

EXHIBIT “A”

“Chapter 5.80 - ENTERTAINMENT PERMIT

Section 5.80.010 Purpose and intent.

The City Council of the City of Riverside encourages arts and culture in Riverside, and recognizes that many entertainment venues provide a means for such activities. The City Council further recognizes that the variety of entertainment venues in the City provide a rich and diverse cultural experience for the residents of the City and visitors to the City. The City Council also recognizes that many entertainment venues provide a safe place for families and young adults to gather.

The City Council hereby finds that the operation of Entertainment or Entertainment Establishments presents an environment with the demonstrated potential for excessive noise and Disorderly Conduct by patrons, particularly at closing times, with the attendant adverse health and safety impacts on the surrounding business and residential community.

Therefore, it is the purpose of this Chapter to regulate the operation of Entertainment or Entertainment Establishments for the public health, safety and welfare. All Permittees will be held responsible for controlling patron conduct in and around the establishments, making adequate provisions for security and crowd control, protecting the City’s youth from criminal activity, and minimizing disturbances as a result of the operation of the Entertainment.

This Chapter implements minimum standards applicable to the operation of all Entertainment or Entertainment Establishments. Nothing in this Chapter shall limit the City’s authority to impose and enforce permit conditions requiring Entertainment Establishments to comply with operating standards that are more strict, comprehensive or onerous than the minimum standards imposed by this Chapter.

This Chapter also provides discretion to the Chief of Police in regulating the variety of businesses and events that provide Entertainment. The City Council finds that the imposition of conditions tailored to the particular establishment will allow the business or event to flourish while meeting the City’s public health and safety needs.

Section 5.80.020 Definitions.

The following definitions shall apply in interpretation and enforcement of this Chapter.

A. *ABC License* means the license issued by the California Department of Alcoholic Beverage Control.

B. *Admission Charge* means any charge for the right or privilege to enter any place of Entertainment including a minimum service charge, an event charge, a cover charge, a charge for the use of seats and tables, or any other similar charge. It also includes the purchase or presentation of a ticket or token directly or indirectly required as a condition for entrance. It does not include

tips, gratuities, voluntary donations, or suggested donations for employees or for any person providing entertainment.

C. *Banquet Hall* means a room or building for the purpose of hosting a party, banquet, wedding, or other reception or other social event.

D. *Chief of Police* means the chief of police of the City of Riverside and his/her designee.

E. *Dance and Dancing* means movement of the human body, accompanied by music or rhythm.

F. *Disorderly Conduct* means any of the following: consumption of alcoholic beverages on public property, public drunkenness, obstructing the free passage of pedestrians over public sidewalks, the obstruction of free passage of vehicles within the public right of way, littering, fighting, loud speaking or shouting, the operation of automobile audio systems in a manner that violates any provision of Title 7, and such other conduct that constitutes a public nuisance or a violation of law.

G. *Entertainment* means any single event, a series of events, or an ongoing activity or business, occurring alone or as part of another business, to which the public is invited or allowed to watch, listen, or participate or that is conducted for the purposes of holding the attention of, gaining the attention of or diverting or amusing guests or patrons, including, but not limited to:

1. Presentations by single or multiple performers, such as hypnotists, mimes, comedians; musical song or dance acts, karaoke, plays, concerts, any type of contest; sporting events, exhibitions, carnival, rodeo or circus acts, demonstrations of talent; shows, reviews and any other such activity which may be attended by members of the public.

2. Dancing to live or recorded music.

3. The presentation of recorded music played on equipment which is operated by an agent or contractor of the establishment, commonly known as a “DJ” or “disc jockey.” Entertainment does not include ambient music provided through the use of a radio, stereo, juke box, music recording machine or other similar device.

H. *Entertainment Establishment* means a place where entertainment occurs, including the building, any patio or outdoor space, rooftop, and parking lot.

I. *Entertainment Permit* means an Entertainment Permit issued by the Chief of Police pursuant to this Chapter.

J. *Permittee* means a person, persons, or business entity that has been issued an Entertainment Permit as provided in this Chapter.

K. *Private Club* means corporations or associations operated solely for objects of national, social, fraternal, patriotic, political, or athletic nature, in which membership is by application and regular dues are charged, and the advantages of which club belong to members, and the operation of which is not primarily for monetary gain

L. *Public agency* means the City, the county, or the state and any department, district, division, commission, board, or other agency associated with those agencies.

M. *Reasonable Efforts* means the provision of an adequate number of licensed security personnel, the adoption and posting of operating policies that are consistent with the requirements of this Code and the Entertainment Permit and the adherence to those policies, the documented training of employees in the carrying out of the establishment operating policies, notifying the police of apparent criminal activity, and the taking of all additional measures, consistent with sound business judgment, necessary to accomplish the required result.

N. *Responsible Person* means the Permittee, owner, proprietor, promoter, manager, assistant manager or other person exercising control over the operation of an Entertainment Establishment, whether or not that person is a named Permittee.

O. *Special Event* or *Special Event Permit* means any event regulated under Title 13 of this Code.

P. *Theater* means any commercial establishment where regular sporting events, concerts, motion picture screenings or theatrical performances are given and usually with ascending row seating or some arrangement of permanent seating.

Q. *Temporary Use Permit* is defined and regulated under Title 19 of this Code.

Section 5.80.030 Entertainment Permit required—Compliance with other laws.

A. It is unlawful for any person to provide or permit any Entertainment that is open to the public without an Entertainment Permit issued pursuant to this Chapter.

B. No person shall carry on, maintain or conduct any Entertainment in the City without first obtaining an Entertainment Permit therefor from the City.

C. Entertainment provided at a private residence for the monetary gain of any person is prohibited. However, this prohibition is in no way intended to infringe on the rights of private persons to engage in the activities regulated by this Chapter at their residence for private, as opposed to commercial, purposes.

D. An Entertainment Permit shall expire two (2) years from the issuance date and must be renewed thereafter.

Section 5.80.040 Exemptions from the Entertainment Permit requirement.

The following types of Entertainment and events are exempt from the Entertainment Permit required by this Chapter. An exemption does not relieve any Entertainment Establishment from complying with all other applicable laws, including, but not limited to, the laws related to noise levels and nuisances, particularly those contained in this Code.

A. Entertainment sponsored by any agency of the City of Riverside, the County of Riverside, the various boards of education, or by any other public agency of the state of California. The leasing or subleasing of an Entertainment Establishment to a third party does not constitute sponsorship of the Entertainment by a public agency, and is therefore not exempt. Further, any outdoor Entertainment at a public facility requires an Entertainment Permit.

B. Entertainment sponsored by any nonprofit public benefit organization, such as Girl Scouts, Boy Scouts, Little League or Boys and Girls Club, whose primary objective is the sponsoring and control of youth activities and child welfare. If the event is a dance, all of the following requirements must be met:

1. No person eighteen (18) years of age or older may be admitted as a guest, unless such person is a bona fide student at, or member of, the sponsoring agency or organization.

2. No alcoholic beverages may be served, consumed or permitted on the premises.

3. Chaperones from the sponsoring agency are present on the premises at the rate of two adults, who are at least twenty-five (25) years of age, for every one hundred (100) guests.

4. The event must finish by 12:00 a.m. and the premises and the adjoining parking lots must be promptly vacated by all the guests.

C. Entertainment lawfully conducted at any City park, building or recreational facility.

D. Entertainment limited to the use of a radio, music recording machine, juke box, television, video games, video programs, or recorded music by an establishment that does not permit Dancing.

E. Entertainment provided for members and their guests at a Private Club having an established membership when admission is not open to the public.

F. Entertainment provided for invited guests at a private event such as a wedding reception, banquet, or celebration where there is no Admission Charge. Notwithstanding, any Banquet Hall must still obtain an Entertainment Permit.

G. Entertainment conducted in connection with a regularly established theme park.

H. Parades.

I. Street performers such as musicians, singers or mimes.

J. Entertainment conducted or sponsored by any religious organization, bona fide club, organization, society or association that is exempt from taxation pursuant to United States Internal Revenue Code Section 501(c)(3); when all proceeds, if any, arising from such

Entertainment are used exclusively for the benevolent purposes of such religious organization, club, society or association. Written proof of the tax-exempt status shall be provided to the Chief of Police at least seven days before the Entertainment occurs.

K. Performances by the students at educational institutions as defined by the California Education Code where such performances are part of an educational or instructional curriculum or program.

L. Entertainment in Theaters that does not include a disc jockey, Dancing by patrons, or a live musical presentation.

M. Dance lessons, theatrical and performing arts lessons and student recitals.

N. Book readings, book signings, poetry recitations, and any other similar Entertainment consisting of the spoken word, including plays.

O. Fund-raisers for a political cause.

P. Entertainment consisting of ambient or incidental music provided for guests or patrons by musicians such as a piano player, harpist, strolling violinist, mariachi band, guitarist or band, if a sound amplifier is not utilized during the musical presentation. If an Admission Charge is required to observe or attend the Entertainment, the music is not considered ambient or incidental.

Q. The normal and customary fitness services provided by an athletic club or fitness center.

R. Special Events and Temporary Use Permits.

S. Entertainment occurring at a hotel with fifty (50) rooms or more.

Section 5.80.050 Entertainment Permit application filing and process.

A. All applications for Entertainment Permits shall be filed with the Chief of Police on such forms as he/she may prescribe, and shall contain the following:

1. The name and permanent address of the Permittee and all other persons having a financial interest in the operation of the Entertainment or Entertainment Establishment, business or premises where the Entertainment is to be located.

2. A description of the proposed Entertainment, including the maximum number of persons who are expected to be present within the Entertainment Establishment at any one time.

3. The proposed opening date and hours of operation for the Entertainment or Entertainment Establishment.

4. The security plan to control patrons.

5. The name or names of the person or persons having management or supervision authority over the proposed Entertainment or Entertainment Establishment, or any business or premises wherein the Entertainment is proposed to be located.

6. Whether or not the Permittee or any other Responsible Person(s) have been convicted of a misdemeanor involving moral turpitude or a felony offense within the past five (5) years, the nature of such offense(s), and the sentence(s) received therefor.

7. Written consent for the proposed Entertainment on the premises from the owner of the property on which the Entertainment is to be conducted.

8. Professionally drawn site and floor plans to scale of the Entertainment Establishment as required by state law.

9. Such other information as the Chief of Police shall deem necessary for the proper processing and review of the application.

B. The person whose signature appears on the application shall attest, under penalty of perjury, that he or she is a duly authorized representative of the Permittee and that the information contained in the application is true and correct.

C. The application shall be filed under penalty of perjury. False statements therein will constitute grounds for denial, suspension or revocation as applicable.

D. An incomplete application shall not be accepted for processing.

E. Any change in any information in the application which occurs after the application has been filed, must be submitted in writing to the Chief of Police within ten (10) calendar days after the change has occurred.

F. An application is complete when all the requirements of subsections A through D have been satisfied, and after Building & Safety, Fire Prevention, and the Planning Division have cleared all plans.

Section 5.80.060 Complete Application.

A. Upon receipt of a complete application, the Chief of Police shall provide to the Permittee a notice of application for Entertainment Permit and approved security plan, which notice shall be posted as set forth below.

B. Upon receipt of a notice of application for an Entertainment permit, the Permittee shall post the notice on the exterior of the premises for which the Entertainment Permit is sought within twenty-four (24) hours after receiving the notice. The notice shall be posted for no less than fourteen (14) consecutive days. The notice shall be posted in a location that allows interested members of the public to read the notice.

C. The Chief of Police shall either approve or deny the Entertainment Permit within sixty (60) calendar days of receipt of the complete application and approved security plan. The Chief of Police may extend the time for consideration of the application for up to an additional twenty-one (21) calendar days with the written consent of the Permittee. The failure of the Chief of Police to timely act shall not constitute approval of the Entertainment Permit.

D. Any required tenant improvements shall suspend the issuance of an Entertainment Permit until the tenant improvements are completed and approved by Building & Safety and Fire Prevention.

Section 5.80.070 Issuance of Entertainment Permit.

A. The Chief of Police shall approve the issuance of the Entertainment Permit if he/she finds:

1. That issuance of the Entertainment Permit and conduct of the Entertainment at the proposed location, as conditioned, is consistent with federal, state and local laws, rules, regulations and any existing special permit(s).

2. That issuance of the Entertainment Permit at the proposed location, as conditioned, will not constitute an undue burden on the neighborhood because of its proximity to residences, inadequate parking or other neighborhood circumstances and will not interfere with the reasonable use and enjoyment of the neighborhood by its residents.

3. Neither the Permittee or any Responsible Person or principal of the Permittee has, within the past five years, been convicted of a felony or other crime of moral turpitude that is substantially related to the qualifications, functions or duties of a proprietor of premises upon which the Entertainment activities are conducted.

4. Neither the Permittee or any Responsible Person or principal of the Permittee has a history of committing, permitting or failing to prevent significant violations of the city code, or any license or permit, in connection with an Entertainment Establishment for which he or she was a Responsible Person.

5. It does not appear, based upon the information before the Chief of Police, that the Permittee has provided false or misleading material information in the application.

6. That the application is complete.

7. The Permittee does not owe the City a fee or an administrative penalty for violation of a provision of this Chapter or a condition of an Entertainment Permit issued pursuant to this Chapter.

B. Where the Chief of Police does not approve an Entertainment Permit, the Chief of Police shall inform the Permittee of the reason(s) for the denial in writing.

C. In issuing the Entertainment Permit, the Chief of Police may impose additional conditions relating to the operation of the Entertainment Establishment.

D. Any required tenant improvements shall suspend the issuance of an Entertainment Permit until the tenant improvements are completed and approved by Building & Safety and Fire Prevention.

Section 5.80.080 Tier Conditions

A. Tier 1: Individuals and business entities who apply for and obtain Entertainment Permits shall comply with all applicable laws, regulations, ordinances and stated conditions, known as Tier 1 Conditions and listed as follows:

1. Except as otherwise provided herein, all Entertainment Establishments shall be closed and all patrons shall vacate the premises between 2:00 a.m. and 6:00 a.m. It is unlawful for any Responsible Person to fail to abide by the hours of closure.

2. A Responsible Person must be present in the Entertainment Establishment during all hours that the Entertainment Establishment is open and offering entertainment.

3. Each Responsible Person shall make Reasonable Efforts to prevent the admittance of any person whose conduct is described in Penal Code Section 415 (fighting, loud noise, offensive words in public places) or 647 (disorderly conduct) at the premises or on any parking lot or similar facility used by the establishment. Each Responsible Person shall make Reasonable Efforts to remove any persons exhibiting such conduct from the establishment.

4. Each Responsible Person shall make Reasonable Efforts to prevent the admittance of any obviously intoxicated person. For purposes of this section, a person is "obviously intoxicated" when he or she exhibits readily apparent outward manifestations of drug or alcohol intoxication, including but not limited to, inability to walk or stand in a normal manner, bloodshot or glassy eyes, flushed face, incoherent or slurred speech, alcoholic breath, belligerence or other loud or boisterous conduct, extreme agitation or nervousness or mental confusion.

5. Each Responsible Person shall obey all laws applicable to noise abatement, including those contained in Title 7 of this Code.

6. Each Responsible Person shall make Reasonable Efforts to control the conduct of patrons so as to prevent or minimize disorderly or unlawful conduct within the establishment and within fifty (50) feet of the establishment. The distance shall be measured in a straight line from the property line of the establishment.

7. Each Responsible Person shall use Reasonable Efforts to cause the orderly dispersal of individuals from the vicinity of the establishment at closing time, and shall not allow them to congregate within fifty (50) feet of the establishment in a disorderly fashion. The distance shall be measured in a straight line from the property line of the establishment.

8. It is unlawful for any person to bring an alcoholic beverage and/or drugs onto the premises unless such action is allowed by the Entertainment Establishment's ABC License.

9. It is unlawful for any Responsible Person to allow any person to bring an alcoholic beverage and/or drugs onto the premises unless such action is allowed by the Entertainment Establishment's ABC License.

10. The premises on which the business is located shall be posted to indicate that it is unlawful for any person to drink or consume any alcoholic beverage in any public place or posted premises in accordance with Title 9 of this Code.

11. The Chief of Police may require a Permittee or Responsible Person to close down operations and disperse all patrons for the remainder of its daily operation whenever conduct by disorderly patrons reaches a magnitude that presents an immediate threat to the public safety or well-being of the patrons and general public in the vicinity. It is unlawful for any person to fail to comply with any directive issued by the Chief of Police.

12. Indoor Entertainment and outdoor Ambient Music that otherwise conforms with the requirements of state and local laws and regulations may be offered until 2:00 a.m., seven (7) days a week.

13. Outdoor amplified music and Entertainment, if permitted, will be subject to the following restrictions: a) sound amplifying equipment may be used only between 10:00 a.m. and 10:00 p.m. Sunday through Thursday, and 10:00 a.m. and midnight Friday and Saturday. Permittee agrees that the following standard is reasonable: Noise emanating from Permittee's premises shall not be unreasonably loud or disturbing in light of the facts and circumstances then prevailing within fifty feet (50') of the perimeter of the premises in all directions. Sound and amplification equipment shall be monitored during business hours to ensure that audible noise remains at acceptable levels in accordance with Title 7 of this Code.

14. Permittees shall place or post conditions on the premises in a place easily accessible by City staff, including law enforcement personnel.

15. Permittee, within ninety (90) days of application, shall be required to acknowledge that he/she has read, understood and agreed to the conditions of the Entertainment Permit and submit proof of attending the LEAD program offered by the Department of Alcoholic Beverage Control.

16. The lawful conduct of activity regulated by this Chapter by a Permittee shall be limited to those activities expressly indicated on the Entertainment Permit application and approved by the Chief of Police. Any change in Entertainment which exceeds the parameters of the approved Entertainment Permit will require the approval of the Chief of Police.

17. The holder of an Entertainment Permit shall not allow others to use or rent his/her permitted premises for any other Entertainment. This restriction shall not apply to a location which is additionally licensed for hall rental.

18. Permittees shall be responsible for all Entertainment at the location, including those conducted by promoters. Each Permittee and promoter conducting business within the City shall obtain a City Business Tax Certificate prior to conducting Entertainment. Permittee shall provide all promoters and agents hired to conduct Entertainment with a copy of the approved Entertainment Permit, which shall include a copy of the approved conditions of operation.

19. If Permittee utilizes an independent third party event promoter to provide Entertainment related services resulting in any public safety call for service, the City reserves the right to remove and/or restrict the use of any independent third party promoters.

20. The operation of the establishment shall be limited to those activities expressly indicated on the Entertainment Permit application. Any change in the operation that exceeds the conditions of the approved Entertainment Permit will require approval by the Chief of Police.

21. Permittee shall conduct all aspects of his or her operation, including before- and after-hours deliveries and maintenance, in consideration of residences located nearby.

22. Permittee agrees that noise emanating from Permittee's premises shall not be unreasonably loud or disturbing in light of the facts and circumstances then prevailing within fifty feet (50') of the perimeter of the premises in all directions.

23. Applicants for new Entertainment Permits must provide an acoustical study, prepared by a qualified, certified acoustical engineer, hired by the Permittee and acceptable to the City, that shall demonstrate the sound emanating from the Permittee's establishment meets the sound standards described in Title 7 of this Code.

24. A Permittee may be eligible to request a waiver of condition 23 above if they meet one of the following criteria:

a. The location had an Entertainment Permit, and no more than twelve (12) months have elapsed since the permitted Entertainment at that location ceased; or

b. Verifiable evidence that best sound mitigation practices were used in the construction or retrofitting of the location.

25. No adult entertainment, as defined by Title 19 of this Code, shall be conducted on the permitted premises. Permittees 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.

26. Current occupancy loads shall be posted at all times, and 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.

27. If Permittee's operations give rise to a substantial increase in complaints/calls for police service, 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 Entertainment Permit and any permit issued by the Alcoholic Beverage Commission, the more stringent regulation shall control.

28. Permittee shall be responsible for maintaining an adequate security staff, per its security plan, to supervise patrons and those waiting to enter. Security staffing requirements shall be as follows:

a. Potential patrons awaiting entry in a defined "queue" shall be counted toward the calculation of required security staffing levels.

b. 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 by the state of California, security guard per floor.

c. There shall be one (1) additional guard for each subsequent increment or each partial increment of fifty (50), plus one (1) guard per each additional floor.

d. 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.

e. The attire of each security guard shall clearly indicate the guard's affiliation with the establishment by means of having security displayed on a shirt in large letters or other clearly-visible form of identification.

29. Permittee shall install and maintain a video surveillance system that monitors no less than the front and rear of the business with full view of the public rights-of-way and any parking lot under the control of the Permittee. The video system must be capable of delineating on playback the activity and physical features of persons and areas within the premises. Recordings shall be retained for a minimum of thirty (30) days and be immediately accessible for the Riverside Police Department by an on-duty employee, manager, or other Responsible Person.

30. The Permittee shall work directly with the Riverside Police Department at least 2 weeks prior to events where bands or other performances are expected to draw large crowds.

31. Restaurants with alcohol and Entertainment must be operated and maintained as bona fide eating places, making actual and substantial sales of meals, during at least one (1) full normal mealtime, at least five (5) days a week. Normal mealtimes are 6:00 a.m. - 9:00 a.m., 11:00 a.m. - 2:00 p.m., and 6:00 p.m. - 9:00 p.m. or as defined in the Permittee's ABC License. Minors are only allowed on the premises during mealtime hours.

32. If it's a bona fide eating place, persons under eighteen (18) years of age shall not be permitted to enter nor permitted to remain on the premises after 10:00 p.m., unless accompanied by a parent or legal guardian.

33. Permittee shall make reasonable efforts to ensure that there is no loitering, littering, or making of excessive noise unless outside any of the entrance/exit doors and Permittee shall take steps to prevent patrons from loitering in the immediate area of the Entertainment Establishment at all times.

34. 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.

35. Any graffiti painted or marked upon the premises or on any adjacent area under the control of Permittee shall be removed or painted over within twenty-four (24) hours of being applied.

36. Windows shall not be obscured by the placement of signs, including signs advertising alcoholic products, dark window tinting, shelving, racks or similar obstructions.

37. The Permittee shall comply with all federal, state and local laws and shall cooperate with the Riverside Police Department in the enforcement of all laws relating to this permit. Material violation, as determined by the Chief of Police, of any laws in connection with this use or failure to cooperate with the Riverside Police Department, will be cause for revocation of this permit.

38. As a condition of any City approval, Permittee shall defend, indemnify and hold harmless the City of Riverside, its agents, officers and employees from any claim, action or proceeding against the City of Riverside or its agents, officers or employees to attack, set aside, void or annul the approval of the City concerning the processing of the Entertainment Permit or any action relating to or arising out of such approval. At the discretion of the City and with the

approval of the City Attorney, a deposit of funds by the Entertainment Permit Permittee may be required in an amount sufficient to cover the anticipated litigation costs.

39. Entertainment Permits may be administratively reviewed by the City within six (6) months from the date of issuance to monitor compliance with Entertainment Permit conditions.

B. Tier 2: When the Permittee has violated the terms of the Entertainment Permit, any of the Tier 1 Conditions, or Permittee's obligation to comply with all other laws and regulations, the Chief of Police may require Permittee to attend a meeting with the involved departments to address the violations. The Chief of Police may impose Tier 2 Conditions, which are in addition to the Tier 1 conditions. Tier 2 conditions will supersede any similar Tier 1 conditions.

1. Noise: Following the receipt of three (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 standard prohibiting unreasonably loud sound fifty feet (50') from the perimeter of the premises, Permittee will be notified that his/her premises must comply with those Tier 2 Noise Conditions which the City determines are necessary to protect the public peace as follows:

(a) Permittee must keep all doors and windows closed except while patrons are entering or exiting.

(b) Permittees shall submit an acoustical study, performed by a qualified, certified acoustical engineer, hired by the Permittee and acceptable to the City. The study shall be reviewed and confirmed by the Community & Economic Development Department. Based on the results of the acoustical study, appropriate mitigation measures may be required so that the noise emanating complies with the sound ordinance. Such measures must be completed and approved by the City before outdoor amplified Entertainment will be permitted. If the Permittee did not previously perform and submit such an acoustical study and mitigation measures, the Permittee shall do so. Once a Permittee has been notified of Tier 2 status, the Permittee can no longer qualify for a waiver pursuant to Condition 24 above.

(c) Sound and amplification equipment shall be monitored during business hours to ensure that audible noise remains at acceptable levels in accordance with Title 7 of this Code.

(d) No Entertainment of any kind will be permitted after 1:00 a.m.

(e) No outdoor Entertainment of any kind (amplified or non-amplified) will be permitted after 10:00 p.m.

(f) No queue will be permitted after midnight. Any persons gathering outside the establishment shall be considered to be loitering.

2. 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 three (3) or more incidents within a 30-day period, or a single incident involving violence, the Chief of Police or Fire Marshal may notify Permittee of additional measures and conditions to be implemented. These additional measures could include all or some of the following:

(a) Additional security personnel at hours determined necessary by the Chief of Police to prevent Permittee's operations from creating a public nuisance.

(b) Additional security checks on incoming patrons.

(c) No Entertainment of any kind will be permitted after 1:00 a.m.

(d) No queue after midnight. Any persons gathering outside the establishment shall be considered to be loitering.

(e) Any additional measures deemed necessary by the Chief of Police or the Fire Marshal to protect health and safety.

3. After 30 days of being placed in Tier 2, Permittee may request, in writing, to return to Tier 1 conditions. The Chief of Police, in consultation with the Fire Marshal, shall review 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.

C. Tier 3: The failure of a Permittee to resolve noise and/or security/public safety issues as directed by the Chief of Police within a period not to exceed thirty (30) days or upon the occurrence of a major incident, as determined by the Chief of Police, shall result in the implementation of Tier 3 Conditions, which are in addition to the Tier 1 conditions. Tier 3 conditions will supersede any Tier 1 conditions.

1. Noise:

(a) No outdoor Entertainment of any kind will be permitted at any time.

(b) Amplified Music will only be permitted until 10:00 p.m. any night.

(c) All noise must be contained within the premises. No noise shall be audible outside the establishment.

(d) Implement recommendations to mitigate noise, including pre- and post-implementation monitoring data collected by a certified noise expert.

2. Security/Public Safety:

(a) Entertainment must cease not later than 10:00 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 (1) hour in these times to protect the public peace.

(b) Permittee shall limit the queue outside the establishment to no more than twenty (20) people. There shall be no queue within two (2) hours of the lawful closing time. Any persons gathering outside the establishment shall be considered to be loitering.

(c) Additional security personnel at hours determined necessary by the Chief of Police to prevent Permittee's operations from creating a public nuisance.

(d) Additional security checks on incoming patrons.

(e) Any additional measures determined necessary by the Chief of Police or the Fire Marshal may be imposed to protect health and safety.

3. Upon the occurrence of a major incident, as determined by the Chief of Police, the Chief of Police may immediately suspend the Entertainment Permit for a period of time as commensurate to the incident.

4. After 30 days of being placed in Tier 3, Permittee may request, in writing, to return to Tier 1 or Tier 2 conditions. The Chief of Police, in consultation with the Fire Marshal, shall review Permittee's recent compliance history and determine whether some or all conditions can be returned to Tier 1 or Tier 2 levels consistent with the protection of public health and safety.

5. If the Chief of Police determines that Permittee has not modified his/her operations in compliance with Tier 3 Conditions and Permittee continues to violate the terms and conditions of the Entertainment Permit, the Chief of Police shall begin revocation or suspension proceedings. Permittee is entitled to a hearing to contest such revocation or suspension.

Section 5.80.090 Entertainment Permit Nontransferable.

A. Any Entertainment Permit issued pursuant to this Chapter shall not be transferred or assigned to another person for any purpose. Any change in ownership shall require a new Entertainment Permit. Regardless of any change in ownership, the Permittee shall be required to notify the Chief of Police of any change in the business name.

The following shall be deemed a change of ownership:

1. For general partnership personnel, the addition or substitution of a new partner.
2. For a limited partnership, the addition or substitution of a new partner or the addition or substitution of a general partner not listed as a partner in the application for the Entertainment Permit previously approved.
3. For a corporation, more than fifty percent (50%) of the shares of stock is transferred to or acquired by persons other than those designated in the application for the Entertainment Permit previously approved.

B. Any Entertainment Permit issued pursuant to this Chapter shall not be transferred to any other location for any purpose. Any change in location shall require a new Entertainment Permit. Any of the following shall be deemed a change in location:

1. Any relocation or expansion that includes a separate piece of property or parcel of land.

2. Any expansion of the initially permitted premises which represents a greater than fifty percent (50%) increase in the square footage of space devoted to public access or occupancy.

Section 5.80.100 Renewal of Entertainment Permits.

A. A Permittee may apply for permit renewal by submitting to the Chief of Police before the expiration of an Entertainment Permit, a renewal application and a non-refundable renewal fee in an amount set by resolution of the city council. A permit renewal application submitted after expiration of the Permittee's most recent Entertainment Permit shall be considered an application for a new Entertainment Permit.

B. If a timely and complete application for renewal is filed, the Entertainment Permit's expiration shall be stayed until a decision on the renewal application is issued.

C. The Chief of Police shall either approve or deny the renewal of a permit within sixty (60) calendar days of receipt of the complete application. The Chief of Police may extend the time for consideration of the application for up to an additional twenty-one (21) calendar days with the written consent of the Permittee.

D. The Chief of Police shall approve the renewal of a permit if he/she finds that no circumstances existed during the term of the Entertainment Permit, existed at the time of submission of an application for renewal, or existed at any time during the review of the application for renewal that is inconsistent with any finding required for approval of a new permit for the Permittee or location. Notwithstanding the above, the Chief of Police may add, delete or modify the permit conditions as a condition of permit renewal.

Section 5.80.110 Fees.

A. The following Entertainment Permit program fees shall be imposed in amounts established by resolution of the City Council:

1. New Entertainment Permit Fee. Every application for a new Entertainment Permit must be accompanied by a nonrefundable permit fee.

2. Renewal Permit Fee. Every application to renew an Entertainment Permit must be accompanied by a nonrefundable permit fee.

B. The fees established in this section are in addition to the City's business operation tax and any other license or permit fee imposed by this Code upon the Permittee.

Section 5.80.120 Denial, suspension, modification, and revocation—Appeals.

A. An appeal of the Chief of Police's decision to deny, revoke, or suspend an Entertainment Permit must be filed with the City Clerk, in writing, within ten (10) calendar days after denial of the application or revocation or suspension of the Entertainment Permit has been served. If the tenth (10) day is a weekend or holiday, the following weekday will be the tenth (10) day. The appeal shall clearly state the applicable basis for the appeal. The City Manager shall cause the matter to be set for a hearing before an Administrative Hearing Officer to hear such matters.

B. The scope of the appeal hearing pursuant to this Section shall be limited to those issues raised by appellant in the written appeal, as submitted pursuant to subdivision (A) above.

C. Should an appeal of a denial of an Entertainment Permit, or revocation or suspension of an Entertainment Permit be filed, the denial, revocation, or suspension decision made by the Chief of Police will remain in effect and no Entertainment may occur until such time as the Administrative Hearing Officer has rendered a decision.

D. Notice of the date of the administrative hearing shall be given in writing. The date of the administrative hearing shall be no sooner than ten (10) days from the date when the notice of hearing is served on the appellant.

E. At the time fixed in the notice of hearing, the Administrative Hearing Officer shall review all relevant evidence and hear the testimony of all competent persons desiring to testify respecting the incident or alleged violation.

F. The general evidentiary procedures for all administrative hearings shall be governed by Chapter 1.17.130. However, evidence shall include, but is not limited to, police reports, criminal citations, photographs, videos, audio recordings, and the like.

G. At the conclusion of the hearing, the Hearing Officer shall determine whether the appellant violated any provisions of this Chapter or any other relevant law, statute, or code. If the Administrative Hearing Officer concludes the appellant was in violation of the law, the Administrative Hearing Officer shall revoke or suspend the Entertainment Permit.

H. The decision of the Administrative Hearing Officer on the determination of a violation of this Code or other relevant law is final. Any appeal of the Administrative Hearing Officer's decision shall be governed by California Code of Civil Procedure section 1094.6 or such section as may be amended from time to time.

I. Any withdrawal of an appeal or the surrender of the Entertainment Permit will be deemed a revocation of that Entertainment Permit.

J. Failure of any person to file a timely appeal in accordance with the provisions of this Section shall constitute an irrevocable waiver of the right to an administrative hearing and a final adjudication of the notice and order, or any portion thereof.

Section 5.80.130 Violation—Penalty.

A. Violation of Tier 3 conditions is a revocation of the Entertainment Permit.

B. 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 Permittee's operations, the cost of such services shall be billed to Permittee as an expense of an emergency response. "Expense of an emergency response" means those costs incurred by the City 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.

C. Violation of this Chapter is an infraction or misdemeanor. Revocation or suspension of an Entertainment Permit shall not be a defense against prosecution.

D. The provisions of this Chapter may be enforced through the administrative code enforcement remedies set forth in Chapter 1.17 of this Code in addition to all other proceedings authorized by this Code or otherwise by law. The prevailing party in any action, administrative proceeding, or special proceeding to abate a nuisance shall be entitled to recover their attorney's fees and costs pursuant to Chapter 1.01, 1.17, and 6.15 of this Code, and Government Code section 38773.5.

E. For one year following a revocation of an Entertainment Permit, Permittee shall not be allowed to reapply for an Entertainment Permit at the same Entertainment Establishment or apply for an Entertainment Permit at a new Entertainment Establishment.

Section 5.80.140 Severability.

If any section, subsection, sentence, clause or phrase of this Chapter is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Chapter and each section, subsection, clause or phrase thereof irrespective of the fact that any one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional."