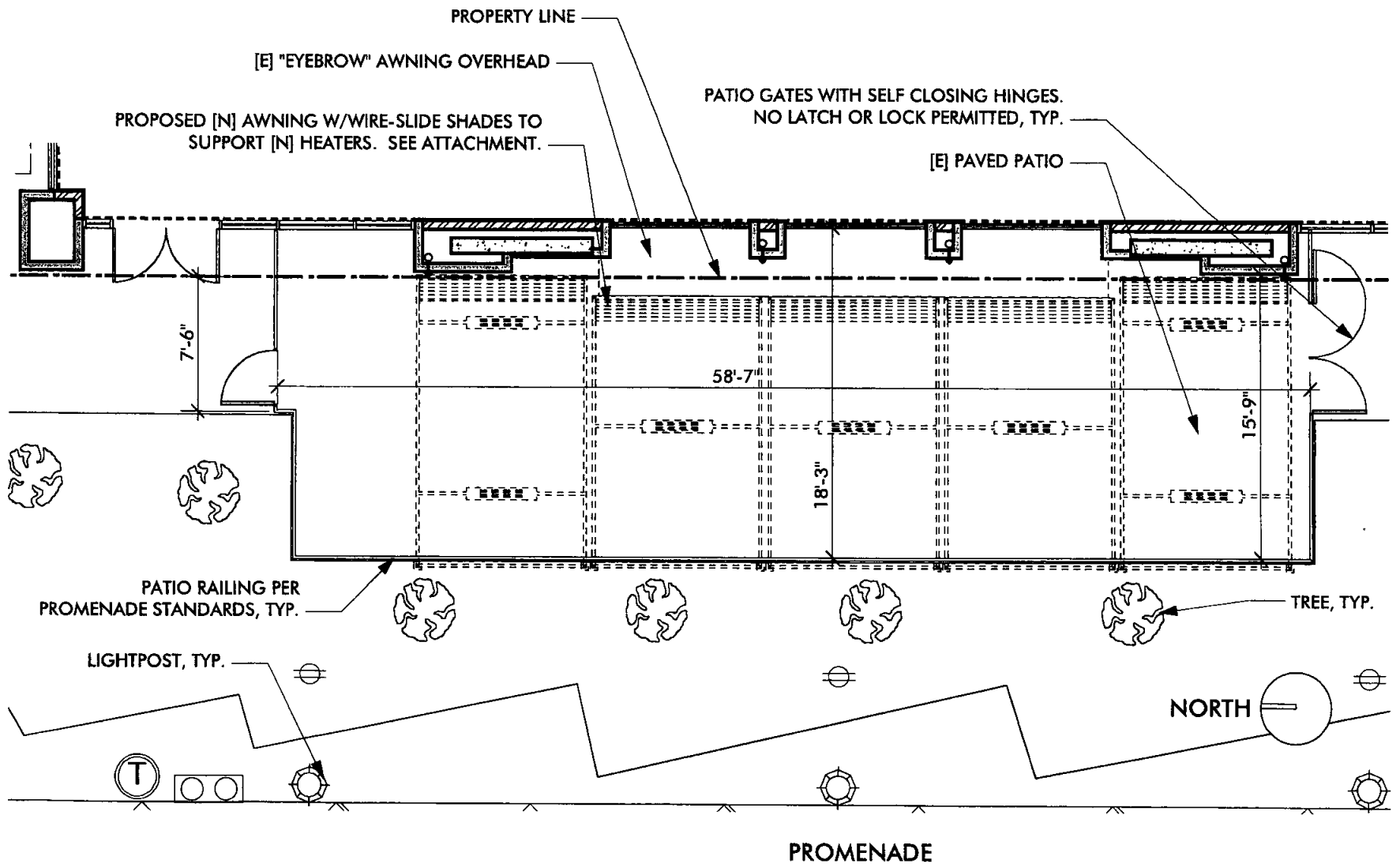
By [Signature] Assistant City Manager  
City Manager **EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER.**

"CITY"

Approved as to form this 1<sup>st</sup> day of June, 2011.

ROBERT E. SHANNON, City Attorney

By [Signature]  
Deputy City Attorney



BEACHWOOD BREWERY 210 E. THIRD ST.  
SCALE: 1/8" = 1'-0"  
EXHIBIT A PAGE 2 OF 3  
15 APRIL 2011

CITY OF LONG BEACH - CALIFORNIA  
DEPT. OF PUBLIC WORKS - ENGINEERING BUREAU  
PUBLIC WALKWAYS OCCUPANCY PERMIT



**List of Approved Furnishings and Accessories**  
(Attachment to Public Walkways Occupancy Permit for Sidewalk Dining Purposes)

Restaurant: **BEACHWOOD BBQ & BREWING** Permittee: \_\_\_\_\_

Address: 210 E. 3<sup>RD</sup> ST, STE B Telephone: \_\_\_\_\_  
LONG BEACH, CA 90802

Tables number: 23

Chairs number: 66

\_\_\_\_\_ Umbrella(s) height & number: \_\_\_\_\_

Heater(s) height & number: (6) AT 8'-0" AFF

\_\_\_\_\_ Menu board  
note: maximum height of 5 ft 6 in, maximum width of 2 ft & none permitted in the coastal zone

\_\_\_\_\_ Waiter station size: \_\_\_\_\_

\_\_\_\_\_ Planters for trees or other greenscaping describe: \_\_\_\_\_

Other: ALUMINUM FRAME TO SUPPORT HEATERS W/ WIRE-SLIDE SUN SHADE FABRIC, PROMENADE STANDARD PATIO RAILING & GATES

\_\_\_\_\_ We intend to make occasional use of the permit area for live or recorded entertainment (Note: A separate entertainment permit is required).

- The following are prohibited:
- canopies (ground supported)
  - television monitors

→ Permittee signature:  Date: 1/2/11

→ Print name here: Gabriel Gordon

This list of furnishings and accessories is effective only when attached to a completed Public Walkways Occupancy Permit.

**EXHIBIT "B"**

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"Downtown area" means the area bounded northerly by the centerline of Tenth Street; westerly by the centerline of Maine Avenue north of First Street, and the centerline of Golden Avenue south of First Street and the centerline of Golden Shore and its southerly prolongation; easterly by the centerline of Lime Avenue north of First Street and the centerline of Alamitos Avenue and its southerly prolongation south of First Street; southerly by the mean high tide line of the Pacific Ocean and its prolongation across the entrance to Pacific Terrace Harbor and Queen's Way Landing Boat Basin.

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EXHIBIT "C"

**PUBLIC WALKWAYS OCCUPANCY PERMITS  
ENFORCEMENT PROCESS**

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1. Letter of information sent to permittee regarding Municipal Code requirements and requested to correct an observed violation of permit conditions.
  - If not remedied in ten (10) working days, send official Notice of Violation.
2. Notice of Violation
  - Indicates that permittee can be found in default for failure to comply with permit conditions per Municipal Code Section 14.14.090.
  - Notes that uncorrected violations will be reported to the City Council at the next permit application.
  - Alerts permittee that the Alcoholic Beverage Control (ABC) will be notified of all permits declared in default.
  - If violation of permit conditions is not corrected within ten (10) working days, send Second Notice of Violation by certified mail.
  - Copies of Notice of Violation to be sent to the City Manager, Downtown Long Beach Associates (DLBA) and the Redevelopment Agency.
3. Second Notice of Violation
  - Inform permittee that "On (date 10 working days hence) you will receive a Notice of Default if permit violations not corrected."
  - If permit violations not corrected within ten (10) working days, send Notice of Default by certified mail.
  - Copies of Second Notice of Violation to be sent to the City Manager, DLBA and the Redevelopment Agency.
4. Notice of Default by Department of Public Work
  - Provides permittee ten (10) working days to remedy violation.
  - "If permittee fails or refuses to remedy the default within the time specified, the right of the permittee to use the public walkway shall cease and City shall have the right to remove the public walkway obstruction at permittee's expense" (LBMC 14.14.090).
  - If a Notice of Default is issued, the security deposit that was paid with the permit application will be forfeited.
  - Second ABC notice of permit status upon actual default.
  - City Manager, DLBA and Redevelopment Agency informed when final default occurs.
5. City pick-up of obstructions at permittee's expense and/or possible legal action to restrain use of sidewalk by the City Prosecutor.
6. Prior to New Permit Issuance
  - Payment of new permit processing fee and security deposit.
  - Payment of any fees, damages, or City costs assessed for prior code enforcement actions.

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EXHIBIT "D"

REQUIREMENTS FOR PUBLIC WALKWAYS OCCUPANCY PERMIT WITH CANOPY ("CANOPY PERMIT")

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1. A public walkway occupancy permit granted to a business in the Downtown area may include a permit for a canopy structure, including overhead structures and windbreaks, provided that public walkway occupancy permit is maintained in good standing. Should the business not comply fully with the terms and conditions of the public walkway occupancy permit, or fail to pay any fees associated with the permit, the Canopy Permit may be revoked.
2. Such structures must comply with all applicable laws and regulations, including but not limited to all Fire, Health, and Building Code regulations.
3. Such structures shall be a medium-toned beige or shall match the color of the adjacent building.
4. Signage on or adjacent to a canopy shall be limited to business identification signs, and shall be included in the calculation of total signage permitted pursuant to Chapter 21.44 of the Municipal Code.

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