



CITY OF LONG BEACH

DEPARTMENT OF FINANCIAL MANAGEMENT

CH-1

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February 6, 2007

HONORABLE MAYOR AND CITY COUNCIL
City of Long Beach
California

RECOMMENDATION:

Adopt the Hearing Officer Statement of Issues, Findings of Fact, and Summary of Relevant Evidence regarding entertainment permit number BU99041410, issued to Mariposa Restaurant Group, LLC, dba Mariposa, 135 Pine Avenue, Long Beach, 90802, and instruct staff to suspend the permit, impose entertainment permit conditions requiring Mariposa to limit patron dancing, obtain accurate occupancy load certificates, conduct occupancy counts, maintain occupancy logs, and maintain licensed security personnel as recommended by the Hearing Officer, and issue a Downtown Entertainment District entertainment permit subject to the above recommendations as well as Tier 2 conditions, and commence the suspension on March 9, 2007, as further recommended by staff. (District 2)

DISCUSSION

This matter is before the City Council to review the attached Hearing Officer Report of Michael R. Diliberto regarding revocation/suspension of entertainment permit number BU99041410 issued on December 11, 2001.

At the direction of the City Council, an administrative permit revocation/suspension hearing commenced September 11, 2006, and concluded December 1, 2006 following a lengthy history of alleged nuisance-related activity at Mariposa.

Evidence was presented to the Hearing Officer by members of the Long Beach Police and Fire Departments, the California Department of Alcoholic Beverage Control, as well as private restaurant security and other restaurant personnel.

The Hearing Officer determined the City met its burden of proof to establish that Mariposa violated its entertainment permit number BU9941410. Among other things, the Hearing Officer's Report concluded that:

- Mariposa obtained inflated maximum occupancy load certificates based on architectural floor plans it submitted depicting a dance floor area larger than approved dimensions.
- Mariposa exceeded these inflated limits by admitting patrons in excess of as many as 150 persons.

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- Mariposa provided loud amplified entertainment with open doors, windows, and roll-up panels, and provided live entertainment on the patio, in violation of its expressed permit conditions to the contrary.
- Numerous fights occurred at Mariposa resulting in head and face lacerations, swollen mouths, and bruised eyes. However, the Hearing Officer determined Mariposa did not cause these incidents.
- Members of the Long Beach Police Department were flagged down by Mariposa security to intervene and quell a fight disturbance, during which an officer surrounded by patrons had his police radio ripped from his person. However, the Hearing Officer determined Mariposa did not cause this incident.

Based on the evidence presented, the Hearing Officer made the following recommendations to the City Council:

- Suspend entertainment permit BU99041410 for three weekends comprising Friday and Saturday, with weekends one and two occurring consecutively, and the third weekend occurring no more than 30 days following weekend two;
- Require Mariposa to submit fully dimensioned accurate floor plans to the Planning & Building Department for approval;
- Require Mariposa to provide these approved plans to the Long Beach Fire Department to obtain accurate maximum occupancy certificates;
- Limit the maximum persons allowed on the dance floor to 43;
- Require Mariposa to conduct half-hourly occupancy checks, maintain occupancy logs for three years, and make this information available for inspection;
- Require Mariposa to consult with the Planning & Building Department, the State Department of Alcohol Beverage Control, and/or a private firm to develop a suitable system for obtaining accurate occupancy counts;
- Require Mariposa to maintain six licensed security guards on Friday and Saturday nights when entertainment is provided, and three licensed security guards on all other nights; and
- Require Mariposa to maintain, for three years, time sheets for all licensed security guards, and make these documents available for inspection.

In order to fully implement the Hearing Officer's recommendations, City Staff further recommends that the City Council:

- Commence the entertainment permit suspension on March 9, 2007;

- Require Mariposa to submit revised floor plans to the Planning and Building Department within five working days from the date of this hearing;
- Require Mariposa to submit the approved revised floor plans to the Long Beach Fire Department within two business days following plan approval;
- Require Mariposa to conduct half-hourly occupancy checks, maintain occupancy logs for three years, and make this information available for inspection; and
- Issue Mariposa Restaurant Group, LLC, dba Mariposa, 135 Pine Avenue, Long Beach a Downtown Entertainment District entertainment permit subject to the above conditions, as well as the attached Tier 2 conditions, and in the event any of the conditions are in conflict, require Mariposa to adhere to the strictest of the applicable conditions.

This item was reviewed by Deputy City Attorney Cristyl Meyers and Performance Management and Budget Bureau Manager David Wodynski on January 30, 2007.

TIMING CONSIDERATIONS

The Long Beach Municipal Code requires the hearing to be held February 6, 2007, or at a time thereafter agreed upon.

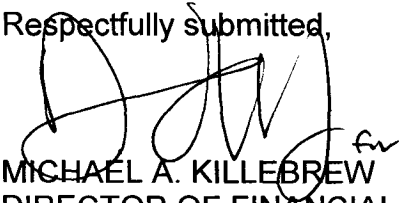
FISCAL IMPACT

There is no fiscal impact associated with this item.

SUGGESTED ACTION:


Approve recommendation.

Respectfully submitted,



MICHAEL A. KILLEBREW
DIRECTOR OF FINANCIAL MANAGEMENT

APPROVED:



GERALD R. MILLER
CITY MANAGER

that indoor entertainment would be provided Monday through Sunday from 6:00 p.m. to 10:00 p.m. without a cover charge or security. (Exhibit 1) At that time, Mariposa was owned by five individuals identified as Tony Guillen, Lyle Sardie, Therese Sardie, Marge Kennedy and Bill Kennedy. (Exhibit 1). Mariposa is located at 135 Pine Avenue, Long Beach, California 90802. Mariposa is within the jurisdiction of the Long Beach Police Department South Division. (RT:777:15-19).

2. On February 16, 2000, Lyle Sardie, on behalf of Mariposa, submitted a revised permit application requesting a 10'x10' carpeted dance floor for patrons, outdoor entertainment and extended entertainment hours to 11:00pm on Thursdays, and 1:00am on Fridays and Saturdays. Mariposa also submitted a floor plan showing the restaurant floor plan, including the dance floor dimensions and location. (Exhibit 2).

3. On May 11, 2000, the Long Beach Police Department recommended approval of Mariposa's application for entertainment permit with dancing (Exhibit 3), subject to eleven conditions, summarized as follows:

(a) The operation of the establishment shall be limited to those activities and elements expressly indicated on the permit application and approved by the City Council. Any change in the operation will require a new permit application.

(b) Mariposa agrees to reimburse the City wherever excessive police services are required as the result of any incident or nuisance arising out of or in connection with the Mariposa's operations.

(c) Mariposa shall employ its own discretion in determining the level of security necessary to prevent violations of law and other disturbances. In the event of substantial increase in calls for service, Mariposa shall increase security as directed by the Chief of Police.

(d) If any noise, disturbance complaints or trash left in the parking lot and surrounding area of the business is attributed to operation of the business, the Police Department can determine and impose requirements for security officer presence to handle these problems.

(e) Mariposa shall not convert the restaurant into a dance/night club. All entertainment activities shall be conducted with regular dining or banquet activities.

(f) Entertainment shall not be offered on any day that the restaurant is closed.

(g) The doors shall be kept closed at all times during operation of the business except in cases of emergency and to permit deliveries.

(h) No sound shall be audible from any area outside of the business.

- (i) All promoters must have or obtain a City of Long Beach Business License prior to conducting entertainment activities governed by this permit.
- (j) Mariposa must provide all promoters conducting entertainment activities with a copy of the approved permit, including a copy of the approved conditions of operation.
- (k) In the event that Mariposa's restaurant ceases operations, the entertainment permit becomes null and void.

4. On June 22, 2000, the Long Beach City Council approved Mariposa's revised application and issued a permit for entertainment with dancing by patrons. The permit incorporated the eleven conditions recommended by the Police Department. The permit also added a twelfth condition requiring Mariposa to remain in compliance with all applicable provisions of the Long Beach Noise Ordinance, and added a preemption clause, providing that in the event that any conditions of the permit or license conflicted, Mariposa shall adhere to the strictest applicable conditions. (Exhibit 4).

5. As of May 8, 2001, Mariposa's ownership changed. Therese and Lyle Sardie became full owners. The ownership change required a new permit application. On May 8, 2001, Lyle Sardie, on behalf of Mariposa, submitted a new application for entertainment permit, identifying Therese Sardie and Lyle Sardie as full owners. The application requested entertainment for a Mexican cuisine restaurant with 30 tables; stated 4 security officers will be provided from 10:00 p.m. to 2:30 a.m. on Fridays and Saturdays, and 6:00 p.m. to 10:00 p.m. on Sundays; increased hours of entertainment on Thursdays to 1:00 a.m., Fridays and Saturdays to 1:30 a.m. and added entertainment on Mondays and Tuesdays from 6:00 p.m. to 10:00 p.m.; expanded the type of entertainment to include dancing by performers, disc jockeys and karaoke; and revised the dance floor surface type from carpet to tile. (Exhibit 5).

6. Due to the change in ownership, the City of Long Beach issued a temporary entertainment permit on May 8, 2001 pursuant to LBMC section 5.72.125. (Exhibit 6). Lyle Sardie signed and dated the temporary permit acknowledging Mariposa's agreement to "comply with these conditions" stated in the temporary permit.

7. On May 23, 2001, during the pendency of the temporary permit, Mariposa's application was approved as a "permitted accessory use to an existing restaurant/bar." (Exhibit 19).

8. On June 1, 2001, Lyle Sardie, on behalf of Mariposa, submitted another revised permit application requesting outdoor entertainment. (Exhibit 7).

9. On July 10, 2001, Lyle Sardie, on behalf of Mariposa, submitted a letter to Long Beach Business License supervisor Jeannine Montoya, requesting a modification to its existing entertainment permit, to allow Mariposa to keep its front doors open while entertainment is provided. (Exhibit 15). The request was denied, and in a letter sent to Jim Goodin dated August 20, 2001, Mariposa withdrew its application. (Exhibit 18).

10. On August 20, 2001, Lyle Sardie, on behalf of Mariposa, submitted another application for entertainment permit. This application contained a request for outdoor entertainment, a 10'x 30' tile dance floor and stated that admission fees would be charged on Friday and Saturday. Mariposa also submitted a floor plan showing the restaurant floor plan, including the revised dance floor dimensions and location. (Exhibit 9). Exhibit 9 reflects the most current entertainment permit application by Mariposa.

11. Lyle Sardie signed and dated the Release Form at page 8 of the August 20, 2001 application, acknowledging Mariposa's agreement that "full compliance will be made with all applicable State laws and City ordinances governing the conduct of the particular type of business activity for which a business license is requested;" that "[t]he applicant by signing this application understands that any incomplete or false information may constitute grounds for denial;" and that Mr. Sardie "read the foregoing application and that all information and statements made by the undersigned/applicant regarding this application are true and correct."

12. On August 22, 2001, due to the August 20, 2001 application, another temporary permit was issued by the City of Long Beach, pursuant to LBMC section 5.72.125. (Exhibit 11). The temporary permit stated that Mariposa must comply with the present conditions, which were the twelve conditions of the June 22, 2000 permit shown in Exhibit 4. Jim Goodin testified that the June 22, 2000 permit for entertainment with dancing by patrons (Exhibit 4) was attached to the temporary permit reflected in Exhibit 11. Lyle Sardie signed and dated the temporary permit acknowledging Mariposa's agreement to "comply with these conditions."

13. On September 14, 2001, Long Beach Police Sargeant Ernie T. Kohagura wrote a memorandum for J. Craig Jacobs, Commander, Patrol/South Division, to Albert George, Commander, Special Investigations Division. (Exhibit 23). The memorandum recommended that Mariposa's August 20, 2001 application for entertainment permit be denied. Sergeant Kohagura testified that he reviewed the calls for service to prepare the memorandum.

14. On November 29, 2001, Pamela Wilson-Horgan, Manager, Commercial Services Bureau, sent a letter to Lyle Sardie of Mariposa, to inform him that the hearing on Mariposa's August 20, 2001 application for entertainment with dancing would be held on December 11, 2001 in the City Council Chambers. The letter referred to attachments from the police department, planning and building, fire and health and human services departments, which were filed with the Commercial Services Bureau. (Exhibit 46).

15. On December 3, 2001, Bob Torrez, Director of Financial Management, sent a staff recommendation letter to Henry Taboada, City Manager, recommending that Mariposa's August 20, 2001 application for entertainment with dancing by patrons be denied. (Exhibit 45). James Goodin testified that unless all the departments recommend approval (such as police, fire, planning and building, zoning and health and human services), it is customary, but not mandatory, that the staff recommends denial, without conducting an independent investigation. In this instance, of all the departments, the police department

recommended denial, which resulted in the Director of Financial Management recommending denial. (RT:1209:5-1211:9).

16. On December 11, 2001, the City Council approved Mariposa's application for a restaurant with entertainment permit with dancing, and issued permit BU9941410. (Exhibit 12). Mr. Sardie was present at the December 11, 2001 City Council meeting. Although issued on December 11, 2001, the permit was mailed to Mariposa on or about May 22, 2002. Exhibit 12 reflects the current approval and conditions for Mariposa's entertainment permit. The entertainment permit listed 12 conditions that were written by the Police Department and approved by the Long Beach City Council. The December 11, 2001 conditions tracked the May 11, 2000 and June 22, 2000 conditions, with the following modifications:

(a) Condition 3 was revised to require Mariposa to provide a minimum of three security guards during all times that entertainment activities are being conducted.

(b) A new condition 7 required Mariposa to keep its panel roll up (the roll up windows) down during the hours of entertainment.

(c) Condition 8 was revised to state that no sound shall be audible from the exterior of the premises in any direction.

(d) Condition 11 was expanded to require Mariposa to be maintained as a full service restaurant providing an assortment of full meals normally offered in such establishments.

(e) A new condition 12 stated that Mariposa shall remain in compliance with all applicable laws, ABC laws, ordinances and stated conditions.

17. The December 11, 2001 entertainment permit (Exhibit 12) also incorporated as part of the conditions the type of entertainment and hours requested by Mariposa listed on page seven of the August 20, 2001 application for entertainment permit (Exhibit 9). (RT:1127:2-1128:9).

18. James Goodin, Business Services Officer for Long Beach Commercial Services Bureau testified that the Exhibit 12 conditions modified the conditions set forth in page seven of Mariposa's August 20, 2001 application (Exhibit 9) in two main respects:

Condition 6: "The doors shall be kept closed at all times . . ." was an additional condition imposed;

Condition 8: "No sound shall be audible from the exterior of the premises in any direction" essentially denied Mariposa's request to have outdoor entertainment.

No entertainment would be allowed outdoors if it caused any noise at all, except two or less non-amplified Mariachis or other entertainers, which are not considered to be entertainment and are not subject to an entertainment permit. (RT:1137:4-1139:9).

However, even if two non-amplified entertainers were performing on the Mariposa patio, they would still be required to abide by condition number 13 of Exhibit 12, which requires compliance with the Long Beach Noise Ordinance (LBMC Chapter 8.80) (RT:1199:15-18).

19. Mariposa holds business license BU99041410 for its restaurant business. The Mariposa business license for its restaurant is separate from its entertainment permit, and is not at issue in this hearing.

20. Mariposa holds an on-sale general eating place license under the Alcoholic Beverage Control Act, license number 47-361466. This is a Type 47 license that requires restaurant food services. (RT:513:4-16). On January 16, 2002, Lyle Sardie and Therese Sardie filed a Petition for Conditional License on behalf of Mariposa with the Department of Alcoholic Beverage Control. The ABC license sets forth nine conditions, including condition 7 which states that "Entertainment provided in the patio area shall not be amplified in any way, including no amplified music." Condition 8 provides that "Entertainment provided in the patio area shall only be allowed until 10:00 p.m. each day of the week." (Exhibit 31).

21. During May 2003, Lyle Sardie submitted Mariposa architectural floor plans to the Long Beach City Fire Department for plan check review to ensure facility compliance with applicable California Building and Fire Codes. (Exhibit 27). Mariposa's August 20, 2001 application described a dance floor of 10'x 30' (Exhibit 9). The May 2003 plans submitted to the Fire Department indicated a dance floor area of 10'x 40'. Mariposa also stated in the May 2003 plans that Mariposa's interior square footage was 2000 square feet. The plans were the basis used by the Fire Department to determine occupancy loads, to ensure public safety. The floor plans identify the maximum occupancy capacity at 133 persons for dining only, 164 persons for dining combined with dancing, a separate capacity of 159 persons on the patio, and a maximum of 57 dancers for the dance floor, based on the 10' x 40' dance floor dimensions.

22. The Fire Department issued maximum occupant load certificates to Mariposa for 133 persons for dining only, 164 persons for dining combined with dancing, and a separate capacity of 159 persons on the patio. (Exhibit 44). Lyle Sardie, signed an Occupant Load Certificate dated April 2, 2004, in which he acknowledged, on behalf of Mariposa, that "I, the undersigned, have read completely and fully understand the requirements of this form which apply to the Fire Department regulations." (Exhibit 44).

23. David Zinnen, a civilian fire plan checker with inspection duties for the City of Long Beach, testified that the California Building Code sets an occupant load factor of fifteen square feet per person for the restaurant and patio, which takes into account tables and chairs. The California Building Code sets an occupant load factor of seven square feet per person for the dance floor, which contemplates removal of certain tables and chairs. The dance floor occupancy is determined by the square feet of the dance floor, divided by seven. Thus, the 400 square foot dance floor submitted by Mariposa to the Long Beach Fire Department allows a maximum of 57 dancers. The 300 square foot dance floor

submitted by Mariposa in its application for entertainment permit, and approved by the City Council, allows a maximum of 43 dancers. (RT:429:18-435:14).

B. Events Leading Up To This Hearing

24. On January 9, 2004, William Bramble, a Mariposa security officer was hit in the head with a beer bottle while attempting to break up an altercation between two male patrons. Mr. Bramble received 17 stitches. (TR:923:13-24)(Exhibit 41; Exhibit 41A; Exhibit 48).

25. On January 30, 2004, an incident report filed by Officer George Nogueira, states that an altercation occurred at Mariposa, when a male grabbed a woman's behind and hit her in the face with a beer bottle. (Exhibits 42, 47 47 and 49). William Bramble, the Mariposa security guard, testified that he escorted the woman and her two male companions out the door of Mariposa that evening between approximately 12:30 a.m. to 1:00 a.m. Mr. Bramble also testified that the woman did not explain to him how she received her injuries. (RT:1295:10-1297:3).

26. An April 17, 2004, an incident report was prepared by Officer Ronald Quarn, at the request of Long Beach Police Sergeant Max Jones, based on Sergeant Jones' observation that Mariposa was not using a hand counter to track the number of customers on the patio of Mariposa. Upon reviewing the hand counter at the restaurant entrance, Sergeant Jones determined that Mariposa had 44 customers over capacity in the restaurant. (Exhibit 28). At the hearing, Officer Jones testified that he did not conduct a hand count of the Mariposa customers to determine overcapacity, and he acknowledged that hand counters are not a condition of Mariposa's December 11, 2001 entertainment permit.

27. At some point, Lyle Sardie initiated a police internal affairs complaint against Officer Ronald Quarn. In response, Officer Quarn filed a small claims action against Mr. Sardie, and obtained a \$5000 judgment against Mr. Sardie, which was overturned on appeal. Officer Quarn filed a second small claims action against Mr. Sardie, which settled before the small claims court date.

28. On March 25, 2005, Long Beach Police Officer William R. Wendt filed an incident report in which he described a fight that occurred at Mariposa. It appears that a male patron, while attempting to get an engagement ring back from an ex-girlfriend, hit another male patron in the head with a beer bottle for dancing with his ex-girlfriend. (Exhibit 34A).

29. On June 3, 2005, Long Beach Police Officer James A. Mondragon was dispatched to an Orange County hospital, where he interviewed a person who stated that he was the friend of a person who was the victim of a fight at Mariposa. (Exhibit 35; Exhibit 35A). At the hearing, Officer Mondragon testified that he interviewed the friend of the victim only, not the victim. The statement from the victim's friend was the only evidence submitted to indicate whether or not the incident occurred at Mariposa. Officer Mondragon also testified that this was the first time in his two years on the Long Beach Police force that he had to go outside of Long Beach to conduct an investigation.

30. On September 24, 2005, Long Beach Police Officers were flagged down by a Mariposa private security guard to assist with a large fight at Mariposa. Sergeant Ernie Kohagura wrote a September 24, 2005 letter to William Blair, Commander, Patrol South Division, describing his impressions of the disturbance as an officer on the scene, and what he believed were contributing factors to the incident. (Exhibit 24).

31. In a letter dated November 1, 2005, the Long Beach Police Department, through Anthony W. Batts, Chief of Police, recommended to the City of Long Beach, through Michael A. Killebrew, Director of Financial Management, that the City of Long Beach take administrative action to revoke or suspend Mariposa's entertainment permit number BU9941410. (Exhibit 22).

32. The November 1, 2005 letter (Exhibit 22) was written by Long Beach Detective Chris Anderson, Vice Administration Detail. Detective Anderson testified that he wrote the November 1, 2005 letter at the request of Sergeant Schillig. RT:834:4-18. Sergeant Schillig requested Detective Anderson to prepare the November 1, 2005 letter, after Sergeant Schillig became aware of, among other elements, the September 24, 2005 incident at Mariposa, through Sergeant Ernie Kohagura's September 24, 2005 letter to William Blair, Patrol South Division (Exhibit 24). RT:1353:9-1356:12).

33. Sergeant Schillig described six incidents occurring since 2001 that he believed justified a recommendation to revoke or suspend Mariposa's entertainment permit: (T:3182:5-1409:25).

(a) June 2000: A patron seen leaving Mariposa was involved in a traffic collision that killed another driver. The blood alcohol was .14 and the subject had parked his vehicle in front of Mariposa. Sergeant Schillig testified that there was no factual basis for attaching what the subject did to Mariposa. (RT:1384:2-1385:24).

(b) July 20, 2003: Fight at Mariposa. Victim was hit in the face, causing lacerations. Another victim was punched in the face, causing a swollen eye. Victim identified two subjects who kicked him in the face. Victim and his friend were leaving Mariposa, when a skirmish erupted in connection with a subject who resembled a female salsa dancer from Mariposa. Sergeant Schillig testified that the police report did not state that any employee of Mariposa failed to do something or caused something to happen in connection with the event.

Detective Anderson, upon reviewing the DR, stated that a witness stated that the witness walked out of the rear of Mariposa and observed male Hispanics kicking the victim. According to the report, the event occurred at 2:10 a.m., after closing time for Mariposa, and was not reported until 3:46 a.m. The report does not clarify whether or not the fight occurred on Mariposa property. (RT:1504:7-1509:23).

(c) January 9, 2004: Mariposa security guard William Bramble was hit in the face with a beer bottle while escorting an unruly patron out of Mariposa. A woman subject

was also hit in the head with a bottle. (Exhibit 41). Sergeant Schillig testified that the report did not find that security guard William Bramble did anything that was not reasonable to handle the fight situation.

Detective Anderson referred to a January 30, 2004 incident (Exhibit 42) in which a man grabbed the victim's behind and hit her in the head with a bottle, described in paragraph 25 above. Detective Anderson stated that this incident involved one victim and three officers. One officer went to Mariposa to inquire as to what happened, and two officers went to the victim's home to make the report. (RT:15111:7-1512)

(d) March 25, 2005: Victim was hit in the head with a beer bottle from a suspect, for no apparent reason. The police report stated that Mariposa initially removed the suspect from the premises, and then allowed the suspect to reenter Mariposa. (Exhibit 34A and 34B). Detective Anderson stated that this incident involved one victim and 10 officers. (RT:1514:15-1514:24).

(e) June 3, 2005: A victim was punched and kicked in the head resulting in a swollen mouth and three missing teeth. Sergeant Schillig testified that in breaking up the fight, the Mariposa security guard prevented further injury to the victim. The report did not indicate that an employee of Mariposa did anything to cause the fight. (Exhibit 35).

Detective Anderson testified that the police reports describing the events from up to this point, June 3, 2005, and no other factors, did not merit a memorandum to the Chief of Police to recommend suspension or revocation of Mariposa's entertainment permit. (RT:1524:4-19). Detective Anderson believed that the totality of the circumstances justify the suspension or revocation of Mariposa's entertainment permit. Detective Anderson stated that this particular incident involved one victim and two police officers. (RT:1520:24-1521:14).

(f) September 24, 2005: A large fight at Mariposa required 17 police units to handle. Sergeant Schillig stated that a possible contributing factor to the fight was that Mariposa did not provide enough security guards. It was noted that Mariposa's entertainment permit conditions require a minimum of three security guards. (Exhibit 12). This fight was the only event at Mariposa since it opened that required the police to intervene in the nature of quelling the disturbance.

34. Sergeant Schillig stated that the escalation of the violence at Mariposa lead to the decision to recommend suspension or denial of Mariposa's entertainment permit. Based on the events, Sergeant Schillig believed that Mariposa may have contributed to the fights by having insufficient security, along with overcrowding. Although Sergeant Schillig observed what he believed to be overcrowding of patrons at Mariposa, he did not make a physical head count of patrons.

35. Officer Whelen, who was on the scene at Mariposa during the September 24, 2005 incident and filed a report concerning the September 14, 2005 fight (Exhibit 29A), stated that the security staff that he observed at Mariposa was not enough security to handle the crowd that evening. (T:1426:14-1428:9).

36. Since the November 1, 2005 letter written by Long Beach Detective Chris Anderson, Vice Administration Detail (Exhibit 22), constitutes the request by the Long Beach Chief of Police to suspend or revoke the Mariposa entertainment permit, analysis of the grounds set forth in that letter merit review:

(a) Exhibit 22: Calls for Service

The November 1, 2005 letter refers to 44 calls for service that Detective Anderson stated were attributable to Mariposa since it received its business license in 1999. Detective Anderson testified that the calls for service were retrieved by conducting a search on the Crystal Report Database. Detective Anderson could not state how many calls for service were attributable to Mariposa for the period of time after December 11, 2001, the date of Mariposa's current entertainment license. (RT:839:11-842:7). Detective Anderson could not state which of the 44 calls for service occurred after December 11, 2001 (RT:883:4-8), or the nature of each specific call for service. (RT:884:3-8).

(b) Exhibit 22: Arrests

The November 1, 2005 letter refers to 41 arrests. Detective Anderson testified that the 41 DRs were not in the file, and he could not state how many of those 41 arrests were specifically attributable to Mariposa after December 11, 2001. (RT:842:8-19). Detective Anderson could not recall the nature of each of the 41 arrests described in the letter, except for the September 24, 2005 incident. (RT:884:9-25).

(c) Exhibit 22: Crime Reports

The November 1, 2005 letter refers to 59 reported incidents attributable to Mariposa. Detective Anderson testified that he did not have all 59 crime reports in the file, and that he did not know how many of the crime reports were attributable from December 11, 2001 to November 1, 2005. (RT:842:20-843:2).

Of the 59 crime reports, Detective Anderson identified 6 crime reports by date and the nature of the offense:

(i) July 20, 2003: Fight. The victim was kicked in the face causing laceration. Another victim was punched in the face causing a swollen eye;

(ii) January 9, 2004: Fight. A Mariposa security guard trying to break up a fight was hit in the face with a bottle, causing a large laceration, requiring stitches;

(iii) January 30, 2004: Assault with a bottle to the face. The victim was hit in the eye with the bottle causing a severely bruised eye;

(iv) March 25, 2005: Fight where victim was hit in the head with a beer bottle, with a laceration to the head;

(v) June 3, 2005: Fight where victim was punched and kicked in the head resulting in a swollen mouth and three missing teeth; and

(vi) September 24, 2005: Fight, to which 17 police units responded. (Exhibit 29A-G) (RT:885:1-886:23).

Detective Anderson stated that of the above six crime report incidents, he did not find that Mariposa in any way violated its entertainment permit. (RT:892:14-22).

(d) Exhibit 22: Inspections

The November 1, 2005 letter refers to 49 uniform and/or undercover inspections of Mariposa. Exhibit 22 further states that 20 of these inspections noted violations such as over capacity, extremely loud music, open doors and not having counters. Exhibit 22 states that four citations were written as a result of these inspections. The Hearing Officer notes that counters are not a condition of Mariposa's entertainment permit, although the use of counters appears to be a practical way of addressing over capacity issues.

(e) Exhibit 22: ABC

The November 1, 2005 letter states that ABC has not taken disciplinary action against Mariposa since it received its Alcohol Beverage and Control license. On September 5, 2001, ABC admonished Mariposa for serving alcohol from a portable cart in the patio area. Mariposa corrected the problem by obtaining a license to serve alcohol on the patio and to serve from a portable bar.

(f) Exhibit 22: Violent Incidents

The November 1, 2005 letter states that violent incidents occurred at Mariposa, referring to the incidents to which Sergeant Schillig testified in paragraph 33 above.

37. In a letter dated January 5, 2006, Mariposa was advised that the Chief of Police for the City of Long Beach requested that the Long Beach City Council suspend or revoke Mariposa's entertainment permit number BU99041410. The letter also advised Mariposa that the City Council, at its January 10, 2006 meeting, will be asked to refer the matter to a Hearing Officer for a determination. (Exhibit 21).

38. On January 10, 2006, the Long Beach City Council referred this matter for hearing before a Hearing Officer pursuant to Long Beach Municipal Code Chapters 2.93, 5.02,

5.04, 5.06 and 5.72. (Exhibit 21). The November 1, 2005 letter written by Detective Anderson (Exhibit 22) was attached to the January 10, 2006 letter sent to Mariposa.

C. Additional Issues:

Overcrowding (Occupancy Load Certificates)

William Bramble

39. William Bramble was Director of Security at Mariposa from January 5, 2000 to April 2004. From July 2001 to April 2004, Mr. Bramble worked at Mariposa every Friday and Saturday and supervised Wednesday and Thursday nights and special events. During normal restaurant hours, he would conduct patrols in and out of Mariposa to make sure the bartenders and servers did not need assistance. (RT:1235:5-1236:3).

40. Mr. Bramble testified that on a typical Saturday night, after the first two years, the range of patrons was between 200 and 400 people total, in and out during the night. At any point in time, Mariposa had 200 to 300 people inside. Approximately 50% of those patrons would be on the dance floor, e.g., 100 to 150 plus people would be on the dance floor. (RT:922:8-22) (RT:926:19-927:21) (RT:1282:2-18) (1305:6-1306:9).

Gary Clift

41. Gary Clift worked as a security guard at Mariposa, beginning on March 5, 2005, for a period of time that included September 24, 2005. Mr. Clift worked on Thursday, Friday and Saturday nights, usually between 10:00 p.m. to 2:00 a.m. His primary assignment was watching the front or back doors. He stated that he did not observe patrons walking out of Mariposa with drinks. Mr. Clift was present at Mariposa during the September 24, 2005 fight. Mr. Clift was the security guard who alerted the police that security needed assistance.

42. Mr. Clift stated that on the Saturday nights that he worked at Mariposa, he observed 100 people or more on the dance floor. Mr. Clift also observed what he believed was in excess of 200 to 250 patrons inside the restaurant. (RT:940:6-941:5). Mr. Clift stated that the greatest influx of patrons occurs between 9:30 p.m. -11:00 p.m. (RT:945:9-17). He also stated that Mariposa had a fight approximately once or twice a month, but that they were mostly non-violent verbal altercations, not requiring police assistance. (RT:951:15-952:10).

Lyle Sardie

43. Lyle Sardie testified that there were more than 43 dancers on the dance floor for each year from 2002 through 2006. (RT:1909:2-1913:11). Mr. Sardie also stated that he did not try to limit the number of people on the dance floor to 44 dancers. He stated that he did not know that the limit was 44 dancers. (RT:1985:5-11).

Lisa Torres

44. Lisa Torres, one of the Managers at Mariposa, testified about the Mariposa floor plan shown in Mariposa's August 20, 2001 application (Exhibit 9) and described the number of tables that are removed for the dance floor during hours of entertainment, as follows: Four tables within the rectangle that delineates the dance floor are removed; three tables to the west of the perimeter of the rectangle are removed; two tables to the north of the perimeter are removed; and two tables near the double doors to the patio area are removed. The Hearing Officer notes that while the removal of the seven tables beyond the dance floor perimeter may be practical due to their proximity to the dance floor, it also expands the dance floor area beyond the approved 10' x 30' dimensions.

Will Salao / Police Officers

45. Will Salao, Supervising Superior for the California Department of Alcoholic Beverages Control, stated that he was at Mariposa on a Saturday night between 11:00 p.m. and midnight in August 2006 working an enforcement shift. His "guesstimate" was that there were at least over 200-250 patrons in the interior of Mariposa. Mr. Salao did not conduct a physical head count. Various police officers also estimated what they believed were overcrowding conditions in Mariposa. Because the police officers and Mr. Salao did not conduct an actual count of the patrons, the Hearing Officer gives greater weight to the testimony of Mariposa's security guards William Bramble and Gary Clift, Ms. Torres, a Mariposa manager, and Lyle Sardie on this issue.

Officer Max Jones

46. Officer Max Jones requested Officer Ronald Quarn to file an Incident Report for an April 17, 2004 incident (Exhibit 28) in which Officer Jones stated that he checked the Mariposa hand counters and determined that there were 44 patrons over capacity.

Windows and Doors Open

Mariposa Security Guard Gary Clift

47. Mariposa security guard Gary Clift stated that he frequently saw the Mariposa roll-up windows open and the doors open when amplified music was provided. (RT:950:5-14).

ABC Inspector Will Salao

48. Will Salao stated that during a minor decoy operation in 2006, he heard music coming from open windows with amplified music from Mariposa. (RT:522:8-23).

Sergeant Ernie Kohagura and Officer Christopher Ignacio

49. Sergeant Ernie Kohagura stated that he observed Mariposa's doors open and he observed Mariposa's windows open during hours of entertainment, and that he had discussions with Lyle Sardie of Mariposa on these topics on many occasions. Officer Ignacio observed Mariposa's windows open during hours of entertainment and requested security to close the windows.

Citations to Mariposa for Doors Open

50. Mariposa was cited for having its doors open on March 26, 2004 (Exhibit 43). Mariposa was cited for doors open with music playing on January 25, 2002 (Exhibit 43). Detective Anderson testified about additional Vice Inspections forms (Exhibit 43) which referenced incidents of doors open at Mariposa on March 24, 2004, August 23, 2003 and April 11, 2003. No citations were issued for those three incidents.

Mariachis-Entertainment on the Patio

51. William Bramble stated that he observed three to four mariachis on the Mariposa patio. (RT:1285:25-1286:10). Officer Christopher Ignacio observed more than two mariachis performing on the Mariposa patio. Long Beach Municipal Code Section 5.72115 defines an "Entertainment Activity" as one that is "carried on by more than two persons or whenever amplified." One or two mariachis, non-amplified are not considered entertainment by the City of Long Beach and would not fall under condition number 8 of Mariposa's entertainment permit (Exhibit 12), which prohibits audible sound from the Mariposa exterior. (RT:1121:7-1122:4). Mariposa could attempt to apply for an entertainment permit allowing more than two mariachis. (RT:1129:22-24).

III. Summary of Relevant Evidence

52. The City has met its burden of proof to establish overcrowding conditions at Mariposa, with patrons that exceed the maximum capacity set forth in the Occupancy Load Certificates for patrons in the restaurant and on the dance floor, in violation of condition twelve of Mariposa's entertainment permit. Mariposa has expanded the area of its dance floor beyond the approved 10' x 30' dimensions, by removing additional tables to create more space for dancers.

53. The City has met its burden of proof to establish that Mariposa has kept its doors open and its windows open during hours of entertainment, in violation of conditions six and seven of its entertainment permit. Mariposa has also allowed more than two Mariachis to perform on its patio, which violates condition eight of its entertainment permit.

54. The City submitted testimony and documents to demonstrate the occurrence of fights and disturbances taking place at Mariposa. However, the November 24, 2005 fight incident is the only incident that required the police to intervene to quell the disturbance,

since 1999. It appears that the magnitude of the November 24, 2005 event was an isolated event. There was no evidence that Mariposa was the cause of the November 24, 2005 fight incident, or the other fight incidents described in this decision.

55. There was no definitive testimony on whether or not Mariposa stopped serving food before the close of entertainment, which would be a violation of condition eleven of its entertainment permit. Lyle Sardie wrote a letter dated July 10, 2001 to Long Beach Business License supervisor Jeannine Montoya in which he stated, among other topics, that Mariposa serves food until 12:00 midnight. (Exhibit 15).

56. Hand counters are not required under the entertainment permit, but they appear to be the most practical way of determining occupancy, other than conducting a physical head count. Mariposa stated that it voluntarily moved its entrance in the evening from its usual Pine Street entrance, to the rear door to the west side. This was done in accordance with a suggestion from Sergeant Ernie Kohagura, who stated that the line from Mariposa's patrons in the evening was interfering with King's Fish House. Mariposa stated that maintaining an accurate patron count became more difficult after this change of entrance occurred, because it must determine which patrons enter the restaurant, separate from the patio area.

IV. Recommendations

57. The Hearing Officer recommends that Mariposa's entertainment permit be suspended for six days, comprised of three weekends (Friday and Saturday), as follows: two consecutive weekends, with the third weekend within 30 days of the second suspension weekend, for the entertainment permit violations of overcrowding, keeping the doors open, having windows open during hours of entertainment and for having more than two Mariachis on the patio. Further acts of non-compliance should result in additional suspension dates.

58. Mariposa must limit dancing to the permitted 300 square foot dance floor with no more than 43 patrons on the dance floor at any one time.

59. Mariposa must submit a revised floor plan to be approved by Building and Safety, to accurately reflect the permitted dimensions of Mariposa, and to state the correct size of its dance floor approved in Mariposa's entertainment permit as 10'x 30,' instead of the current incorrect statement on file with Building and Safety as 10'x 40.' To the extent that Mariposa's occupancy load certificates are incorrect, Mariposa must obtain accurate occupancy load certificates from the Fire Department based on the permitted dimensions.

60. Ms. Torres, one of Mariposa's managers, testified that Mariposa conducts a patron occupancy check every half-hour and records that information into a notebook. The Hearing Officer recommends that Mariposa maintain the occupancy notebook logs in its possession for a period of three years, so that such logs are available for inspection, if necessary.

61. Mariposa should seek advice from Building and Safety, ABC and/or a professional venue/security consultant to determine the best system to maintain an accurate count of its patrons. An additional possible area to explore is whether Mariposa should be permitted to utilize its entrance on Pine Street, by allowing its evening patrons to form a roped-off line going south on Pine Street, and into the walkway between Mariposa and Allegria Restaurant. This may enable Mariposa to maintain an accurate count, by having one main entrance and one main exit.

62. Lyle Sardie testified that Mariposa maintains three security guards for slower nights with approximately 25-30 patrons, and he maintains six security guards for the busy Friday and Saturday nights. The Hearing Officer recommends that Mariposa maintain a minimum of six licensed security guards for Friday and Saturday nights at all times while entertainment is provided. It is anticipated that Mariposa's compliance with the occupancy load certificates will make six security guards sufficient for the weekends.

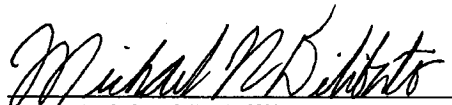
63. Mariposa introduced a security guard time sheet into evidence. (Exhibit D). The Hearing Officer recommends that Mariposa maintain the security guard time sheets in its possession for a period of three years, so that such time sheets are available for inspection, if necessary.

64. To ensure that Mariposa is in compliance with entertainment permit condition eleven to "be maintained as a full service restaurant providing an assortment of full meals normally offered in such establishments," the Hearing Officer recommends that Vice conduct undercover investigations on this topic from time to time.

65. The Hearing Officer recommends additional suspensions for future violations of Mariposa's entertainment permit for the corresponding day of the week that any such future violation occurs, subject to proof.

Sent by U.S. Mail this date to City Clerk Larry Herrera, City of Long Beach.

Date: January 3, 2007


Michael R. Diliberto
Hearing Officer

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. If an establishment is licensed as a restaurant, all entertainment activities shall be conducted in conjunction with regular dining or pre-planned banquet activities. A banquet is defined as a private function held at a bona fide eating-place wherein complete and substantial meals are provided to the persons in attendance by the management of the restaurant where the function is being held. Fast food, snacks and hors d'oeuvres shall not constitute a complete and substantial meal. Taverns are not subject to this requirement.
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."

1/11/06

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.