

**DRAFT PLANNING COMMISSION RESOLUTION NO. 24-025**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF POMONA APPROVING CONDITIONAL USE PERMIT (CUP-000584-2024) ALLOWING A TYPE-20 (OFF-SALE BEER AND WINE) AND A TYPE-41 (ON-SALE BEER AND WINE – EATERY) AND ALLOWING A LIVE ENTERTAINMENT USE AT 101 WEST MISSION BOULEVARD, SUITE #106 (APN 8341008042)**

**WHEREAS**, the applicant, Andy Rosillo, has filed an application for a Conditional Use Permit (CUP-000584-2024) to obtain two California Department of Alcohol Beverage Control licenses, a Type-20 (Off-Sale Beer and Wine) and a Type-41 (On-Sale Beer and Wine – Eatery) café establishment.

**WHEREAS**, pursuant to Section 520 and Section 1160.D, of the Pomona Zoning and Development Code, which identified certain land uses, activities, and facilities to obtain a Conditional Use Permit to establish the aforementioned; approval of the Planning Commission is required to approve a Conditional Use Permit and to impose reasonable conditions upon the approval of the application;

**WHEREAS**, pursuant to Section 2.2.1 (10) of the Pomona Corridors Specific Plan (PCSP), which established the requirement to obtain a Conditional Use Permit for a live entertainment use; approval by the Planning Commission is required for to approve a Conditional Use Permit and to impose reasonable conditions upon the approval of the application ;

**WHEREAS**, the Planning Commission of the City of Pomona has, after giving notice, thereof as required by law, held a public hearing on November 13, 2024, concerning the requested Conditional Use Permit (CUP-000584-2024); and

**WHEREAS**, the Planning Commission has carefully considered all pertinent testimony and the staff report offered in the case as presented at the public hearing.

**NOW, THEREFORE, BE IT HEREBY RESOLVED** by the Planning Commission of the City of Pomona, California:

**SECTION 1.** The Planning Commission exercising their independent judgement has determined that pursuant to the Guidelines for Implementation of the California Environmental Quality Act (CEQA), that the project is Categorically Exempt under Article 19, Section 15301. Existing Facilities, as the project involves no expansion of the existing use.

**SECTION 2.** If any part, provision, or section of this resolution is determined by a court or other legal authority with jurisdiction over the subject matter of this resolution to be unenforceable or invalid, the remainder of the entirety of this resolution shall not be affected and shall continue in full force and effect. To this end, the provisions of this resolution are severable.

**SECTION 3.** In accordance with Section 1160.D. of the Pomona Zoning and Development Code and Section 2.2.1 (10) of the Pomona Corridors Specific Plan, a Conditional Use Permit

must be acted upon by the Planning Commission based upon the information provided in the submitted application, evidence presented in the Planning Division's written report, and testimony provided during the public hearing, only after considering and clearly establishing all of the below-listed findings, and giving supporting reasons for each finding. The application may be approved if all of the following findings are made. Based on consideration of the whole record before it, including but not limited to, public testimony received at the public hearing on this matter, and evidence made part of the public record, the Planning Commission hereby finds as follows:

- A. *The scale and intensity of the proposed use would be consistent with the scale and intensity of land uses intended for the particular zoning district or use module as indicated in the General Plan.*

The site is located within the Downtown Core Segment of the Pomona Corridors Specific Plan (PCSP). This particular segment of the Specific Plan calls a mixed-use urban shopping district with daytime and nighttime activity anchors that complement existing anchors, such as the Fox Theater and the Glass House. The General Plan designates the subject property as an Activity Center. The site is identified as part of a healthy distribution of retail activity that has a unique market focus and role that does not adversely compete with other designated Activity Centers in the City.

The scale of CAVICE Café is consistent with the current land use scale and intensity. This project is not proposing any major modifications that will expand the existing structure.

- B. *The proposed use at the proposed location, and the manner in which it will be operated and maintained, is consistent with the goals, policies, plans and exhibits of the General Plan.*

*Goal 6A. G3. Improve the physical quality and shopping experience of existing and new activity centers throughout the City.*

CAVICE Café establishment will be a unique and diverse addition to the existing retail and general commercial uses in the Downtown Pomona area. While Downtown Pomona may have several café outlets, CAVICE café is proposing to introduce the sale of beer and wine to appeal to a diverse range of patrons and increase pedestrian traffic during hours that are less demanding for coffee and similar drinks.

*Policies 6A.P6. Make Downtown a revitalization a high priority.*

Downtown Pomona is recognizable and active sub-regional center for the surrounding communities within the Pomona Valley area and larger San Gabriel Valley region. CAVICE café presence will assist in preserving and ensuring that Downtown Pomona maintains an economically successful and active region.

- C. *The proposed use at the proposed location, and the manner in which it will be operated and maintained, is consistent with the objectives and requirements of this Zoning and Development Code and any applicable specific plan.*

The project is located in the Downtown Core Segment of the Pomona Corridors Specific Plan

(PCSP). This Segment of the PCSP envisions the promotion and concentration of new retail, dining, and entertainment uses that cater to the entire City and the surrounding region.

A Conditional Use Permit (CUP) is required in the Downtown Core Segment of the PCSP and by the Pomona Zoning and Development Code (Code) for live entertainment uses. Such live entertainment uses may assist in creating a wider appeal to pedestrian oriented retail and to ensure there is a healthy balance of diverse uses between general commercial uses, live entertainment venues, and housing investments. The request is consistent with the requirements of the PCSP and the Code to obtain a CUP to allow for live entertainment and on-sale and off-sale alcohol uses.

- D. The establishment, maintenance, and operation of the proposed use at the proposed location would not be detrimental or injurious to property and improvements within the vicinity, nor would it be detrimental to the health, safety, or general welfare of persons residing or working in the surrounding neighborhood.*

The proposed project is requesting to provide live entertainment and to obtain two ABC license types, a Type-41 and a Type-20 for both on-sale and off-sale alcohol. In particular, the live entertainment request is proposing to provide art exhibits, open poetry sessions, and live musical ensembles, featuring musical acts such as “jazz bands, instrumental bands, and vocalists”. To ensure the operations of the site are not detrimental to the health, safety, or general welfare of persons residing or working in the surrounding neighborhood or are injurious to property, conditions of approval will be placed regarding noise, hours of live entertainment operations, and alcohol related provisions.

- E. The establishment, maintenance, and operation of the proposed use at the proposed location would not create cumulative impacts that are detrimental or injurious to property and improvements within the vicinity, nor would it be detrimental to the health, safety, or general welfare of persons residing or working in the surrounding neighborhood.*

The request of live entertainment and off-sale and on-sale alcohol uses are subject to restrictions and conditions of approval to mitigate cumulative impacts that may be detrimental to property owners, residents, and persons working in the vicinity.

**SECTION 4.** Based upon the above findings, the Planning Commission hereby approves Modification to a Conditional Use Permit (MODCUP-000278-2024) subject to compliance with all applicable laws and ordinances of the City as well as the addition of the following conditions, violations of which (or failure to complete any of which) shall constitute grounds for revocation of the conditional use permit or any portion thereof:

## **PLANNING DIVISION**

### **General Conditions**

1. Approved Plans and Modifications. The subject property shall be developed and/or used in a manner consistent with the project plans reviewed and approved by the Planning

Commission on November 13, 2024 and as illustrated in the stamped approved plans dated November 13, 2024. Any major modifications to the approved project plans shall be reviewed and approved by the Planning Commission as part of a modification to the approved plans. Any minor modifications that do not affect the overall intent of the approved project, may be reviewed and approved by the Development Services Director or their designee.

2. **Approval Period and Time Extension.** This approval shall lapse and become void if construction has not commenced within twelve (12) months from the date of this approval (November 13, 2024) in accordance with the Zoning and Development Code Section 1160.D. The Planning Division may extend this period for a maximum of one (1) year extensions upon receipt of an application for a Time Extension request submitted by the applicant at least thirty (30) days before the expiration date of this approval.
3. **Indemnification.** The applicant shall indemnify, protect, defend, and hold harmless, the City, and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, from any and all claims, demands, law suits, writs of mandamus, and other actions and proceedings (whether legal, equitable, declaratory, administrative or adjudicatory in nature), and alternative dispute resolutions procedures (including, but not limited to arbitrations, mediations, and other such procedures), (collectively "Actions"), brought against the City, and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, that challenge, attack, or seek to modify, set aside, void, or annul, the any action of, or any permit or approval issued by, the City and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof (including actions approved by the voters of the City), for or concerning the project, whether such Actions are brought under the California Environmental Quality Act, the Planning and Zoning Law, the Subdivisions Map Act, Code of Civil Procedure Section 1085 or 1094.5, or any other state, federal, or local statute, law, ordinance, rule, regulation, or any decision of a court of competent jurisdiction. It is expressly agreed that the City shall have the right to approve, which approval will not be unreasonably withheld, the legal counsel providing the City's defense, and that applicant shall reimburse the City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. The City shall promptly notify the applicant of any Action brought and the City shall cooperate with applicant in the defense of the Action.
4. **Violation of Conditions.** In case of violation of any of the conditions of approval or City law, the property owner and tenant will be issued a Notice of Correction. If said violation is not remedied within a reasonable period of time and/or subsequent violations of the conditions of approval and/or City law occurs within ninety (90) days of any Notice of Correction, the property owner shall be held responsible to reimburse the City for all staff time directly attributable to enforcement of the conditions of approval and/or City law, including, but not limited to, revocation of the herein Conditional Use Permit.
5. **Appeals.** The project is subject to a twenty (20) calendar day appeal period. Written appeals may be filed with the City Clerk within twenty (20) calendar days by one or more City Council members or the applicant. The appeal shall be filed with the City Clerk

within twenty (20) calendar days from the date of action by the Planning Commission.

- 6. Conditions of Approvals on Plans. Prior to plan check submittal, the applicant shall include all conditions of approval from Planning Commission Resolution No. 24-025 on the title sheet of the construction documents.
- 7. Sign Permit. The installation of any signage shall require the submittal of a Sign Permit application for review and approval by the Planning Division.
- 8. Noise During Construction Activity. During construction, all requirements of the Pomona Zoning Ordinance and Municipal Code, including the noise provisions, shall be adhered to. All activities including truck deliveries associated with construction and grading will be limited to Monday through Saturday, between 7:00 a.m. and 8:00 p.m., and provided the noise level created by such activities do not exceed the noise standard of 65 dB(A) plus the limits specified in section 18-311(b) as measured on residential property and any vibration created does not endanger the public health, welfare, and safety.
- 9. Noise and Vibration, General. There shall be no activity conducted on the subject site that exceeds the noise and vibration parameters of Pomona City Code Section 18-301, et seq., and City Council Ordinance No. 3939 at any time, or such other ordinance enacted related to noise and vibration.
- 10. Maintenance During Construction. The property, including all construction areas, shall be kept clean at all times prior to, during, and after construction.
- 11. Maintenance During Operations. The property owner shall provide regular maintenance and cleaning of all exterior walkways, patios, canopies, sidewalks, and landscaped parkways in compliance with Pomona City Code 62-351.
- 12. Removal of Graffiti. The property owner shall remove any graffiti on the project site within 24 hours of discovery. The paint utilized to cover the graffiti shall substantially match the existing structure. In the event that the paint finish of the abated area is noticeably distinguishable from the rest of the structure, the property owner shall paint additional portions of the building to minimize the disparity, subject to the approval of the Development Services Director or their designee.

**Operational Conditions**

- 13. Cafe Establishment. The café establishment and per the approved ABC Type-41 alcohol license type must operate as a “bona fide public eating place” as defined by the Business and Professions Code, Section 23038.
- 14. Live Music.
  - a. Hours. Live entertainment operations shall be permitted during the following hours:

<u>Day(s)</u>	<u>Time</u>	<u>Music Type &amp; Location</u>
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Monday – Thursday	5:00 AM to 11:00 PM	Live entertainment must be prohibited.
Friday	6:00 PM to 11:00 PM	Limited to art galleries and acoustic music only with musical ensembles of no more than 4 members. Patrons 18 and older can attend.
Saturday	11:00 AM to 11:00 PM	Limited to art galleries and acoustic music only with musical ensembles of no more than 4 members. Patrons 18 years of age and older can attend.
Sunday	11:00 AM to 6:00 PM	Limited to art galleries and acoustic music only with musical ensembles of no more than 4 members. Patrons 18 years of age and older can attend.
Holiday Eves and Holidays	11:00 AM to 11:00 PM	Limited to art galleries and musical ensembles of no more than 4 members. Patrons 18 and older can attend.

- b. Musical Acts. Live entertainment is limited to acoustic only. Music ensembles are limited to no more than 4 members. Art gallery exhibitions are permitted. Should the operator want to increase live entertainment activities, a Modification to this Conditional Use Permit (CUP-000584-2024) is required.
  - i) Similar Musical Acts. If the operator proposes a live entertainment activity to be similar to the aforementioned permitted uses, the Director of Development Services, or their designee, at their discretion may approve the proposed activity without a Modification to the Conditional Use Permit (CUP-000584-2024).
- c. Noise and Vibration Levels. There shall be no live entertainment, amplified music, or any other activity on the premises that exceeds noise and vibrations

parameters of Pomona City Code, Chapter 18, Article VII, and City Council Ordinance No. 4110 at any time.

- d. Outdoor amplification. Outdoor amplification music is prohibited.
15. Age Restrictions. Patrons aged 18 and older may attend live entertainment events. The operator must ensure such patrons are not consuming alcohol by visible markers, such as wristbands or other similar means of identification to separate attendees under 21 years of age.
16. Dancing. Dancing is prohibited on the premises.
17. Signage. At no time shall there be signage promoting live entertainment events and activities in the form of banners or any other temporary signage without a separate Sign Permit from the Planning Division.
18. Sale and Service. At all time when the premise is open for business, the sale and service of food shall be available.
19. Loitering. Loitering and panhandling on the premises shall be prohibited.
20. Security. Operator must maintain security guards at both entrances of the establishment to verify age of patrons.
21. Crime Reporting. All crimes occurring inside and immediately outside of the location shall be reported to the Police Department at the time of occurrence.
22. Responsible Party. At any time the licensee is absent from the premises, a responsible party shall be designated to respond to any inquiries from City Officials.
23. Cover Charge and Admittance Fees. At no time must the operator charge patrons and/or attendees additional fee, such as cover charges, to enter the premises for live entertainment events.
24. Conditional Use Permit Inspection. Within six (6) months of approval (March 12, 2025), Applicant must file for a Conditional Use Permit Inspection Request and pay applicable fees. Upon receipt of such an Inspection Request, the Development Services Director, or designee, shall conduct an inspection of the proposed operation and review any complaints received on the property. The Director or their designee shall determine if the applicant is satisfactorily in compliance against all conditions of approval set forth in this Resolution. The Development Services Director, or their designee, may, at their discretion, approve or deny Inspection Requests. If noncompliance is determined, the Director, or their designee, may schedule the matter for review by the Planning Commission to consider bringing revocation proceedings. Applicant shall file for subsequent Conditional Use Permit on an annual basis from the date of approval (beginning November 13, 2025). If such Inspection Requests are not received by the Planning Division by the set dates, revocation may be considered.

25. **Violations.** If the Development Services Department (inclusive of: Building and Safety Division, Code Compliance Division, Planning Division) receive more than two (2) complaints within a period of six (6) months that are detrimental to the public peace, health, safety, or welfare of residents and visitors, or constitutes a nuisance, such as unpermitted minor and/or major interior or exterior work without a Building and Safety permit, or any violations of the conditions of approval set forth in this Resolution, the live entertainment use shall be suspended for six (6) months from the date the second violation was cited.
26. **Revocation.** The Planning Commission must have authority to revoke a Conditional Use Permit, based upon one or more of the following findings:
  - a. The Conditional Use Permit approval was obtained by fraud;
  - b. The Conditional Use Permit granted is being, or has recently been exercised contrary to the terms and/or conditions of application approval;
  - c. The Conditional Use Permit granted is being or has been exercised in violation of a federal, State or City statute, ordinance, law, or regulation; and/or
  - d. The Conditional Use Permit granted was exercised in a way that is detrimental to the public peace, health, safety, or welfare, or constitutes a nuisance.

### **Alcohol-Related Conditions**

27. **If the California Department of Alcohol Beverage Control (ABC) Operating Restrictions.** ABC places operating restrictions on the establishment, the operator must provide the Planning Division evidence within one (1) week of such restrictions. The operator must maintain and remain in compliance with all ABC provisions and any operating restrictions, should they exist.
28. **Outdoor Patio Area.** The outdoor patio area shall be kept in a clean and orderly manner. Debris and refuse must be promptly cleared. Any type of fencing enclosing the outdoor patio must allow for entering and exiting of the establishment. Maintaining the fencing as accessible and open to pedestrians is to ensure the establishment is providing a walkable and pedestrian oriented retail outlet.
  - a. **On-Sale Alcohol.** Patrons requesting alcohol and also utilizing the outdoor patio area must be seated by an employee. The sale of alcoholic beverages for on-site consumption shall be served by an ABC certified employee in the outdoor patio area.
29. **Alcohol Licensee(s) and Employee Training.** The employees who sell or serve alcoholic beverages shall be required to complete a training program in alcoholic beverage compliance, crime prevention techniques and the handling of violence. All new and existing employees and licensees shall be required to complete the following training



programs listed below that is provided by the California Department of Alcohol and Beverage Control (ABC) within thirty (30) days of hire, and any existing employees shall complete this training program within thirty (30) days of the issuance of the Type-41 and Type-20 license. Applicant to provide such documentations during each Conditional Use Permit Inspection Request. ABC training programs to be completed:

- a. Responsible Beverage Service (RBS) Training Program
  - b. Licensee Education on Alcohol and Drugs (LEAD) Training
30. Public Convenience and Necessity. A Public Convenience and Necessity decision from ABC is required as stated in the Business and Professions Code under section 23958.4 subsection 3, (b) (1). 23958.4 subsection 3, (b) (1).
  31. Intoxicated Persons. At no time shall persons appearing to be intoxicated or under the influence of controlled substances be allowed within the premise area of the restaurant, including the outdoor patio area.
  32. Sale to Intoxicated Persons. Anyone appearing to be intoxicated or under the influence of controlled substances shall not be allowed to purchase beer or wine.
  33. Display and Storage of Alcoholic Beverages. All alcoholic beverages must only be stored and displayed in the area approved on the floor plan.
  34. Promotion. All exterior window signage, which advertises the sale or availability of alcohol, shall be prohibited.
  35. Alcohol Display. No display or sale of alcohol shall be made from an ice tub.
  36. Sales and Delivery of Alcohol. Sales and deliveries of alcoholic beverages under the on-sale privileges of the license shall be restricted to the confines of the building and outdoor dining area.
  37. Alcohol Ware. No alcohol shall be served in plastic or Styrofoam disposable cups.
  38. On-Sale. The sale of on-sale alcoholic beverages for consumption on the premises must be consumed on-site only. Operator must not provide options to allow for “to-go” cups or containers for patrons.
  39. Signage. The applicant shall post “no alcoholic beverages beyond this point” signs near the patio exit, subject to the review and approval by the Development Services Director or designee.
  40. Gross Sales. The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food during the same period. The licensee shall at all times maintain records which reflect separately the gross sales of food and the gross sales of alcoholic beverages of the licensed business. These records shall be kept on a quarterly basis, and shall be provided to City officials upon request and during Conditional Use Permit

Inspection Request. If the applicant is unable to provide such records, noncompliance may lead to revocation process.

41. Obstructions. No signs or objects shall be placed on the establishment entry/exit door that will obstruct visibility of the patio area.
42. Patron Provided Alcohol. Patrons must not be allowed to bring into the location any alcoholic beverage to be consumed within the establishment, except for bottles of wine, sparkling wine, or champagne brought into a dining area whereby the customer is charged a corkage fee.

### **BUILDING & SAFETY DIVISION**

43. Operator must obtain a Building and Safety Division permit for any minor and/or major exterior and interior work related to mechanical equipment, electrical, siding, ADA compliance, among many other items that will require a permit from Building.
44. Prior to the issuance of Building and Safety permits, all revisions must be resubmitted for review and approval by the Planning Division.

### **PUBLIC WORKS DEPARTMENT**

45. The operator shall obtain a Public Works permit for all work in or adjacent to the public right-of-way.

**SECTION 7.** The Secretary shall certify to the adoption of this Resolution and forward the original to the City Clerk.

**APPROVED AND PASSED THIS 13<sup>TH</sup> DAY OF NOVEMBER, 2024.**

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ALFREDO CAMACHO  
PLANNING COMMISSION CHAIRPERSON

**ATTEST:**

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ATA KHAN  
PLANNING COMMISSION SECRETARY

**APPROVED AS TO FORM:**

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MARCO A. MARTINEZ  
ASSISTANT CITY ATTORNEY

STATE OF CALIFORNIA)  
COUNTY OF LOS ANGELES) ss.  
CITY OF POMONA)

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

Pursuant to Resolution No. 76-258 of the City of Pomona, the time in which judicial review of this action must be sought is governed by California Code of Civil Procedure Section 1094.6.