

PC RESOLUTION NO.

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF POMONA, CALIFORNIA APPROVING MODIFICATION OF CONDITIONAL USE PERMIT (MODCUP 10790-2018) MODIFYING CONDITIONAL USE PERMIT (CUP 06-005) AND CONDITIONAL USE PERMIT (CUPM 06-005) TO ALLOW CHANGING ONE RESTAURANT INTO TWO RESTAURANTS TOTALING 6,800 SQUARE FEET, WITH A SHARED BONA FIDE KITCHEN, AND CHANGES TO EXTERIOR FAÇADES, PATIO EXPANSION AND MODIFICATION OF CERTAIN CONDITIONS AT 101 WEST MISSION BOULEVARD #101 LOCATED IN THE DOWNTOWN CORE SEGMENT OF THE POMONA CORRIDORS SPECIFIC PLAN (APN 8341-008-042).

WHEREAS, the applicant, John Peña for Mission Oak Group LLC, has filed an application for a Modification of Conditional Use Permit (MODCUP 10790-2018) Modifying Conditional Use Permit (CUP 06-005) and Conditional Use Permit (CUPM 06-005) to allow a change in floor plan, exterior façades and patio expansion and modification to certain conditions of approval at 101 West Mission Boulevard #101;

WHEREAS, pursuant to Section .580 of the Pomona Zoning Ordinance, which established criteria for a the approval of a Conditional Use Permit; approval by the Planning Commission is required for modifications to a previously approved Conditional Use Permits (CUP06-005) and (CUPM06-005);

WHEREAS, the Planning Commission of the City of Pomona has, after giving notice thereof as required by law, held a public hearing on November 14, 2018, concerning the requested Conditional Use Permit Modification (MODCUP 10790-2018); 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, (Class 1—Existing Facilities) in that the action involves the minor alteration in the floor plan of an existing building for the proposed 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 .580.B of the Pomona Zoning Ordinance (PZO), the Pomona Corridor Specific Plan (PCSP), as the Planning Commission must make findings in order to approve Conditional Use Permit (CUP 10790-2018). 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. *That the proposed use at the particular location will contribute to the general well being of the neighborhood or community.*

The proposed change in floor plan and outdoor patio and façade upgrades in conjunction with the on-sale general license and limited live entertainment will contribute to the general well-being of the neighborhood and community by providing a unique dining experience for local residents. The expansion of the general alcohol sales on the patio is incidental to the primary use which is a bona fide restaurant. The live entertainment in the patio areas will not adversely impact the surrounding community as it is limited to an acoustic solo artist (maximum of three people) and be used as background music on Sundays only. As such, the live entertainment will cease operation at 10:30 p.m. daily except for Sunday which will cease at 4:30 p.m. (Condition # 16, 18, 22) The upgrades to the west building elevation will enhance the overall building which is visible from a major corridor.

2. *That such use will, under the circumstances of the particular use, not 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 change the floor plan, expand the general alcohol use onto the patio areas, have live entertainment in the patio on Sundays, and construct various exterior building modifications to the west building elevation will not be detrimental to the health, safety, peace or general welfare of people working or living in the area. The alcohol is in an incidental use to the primary use and the live music will be limited to a solo artist which may only be expanded onto the patio areas on Sundays only. The live music will not have a negative impact as it will cease operation by 10:30 p.m. daily except for Sundays (4:30 p.m.) and conditions have been placed restricting the operation of the restaurants by prohibiting dancing, DJ or amplified music (Conditions #16, 18, 22). Lastly, the subject site is sufficiently removed from sensitive uses except for the condominiums located on the third floor of the complex; however, restrictions put in place will assure no impacts will be created by the operation.

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 proposed use will occupy an existing 6,800 square foot commercial unit that is part of a larger mixed-use complex which shares the parking lot to the west and is within the vehicle parking district which provides 2,312 parking spaces. Moreover, the site is in a Transit

Oriented District which is also within a .25 mile of metrolink stop and bus transit stops.

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

The site abuts Mission Boulevard and Garey Avenue which are Major arterial streets that are capable of handling any additional trips generated by the modifications to the existing restaurants. The restaurants are part of a larger mixed-use complex that share the adjacent parking to the west and is within the vehicle parking district; therefore there is ample amount of parking.

5. *That granting of such conditional use permit will not adversely affect the General Plan of the City and conforms to the provisions of the zoning ordinance.*

The project site has a General Plan land use designation of Transit Oriented District Core (western half) and Activity Center (eastern half) which accommodates a wide range of commercial services, including restaurants. In addition, the project is consistent with General Plan Goals 6A.G4, 6B.G8, and 7A.G2; and Policies 6A.P6 and 6B.P8 which encourage Pomona to be a self-sustaining city by supporting a range of uses to meet the needs of the residents. As such, the project is in compliance with the applicable code sections of the PZO, PCSP, and DTPSP, as conditioned. Therefore, the proposed project is consistent with the General Plan and provisions of the zoning ordinance.

SECTION 4. Based upon the above findings, the Planning Commission hereby approves Conditional Use Permit Modification (MODCUP 10790-2018) 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. 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 14, 2018 and as illustrated in the stamped approved plans. 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 modification that do not affect the overall intent of the approved project, may be reviewed and approved by the Development Services 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 (November 14, 2019), in accordance with Pomona Zoning Ordinance Section .580.I. The Planning Commission may extend this

- period for one (1) year upon receipt of an application for a Time Extension request submitted by the applicant at least thirty days before the expiration 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 request of any City representative.
 4. The applicant shall comply with Resolution 06-016 and Resolution 09-015 unless modified herein.
 5. The project is subject to a twenty (20) day appeal period. Written appeals may be filed with the City Clerk within twenty days by one or more City Council members, the applicant, or any person owning property within four hundred feet of the exterior boundary of the applicant's property. The appeal shall be filed with the City Clerk within twenty days from the date of action by the Planning Commission.
 6. 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.
 7. 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.
 8. 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 restaurant.
 9. 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.

10. 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.
11. 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

12. The restaurant establishments shall be operated as a “bona fide public eating place” as defined by the Business and Professions Code, Section 23038.
13. At all times when the premise is open for business the sale and service of food shall be available.
14. 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 areas is noticeable distinguishable from the rest of the structure, the property owner shall paint portion of the building to minimize the disparity, subject to the approval of the Development Services Manager. Original surface materials installed and designed to not accept paint material such as stone, metal, brick, faux stone, veneers, etc. shall be restored to original finish with methods accepted and agreed to by the Development Services Manager.
15. Loitering or panhandling on the premises shall be prohibited.
16. Live music shall be limited to an acoustic solo performer or group (no more than three (3) people) in a designated area in the restaurant and shall serve as background or trio on the patio areas to accompany diners/patrons of the restaurant is acceptable. 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.
17. 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.

18. Live acoustic music conducted indoor shall cease no later than 10:30 p.m., Monday through Saturday. Live acoustic music conducted outdoor in the patio is limited to Sundays only and shall cease no later than 4:30 p.m.
19. Any outdoor amplification of music associated with the restaurant shall be prohibited.
20. Dancing (indoor and outdoor) and outdoor entertainment shall be prohibited on the premises at any time, without modification of this Conditional Use Permit.
21. When live acoustic entertainment is being conducted Monday through Saturday, the front doors leading to the restaurant shall remain closed at all times to permit normal servicing and customer access.
22. The restaurant shall be permitted to operate between the following hours:
10:00 a.m. to 11:30 p.m. Monday through Thursday
10:00 a.m. to 12:30 a.m. Friday, Saturday, Sunday, and holiday eves
8:00 a.m. to 11:30 p.m. Sunday with a trio in **patio (Trio only allowed from 11:00 a.m. to 4:30 p.m. No amplified music by DJ or live band/no club-like form of music and entertainment on the patio is permitted such as with the *Detox at the Sky Bar* in Pomona)**
23. All crimes occurring inside and immediately outside of the location shall be reported to the Police Department at the time of the occurrence.
24. 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:

25. 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.
26. 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).
27. 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.

28. 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.
29. All exterior window signage, which advertises the sale or availability of alcohol, shall be prohibited.
30. No display or sale of alcohol shall be made from an ice tub.
31. 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.
32. 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.
33. No alcohol shall be served in plastic or Styrofoam disposable cups.
34. The sale of alcoholic beverages for consumption off the premises shall be prohibited.
35. 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.
36. 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.
37. No signs or objects shall be placed on the restaurant entry/exit door that will obstruct visibility of the patio area.
38. 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.

SECTION 5. The Secretary shall certify to the adoption of this Resolution and forward the original to the City Clerk.

APPROVED AND PASSED THIS 14th DAY OF NOVEMBER, 2018.

KYLE BROWN
PLANNINGCOMMISSION CHAIRPERSON

ATTEST:

MARIO SUAREZ, AICP
PLANNING COMMISSION SECRETARY

APPROVED AS TO FORM:

ANDREW JARED
ASSISTANT CITY ATTORNEY

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

AYES:
NOES:
ABSTAIN:
ABSENT:

"Pursuant to Resolution **No.** 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."