

PC RESOLUTION NO. 09-015

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF POMONA APPROVING A CONDITIONAL USE PERMIT MODIFICATION (CUPM 06-005) TO ALLOW AN EXTENSION OF CLOSING HOURS FROM 10:30 P.M. TO 2:00 A.M., FRIDAY AND SATURDAY IN CONJUNCTION WITH ON-SALE GENERAL ALCOHOL LICENSE AND LIVE MUSIC FOR AN EXISTING BONA FIDE RESTAURANT (SAKURA ICHI) IN THE MU-CBD (MIXED USE-CENTRAL BUSINESS DISTRICT) OF THE DOWNTOWN POMONA SPECIFIC PLAN (DPSP) ON PROPERTY LOCATED AT 101 WEST MISSION BOULEVARD, #101

THE PLANNING COMMISSION OF THE CITY OF POMONA DOES RESOLVE AS FOLLOWS:

WHEREAS, the applicant, Yao Chi Yang, has filed an application for a Conditional Use Permit Modification (CUPM 06-005) request to allow an extension of closing hours from 10:30 p.m. to 2:00 a.m., Friday and Saturday for an existing restaurant (Sakura Ichi) located at 101 West Mission Boulevard, #101;

WHEREAS, pursuant to Section .580 of the Pomona Zoning Ordinance, which establishes criteria for a Conditional Use Permit, approval by the Planning Commission is required for modifications to a previously approved Conditional Use Permit (CUP 06-005);

WHEREAS, the Planning Commission of the City of Pomona has, after giving notice thereof as required by law, held public hearings on April 22, 2009 and May 27, 2009, concerning the requested Conditional Use Permit (CUP 09-001); 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 judgment has determined that pursuant to the Guidelines for Implementation of the California Environmental Quality Act (CEQA), that the project is Categorically Exempt under Section 15301, Class 1 (Existing Facilities), because the proposed project will utilize an existing structure where all public services and facilities are available to serve the project.

SECTION 2. In 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 .580.B of the Zoning Ordinance, the Planning Commission must make five (5) findings in order to approve Conditional Use Permit Modification (CUP 06-005). Based on consideration of the whole record before it, including but

not limited to, the staff report, 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:

1. *The proposed use at the particular location will contribute to the general well being of the neighborhood or community.*

The proposed extension of closing hours in conjunction with the on-sale general (beer, wine, and distilled spirits) license and live music will contribute to the general well being of the neighborhood and community by providing an existing restaurant with similar privileges enjoyed by other restaurants in the downtown area. Further, the service and convenience to the public of continued dining experiences with the requested hours of operation will not create adverse impacts to the surrounding community. The sale of alcohol will be incidental to the primary use, which is a bona fide restaurant. The live music will be limited to a solo artist, or small group, and be used as background music within the indoor area of the restaurant, and will be further limited to cease live music at 10:30 p.m., daily. Furthermore, the modification of closing hours, in conjunction with the on-sale alcohol use to the services provided will help ensure the economic viability of the restaurant use, thus increasing the likelihood that the business will continue operating and providing dining opportunities to local residents. The on-sale general alcohol license and limited live music will not affect the general welfare of the neighborhood.

2. *Such use will not, under the circumstances of the particular case, be detrimental to the health, safety, peace, or general welfare of persons residing or working in the vicinity or detrimental to the use, valuation, or enjoyment of property or improvements in the vicinity.*

The applicant's request to extend the closing hours of the restaurant will not be detrimental to the health, safety, peace or general welfare of people working and living in the area. The sale of beer, wine, and distilled spirits as mentioned will be incidental to the primary use. The live music will not have a negative impact because it will be limited to the indoor area and will cease at 10:30 p.m., as conditioned and currently allowed. Furthermore, to ensure that these uses do not adversely impact the community, conditions will be placed restricting the operations of the restaurant by prohibiting dancing, outdoor entertainment, and DJ amplified music.

3. *That the site for the proposed use is of adequate topography, size, and shape to accommodate said use, as well as all yards, spaces, walls, fences, parking, loading, landscaping, and any other features necessary to allow said use in the neighborhood.*

The subject site is approximately 16,712 square feet, sufficient enough in size to accommodate all of the development standards of the MU-CBD (Mixed Use - Central Business District) zone.

4. *The site abuts streets and highways adequate in width and improvements to carry traffic generations by the proposed use.*

The subject site is located on Mission Boulevard, a major arterial street with two (2) lanes for each direction going east and westbound that is capable of handling any additional vehicle trips generated by the modification of closing hours for the existing restaurant.

5. *The granting of such a conditional use permit will not adversely affect the General Plan of the City.*

Granting of the permit will not adversely affect the General Plan of the City in that the modification of closing hours for the existing restaurant, in conjunction with the on-sale general alcohol use and live music, as conditioned, will continue to add to the mix of services provided at the Mission Promenade, and would be consistent with the intent of the General Plan's *Commercial* land use category, including the following policy in the Economic Development Element:

“It is the policy of the City of Pomona to encourage, with all means possible, the economic development and redevelopment of Pomona by the private sector.”

SECTION 3. Based upon the above findings, the Planning Commission hereby approves Conditional Use Permit Modification (CUPM 06-005), subject to the following conditions:

PLANNING DIVISION

General Conditions

1. 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 May 27, 2009, and as illustrated in the stamped approved plans dated May 27, 2009. 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 Planning Manager.
2. This approval shall lapse and become void if the privilege authorized is not utilized within one (1) year from the date of this approval.
3. The applicant shall retain a copy of this resolution on the premises at all times and be prepared to produce it immediately upon the request of any City representative.

4. The project shall be subject to an appeal period of twenty (20) days. A written appeal may be filed by one or more City Council members, the applicant, or any person owning property within four hundred (400) feet of the exterior boundary of the subject site.
5. 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 City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. City shall promptly notify the applicant of any Action brought and City shall cooperate with applicant in the defense of the Action.
6. In order to ensure future owners are made aware of conditions of approval, the applicant shall within 30 days of the date of this Resolution ensure that it is recorded with Los Angeles County Recorder's office and recorded copies forwarded to the City of Pomona Planning Division.
7. The property owner shall ensure that future tenants are provided with the conditions of approval and that tenants sign a lease addendum confirming that they have read and understand all conditions relative to operation of the contractor's storage yard.
8. In case of a violation of any of the conditions of approval and/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 a 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.

9. The applicant and any successor in interest shall sign a certificate of compliance stating that:
 - a. They have read and understand all the conditions of approval applicable to their project;
 - b. That they are familiar with the daily operations of the use; and
 - c. That the use will operate in compliance with the conditions of approval.
10. In the event of a violation of any of the conditions of approval, and/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 for reimbursing the City for all costs 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.

Operational Conditions

11. The restaurant establishment shall be operated as a “bona fide public eating place” as defined by the Business and Professions Code, Section 23038.
12. At all times when the premise is open for business the sale and service of food shall be available.
13. The property owner shall remove any graffiti on the project site within 24 hours of discovery. The paint utilized to cover the graffiti must 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 Planning Manager.
14. Loitering or panhandling on the premises shall be prohibited.
15. Live music shall be limited to a solo performer or group (no more than three (3) people) in a designated area in the restaurant and shall serve as background music (amplified or non-amplified) to patrons of the restaurant. DJ’s with amplified music shall be prohibited. At no time shall there be more than one (1) group or performer performing in the restaurant.
16. There shall be no live entertainment, amplified music, or any other activity on the premises that exceeds noise and vibration parameters of Pomona City Code, Chapter 18, Article VII, and City Council Ordinance No. 4110 at any time.

17. Live music shall be conducted entirely indoors and shall cease no later than 10:30 p.m., Sunday through Saturday.
18. Any outdoor amplification of music associated with the restaurant shall be prohibited.
19. Dancing (indoor and outdoor) and outdoor entertainment shall be prohibited on the premises at any time, without modification of this Conditional Use Permit.
20. When live entertainment is being conducted, the front doors leading to the restaurant shall remain closed at all times to permit normal servicing and customer access.
21. The restaurant shall be permitted to operate between the following hours:
10:00 a.m. to 10:30 p.m., Sunday through Thursday, and;
10:00 a.m. to 2:00 a.m., Friday and Saturday (2 a.m. Sunday morning).
22. All crimes occurring inside and immediately outside of the location shall be reported to the Police Department at the time of the occurrence.
23. At anytime when the licensee is absent from the premises, a responsible party shall be designated who can respond to any inquiries from City Officials.

Alcohol-Related Conditions

24. 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 employees shall be required to complete "Licensee Education on Alcohol and Drugs" training that is provided by the California Department of Alcohol and Beverage Control 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-47 license.
25. 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.
26. All distilled spirits within the restaurant shall be displayed and stored behind the bar on shelves and/or in a refrigerator in a secured area, with the exception of the well area of the bar.
27. All exterior window signage, which advertises the sale or availability of alcohol, shall be prohibited.
28. No display or sale of alcohol shall be made from an ice tub.

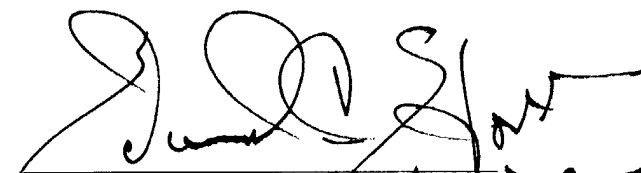
29. Sales and deliveries of alcoholic beverages under the on-sale privileges of the license shall be restricted to the confines of the building and outdoor dining area.
30. At no time shall there be any admission charge, cover fee, or minimum purchase requirement requested of any attendee for any public event, gathering or assembly without first obtaining an entertainment business permit from the City as required under Pomona City Code section 30-101, *et seq.*
31. There shall be no pay telephones installed within the enclosed portion of the premises equipped to receive incoming calls. There shall be no new pay phones of any kind installed on the exterior of the premises.
32. No alcohol shall be served in plastic or Styrofoam disposable cups.
33. The sale of alcoholic beverages for consumption off the premises shall be prohibited.
34. The applicant shall post “no alcoholic beverages beyond this point” signs near the patio exit, subject to the review and approval of the Planning Division.
35. 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.
36. No signs or objects shall be placed on the restaurant entry/exit door that will obstruct visibility of the patio area.
37. Patrons shall not be allowed to bring into the location any alcoholic beverage to be consumed within the establishment, except for bottles of wine or champagne brought into a dining area whereby the customer is charged a corkage fee.

PUBLIC WORKS – BUILDING, WATER ENGINEERING, UTILITY SERVICES

38. The improvements proposed shall conform to all requirements by the Building, Water Engineering, and Utility Services Divisions of the Public Works Department subject to the International Building Code, California Building Code, and all other applicable codes regulated by the City, State, and Federal government.

SECTION 4. The Secretary shall certify to the adoption of this Resolution and forward the original to the City Clerk.


APPROVED AND PASSED THIS 27TH DAY OF MAY, 2009


ARTURO JIMENEZ EDWARD C. STARR
PLANNING COMMISSION CHAIRPERSON
ACTING

ATTEST:


BRAD JOHNSON
PLANNING COMMISSION SECRETARY

APPROVED AS TO FORM:


ANDREW JARED
ASSISTANT CITY ATTORNEY

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

AYES: Starr, Rogers, Rothman and Mosier
NOES: None.
ABSTAIN: Jimenez
ABSENT: Perez

"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 Sec. 1094.6 C.C.P."