



City of Pomona

PLANNING COMMISSION STAFF REPORT

DEVELOPMENT SERVICES | PLANNING DIVISION

November 13, 2024

FILE NO: MODIFICATION TO CONDITIONAL USE PERMIT – MODCUP-000278-2024
 A request to amend conditions of approval related to the operation set forth in an existing Conditional Use Permit (CUP). The project is requesting to expand the days and hours of live entertainment and to include accessory entertainment uses, such as: increasing variety of performers, inclusion of amplified music, and the installation of two stages, one inside of the existing Señor Sushi and El Jefe restaurants, and one outside within the patio area.

ADDRESS: 101 W. Mission Blvd., Suite 101 (APN: 8341-008-042, 8341-008-064)

APPLICANT: John Pena for restaurants Señor Sushi and El Jefe

PROJECT PLANNER: Irene Mouré, Assistant Planner

ENVIRONMENTAL REVIEW: This project is exempt for the California Environmental Quality Act (CEQA) pursuant to Section 15301 Existing Facilities of the 2024 California CEQA Statute and Guidelines.

STAFF RECOMMENDATION: Approve File No(s). CUP-000278-2024 and adopt Draft Planning Commission Resolution No. 024-24 (Attachment 1)

Project Information:

GENERAL PLAN DISTRICT:	Activity Center, Transit Oriented District: Core	ZONING:	Pomona Corridors Specific Plan (PCSP): Downtown Core Segment
TRANSECT:	T6-A	OVERLAY(S):	N/A
GENERAL PLAN DENSITY:	50 minimum DU/AC to over 100 du/acre maximum	CURRENT LAND USES:	Mixed-Use Development: General Commercial and Residential Condominium Units

Project Summary:

Señor Sushi and El Jefe restaurants have been operating since 2019. Both establishments are full-service restaurants that share the same kitchen and have a Type-41 (On-Sale General Eating Place) license type from the California Department of Alcohol Beverage Control (ABC) with a permitted live entertainment use. The live entertainment use is limited to acoustic music with a band of no more than 14 members. The applicant is requesting to amend conditions of approval related to hours of operation and live entertainment set forth

in PC Resolution No. 21-013 (CUP-015739-2021), PC Resolution No. 18-043 (MODCUP-10790-2018), PC Resolution No. 09-015 (CUPM-06-005) and PC Resolution No. 06-016 (CUP-06-005). A modification to a Conditional Use Permit is required in order to amend conditions of approval and other provisions related to the operation of the establishments. The project intends to construct one permanent stage and one portable stage for the outdoor patio area. See Table 1.

Table 1. Existing Conditions of Approval and Applicant-Requested Modifications

Operation Type	Existing Conditions of Approval to be Modified	Proposed Modifications
Operating Hours and Days	<p>Condition #17 (PC Resolution No. 21-03) – Live acoustic music conducted indoor shall cease no later than 10:30 PM, Monday through Sunday. Live acoustic music conducted outdoor in the patios is limited to Sundays only and shall cease no later than 5:00 PM.</p> <p>Condition #20 (PC Resolution No. 21-03) – The restaurant shall be permitted to operate between the following hours:</p> <p>10:00 AM to 11:30 PM Monday – Wednesday (no live acoustic members in the patio)</p> <p>10:00 AM to 1:00 AM Thursday – Saturday, holidays & holidays eves (no live acoustic members in the patio)</p> <p>Sunday 8:00 AM to 11:30 PM with acoustic music in the patio from 10:00 AM to 5:00 PM</p>	<p>Allow live entertainment Monday through Sunday, 7-days a week from 7:00 AM to 2:00 AM.</p>
Live Entertainment	<p>Condition #15 (PC Resolution No. 21-03) – Limited to an acoustic solo performer or group (no more than 14 people) in a designated area in the restaurant and shall serve as background on the patio areas to accompany diners/patrons of the restaurants.</p> <p>Condition #21 (PC Resolution No. 18-043) – DJ’s with amplified music shall be prohibited. At no time shall there be more than one (1) group or 14 performers performing at the restaurant.</p> <p>Condition #18 (PC Resolution No. 21-03) – Any outdoor amplification of music associated with restaurant is limited to 10 outdoor speakers installed on the exterior of the building and shall be allowed during operating hours. Any other form of amplified music is prohibited.</p>	<p>Allow performers, such as Disc Jockeys (DJs), solo or group performers utilizing either acoustic and/or amplified sound. Performances to take place both indoor and/or outdoor within patio area.</p>

Dancing	Condition #19 (PC Resolution No. 21-03) – Dancing (indoor and outdoor) and outdoor entertainment shall be prohibited on the premises at any time, without modification of this Conditional Use Permit (CUP-15739-2021).	Allow dancing both indoors and outdoors.
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Stages	N/A	Allow for the construction of two stages: 1 indoor and 1 outdoor within the patio area. The indoor stage is intended to be permanent. The outdoor, patio area stage is intended to be portable.
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Site History:

General Location

The subject site consists of three parcels that are approximately two acres in area. It is developed with two primary three-story buildings constructed in 2003. It is located at the northwest corner of West Mission Boulevard and South Garey Avenue.

The ground floor of each building consists of several general commercial uses ranging from restaurants, office space, and other retail and personal services outlets. The second and third floors of each building has a mix of general commercial uses and residential uses of 26 condominium units.

Adjacent Land Uses and Current Zoning Designations

The subject site is located within the Downtown Core Segment of the Pomona Corridors Specific Plan (PCSP). Properties to the north are within the Downtown Pomona Specific Plan Mixed Use – Central Business District; existing land uses include residential and commercial. To the south, properties are split between the Midtown Segment of the PCSP and the Neighborhood Edge District 5; existing land uses include residential. To the east, properties are within the same Midtown Segment of the PCSP; existing land uses include residential and commercial. To the west, properties are all within the Midtown Segment of the PCSP; existing land uses include residential and commercial.

Existing Entitlements for Subject Property:

The Planning Commission approved the following entitlements listed below:

PC Resolution No. 06-016 **Approved March 8, 2006** – CUP (CUP 06-005) to allow general alcohol (Type 47) ABC license and live music (solo performer) in conjunction with a bona fide restaurant. This PC Resolution is included as Attachment 2.

PC Resolution No. 09-015 **Approved May 27, 2009** – CUP Modification (CUPM 06-005) to allow an extension in closing hours from 10:30 p.m. to 2:00 a.m. This PC Resolution is included as Attachment 3.

PC Resolution No. 18-043 **Approved November 14, 2018** – CUP Modification (MODCUP-10790-2018) to allow changing one restaurant into two restaurants totaling 6,800 square feet, with a shared bona fide kitchen, and changes to exterior façade and patio expansion. This PC Resolution is included as Attachment 4.

PC Resolution No. 21-013 **Approved April 14, 2021** – CUP Modification (MODCUP-015739-2021) to expand alcohol into a new patio area for the existing Señor Sushi and El Jefe restaurants and to amend several conditions of approval related to the operation. This PC Resolution is included as Attachment 5.

Land Use Violations:

<u>Code Case File No.</u>	<u>Violation(s)</u>	<u>Status and Action</u>
CE-017655-2021	Noise complaints regarding amplified music; Operating outside of Conditions of Approval set forth in PC Resolution No. 18-043; Unpermitted fencing without a Planning Division permit; Unpermitted electrical and gas work without a Building and Safety Division permit.	Opened 03/10/2021 – Closed 05/25/2022. Noise levels were reduced. PC Resolution No. 21-013 approved for extended hours of operation and live entertainment. Building and Safety Permits were obtained.
CE-023829-2023	Noise complaints regarding live entertainment as acoustic band was using an amplified microphone.	Opened 04/18/2023 – Closed 06/02/2023. Pomona PD provided noise complaint report to the California Department of Alcohol Beverage Control (ABC).

Planning Staff contacted the Police Department’s District 2 Area Commander regarding the proposed request. No concerns were expressed by the Area Commander or Police Officers who patrol the District 2 area for the proposed amended conditions of approval regarding operations.

Planning Staff contacted Code Compliance Division regarding the proposed request. The Code Compliance Division Staff expressed concerns regarding anticipation of noise complaints from the residential condominiums above and adjacent to the establishment regarding operations for live entertainment.

California Department of Alcohol Beverage Control (ABC) Operating Restrictions:

1. **Live Entertainment Restrictions.** Entertainment provided shall not be audible beyond the area under the control of the licensee(s) as depicted on the most recent form, ABC-257 (Attachment 6), which is a form that provides details regarding operations and a diagram of the establishment illustrating the alcohol licensed premises. For Señor Sushi and El Jefe restaurants, ABC has placed live entertainment restrictions on the outdoor patio area to ensure noise levels are not audible beyond the patio area.
2. **Alcohol Use Location Restrictions.** Sales, service and consumption of alcoholic beverages shall be permitted on the patio area only between the hours of 8:00 a.m. and 12:30 a.m. daily.

Staff’s Analysis:

Standards for Live Entertainment

The applicant shall be conditioned to comply with all applicable standards noted below.

1. **Entertainment Business License:** A separate Entertainment Business License from the Pomona Business License Unit is required when requesting admission charge, cover fee, and/or minimum purchase of any attendee for any entertainment event.
2. **Operating Restrictions:** Live entertainment shall be restricted to the days, hours, and locations within the premises. Accessory entertainment uses, such as performers, DJs with amplified music, and dancing are limited to: Fridays, Saturdays, Holidays and Holiday Eves from 6:00 PM to 1:00 PM and Sundays from 6:00 PM to 12:00 AM. These accessory entertainment uses are restricted to indoors. At no time must accessory entertainment uses operate within the outdoor patio area.

Required Findings

Section 1160.D.4 – Findings and Decisions. A Conditional Use Permit must be acted upon by the Approving Authority 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.

1. **Land Use Scale & Intensity.** 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 for 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 and intensity of the existing use with the proposed modifications is consistent with the current land use scale intended for the Downtown Core Segment of the PCSP. This project is not proposing any major modifications that will expand the existing structure. The site will maintain previous conditions of approval regarding restaurant and on-site alcohol consumption uses.

2. **General Plan Consistency.** 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.

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

With the proposed modifications, the existing use will improve the shopping experience by providing patrons with the option for a full-service restaurant as well as a variety of live entertainment.

General Plan Goal 6B.11. Revitalize the Civic Center area with uses that complement the public realm and advance community development.

The multiple uses that range from general commercial to residential and artisanal manufacturing, Señor Sushi and El Jefe establishments are full service restaurants with expanded live entertainment complements the public realm.

General Plan Policy 6A. P6 Make Downtown revitalization a high priority.

Señor Sushi and El Jefe restaurants is maintaining an active presence in the general Downtown Pomona area by providing a successful and active establishment, which is assisting in revitalization of the Downtown Pomona area.

- 3. Zoning and Development Code/Specific Plan Consistency.** 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 an active area with a wide variety of uses. A Conditional Use Permit (CUP) is required in the Downtown Core Segment of the PCSP for live entertainment uses to assist in balancing diverse uses. The request is consistent with the applicable requirements of the PCSP and the Pomona Zoning and Development Code to obtain a CUP to allow and/or modify live entertainment uses.

- 4. Health, Safety, & General Welfare.** 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 request is a modification of approved conditions of approval related to operations of the full-service restaurant with live entertainment. In particular, the request is seeking to amend hours and days of operations related to live entertainment. Therefore, the proposed request will include conditions of approvals in place so that live entertainment operations are not detrimental to the health, safety, or general welfare to the surrounding residents.

- 5. Cumulative Impacts.** 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 proposed request to amend hours and days of operations related to accessory entertainment uses is subject to restrictions to ensure the days, hours, and location of the operations at the project site will 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.

Proposed Conditions of Approval:

Table 2. Proposed Conditions of Approval for Accessory Entertainment Use

Day(s)	Time	Entertainment Type and Location
Monday – Thursday	10:00 AM to 11:30 PM	Acoustic only. No live acoustic members in the patio area.
Friday, Saturday, Holidays & Holiday Eves	10:00 AM to 6:00 PM 6:00 PM to 1:00 AM	Acoustic only. No live acoustic members in the patio area. Performers and amplified music, indoors only. No Performers or amplified music in the patio area.
Sunday	10:00 AM to 5:00 PM 6:00 PM to 12:00 AM	Acoustic only. Live acoustic members may provide entertainment in the patio area. Performers and amplified music, indoors only. No Performers or amplified music in the patio area.

Security

Operator must maintain security guards at all entrances to the indoor restaurant on-site during accessory entertainment events. Operator to provide Planning Division with security contracts.

Nightclub and/or Lounge Use

Nightclubs and/or lounge uses are prohibited. Operator must maintain primary restaurant use for both establishments.

Noise Control

The roll-up door on the north side of the project site must remain closed during accessory entertainment events to reduce noise levels and prevent spillage of attendees from indoors of the premises to exterior walkways and parking areas.

Revocation of Conditional Use Permit

The Planning Commission must have authority to revoke a Conditional Use Permit, based upon one or more of the following finding set forth in Section 1160.D. of the Pomona Zoning and Development Code.

Noncompliance with Pomona City Code Section 18-301, et seq., and City Council Ordinance No. 3939 or such other ordinance enacted related to noise and vibration are grounds for revocation.

Attachments:

1. Draft PC Resolution No. 24-024
2. PC Resolution No. 06-16
3. PC Resolution No. 09-015
4. PC Resolution No. 18-043
5. PC Resolution No. 21-013
6. Sample of Department of Alcoholic Beverage Control Form ABC-257
7. Project Plans
8. Public Hearing Notice & Radius Map