

## **PC RESOLUTION NO.**

### **A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF POMONA, CALIFORNIA APPROVING A MODIFICATION OF CONDITIONAL USE PERMIT (CUP 013191-2019) TO PERMIT THE SALE OF ALCOHOLIC BEVERAGES (ON-SALE GENERAL – TYPE 47 ABC LICENSE) FOR ON-SITE CONSUMPTION IN CONJUNCTION WITH AN EXISTING RESTAURANT WITH ANCILLARY LIVE ENTERTAINMENT ON A COMMERCIAL PROPERTY LOCATED AT 300 SOUTH THOMAS STREET (ALSO KNOWN AS 184 WEST THIRD STREET).**

**WHEREAS**, the applicant, John Peña, has filed an application for Conditional Use Permit (CUP 013191-2019) to allow the sale of alcoholic beverages (On-sale general – Type 47 ABC license) for on-site consumption in conjunction with an existing restaurant with ancillary live entertainment located at 300 South Thomas Street/184 West Third Street.;

**WHEREAS**, the subject site is currently located within the Downtown Pomona Specific Plan Mixed-Use Central Business District;

**WHEREAS**, the subject site is currently designated “Transit Oriented District: Core” by the City’s General Plan;

**WHEREAS**, the approval of a Conditional Use Permit by the Planning Commission is required for the on-sale of alcoholic beverages, pursuant to Section .580 of the Pomona Zoning Ordinance;

**WHEREAS**, on September 24, 2008, the Planning Commission adopted Planning Commission Resolution No. 08-046 approving Conditional Use Permit (CUP 08-027) allowing the establishment of a bar with the sale of beer, wine and distilled spirits for on-site consumption (ABC License Type 48) and off-site consumption (ABC License Type 21);

**WHEREAS**, on January 12, 2009, the City Council adopted City Council Resolution No. 2009-4 approving the Finding for Public Convenience or Necessity for a Type-48 (on-sale general) and Type 21 (off-sale general) for the subject bar that was located in a census tract with an undue concentration of on-sale alcohol licenses and within a high-crime police reporting district;

**WHEREAS**, on May 25, 2011, the Planning Commission adopted Planning Commission Resolution No. 11-013 approving Modification of Conditional Use Permit (MCUP 08-027) to provide modifications allowing the addition of live entertainment and to expand and modify the floor plan for a previously approved bar at property located at 184 West Third Street;

**WHEREAS**, on August 24, 2011 the Planning Commission adopted Planning Commission Resolution No. 11-027 approving Modification of Conditional Use Permit (MCUP 08-027-2) which eliminated the sale of beer and wine for off-site consumption;

**WHEREAS**, on June 25, 2014 the Planning Commission adopted Planning Commission Resolution No. 14-036 approving a modification of Conditional Use Permit (MCUP 08-027-03) to allow an approximately 2,860 square foot expansion and an exterior entrance to the basement level at a tequila bar located at 184 West Third Street;

**WHEREAS**, the Planning Commission, after giving notice thereof as required by law, held a public hearing on February 12, 2020, concerning the requested Modification of Conditional Use Permit (CUP-013191-2019); and

**WHEREAS**, the Planning Commission has carefully considered all pertinent testimony, the recommendation of the Planning Division staff and the staff report offered in the case as presented at said noticed 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), the project is Categorically Exempt under Section 15301, (Class 1 – Existing Facilities) in that the proposed project involves licensing and minor alteration of an existing building.

**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 Zoning Ordinance, the Planning Commission must make findings in order to approve Conditional Use Permit (CUP 013191-2019). 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 sale of alcoholic beverages (On-Sale general – Type 47 ABC license) for on-site consumption will enhance the operation of the restaurant by providing a service and convenience to the public. The sale of alcohol will be incidental to the primary use, which is a restaurant. Furthermore, the addition of alcohol to the services provided will help ensure the economic viability of the restaurant, thus increasing the likelihood that the business will

continue operating and providing commercial opportunities to local residents. on-sale (beer and wine – Type 47) alcohol license will not negatively affect the general welfare of the neighborhood.

2. *That such use will, under the circumstances of the particular case, 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.*

As conditioned, the applicant's request will not be detrimental to the health, safety, peace, or general welfare of persons residing or working in the vicinity since the project is in substantial conformance with the development standards and use requirements of the Pomona Zoning Ordinance. The project will not be detrimental to the use, valuation, and enjoyment of property and improvements in the vicinity since the sale of alcohol is for on-site consumption only.

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 an approximately 6,000 square foot tenant space with a first floor and basement floor and two outdoor dining spaces within a larger commercial building. The site will be sufficient enough in size to accommodate all of the development standards of the Mixed Use Central Business District zoning district.

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

The subject site takes access from Third Street and Thomas Street, which are capable of handling any additional vehicle trips generated by the proposed use. Moreover, the subject site is within a Transit-Oriented Development adjacent to the Downtown Pomona Metrolink and Foothill Transit bus stops, thereby further reducing the number of vehicular trips.

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 proposed project is in the "Transit Oriented District Core" land use designation under the Pomona General Plan. The project conforms to the goals and policies found in the Plan, specifically to "ensure that transit oriented districts are walkable, active, and well integrated into surrounding City districts and neighborhoods" (Goal 6B.G4), as the proposed action would further activate the public right-of-way along Third Street, and "provide additional entertainment and cultural venues within the Arts District." (Policy

6B.P8).

**SECTION 4.** Based upon the above findings, the Planning Commission hereby approves Conditional Use Permit (CUP 013191-2019) 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 February 12, 2020 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 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 (February 12, 2021), 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 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.
4. 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.

5. In case of 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 violation 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.
6. 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.
7. No temporary signs related to any activity on the premise shall be placed or allowed to remain within landscape areas, public right-of-way areas adjacent to the subject site (e.g. telephone poles, traffic signs, and city trees) or other portion on the exterior of the building. The only temporary signs allowed shall be properly permitted banners signs by permit per the City's sign ordinance. Signs placed in any window of the premises shall comply with the City's sign ordinance, and all other conditions under this Conditional Use Permit.
8. The property owner shall provide regular maintenance and cleaning of all exterior walkways, patios, sidewalks, and landscaped parkways in compliance with Pomona City Code 62-351 et seq.
9. There shall be adequate lighting around the property at all times (minimum of 1-foot candle). This shall be done in such a fashion that persons standing outdoors at night are easily identifiable by law enforcement personnel. Lighting shall be screened so that no spillover occurs on the adjacent properties.
10. Before issuance of a zoning clearance and business license, 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.

#### **On-Sale Type 47 ABC License Conditions**

1. **Hours:** The establishment shall only sell alcohol under a Type 47 license during the hours permitted by Alcoholic Beverage Control (ABC). The establishment shall be operated as a “bona-fide public eating place” as defined by the Business and Profession Code Section 23038. The ground floor and basement level shall be operated together as part of the same single land use and business, which is a bona-fide restaurant with ancillary live entertainment.
2. **Sales:** Sales of alcoholic beverages shall be limited to a Type 47 license. Sales of alcoholic beverages under the on-sale privileges of this license shall be restricted to the interior gross floor area of the first floor and basement, along with designated outdoor dining areas, as indicated in the stamped and approved site plan for this resolution, dated February 12, 2020. The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food during the same period. The Applicant or other person issued an ABC license for the Premises (“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.
3. **Promotion:** No display or sale of alcohol shall be made from an ice tub. Storefront windows shall be kept clear of at all times from paper, paint, cardboard or any other material used for signage. All exterior windows shall be clear glass with no tinting or window coverings either interior or exterior. All interior window signage and exterior signage of any kind, which advertises the sale or availability of alcohol, shall be prohibited.
4. **Training:** The employees who sell 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 or equivalent responsible beverage service program within thirty (30) days of hire.
5. **Site:** Loitering or panhandling on the premises shall be prohibited. Overnight parking of vehicles, including recreational vehicles (R.V.’s) on the premises shall be prohibited. Signs prohibiting overnight parking shall be placed throughout the parking lot area. No vending

machines of any kind shall be installed outdoors within the project site. There shall be no pay telephones installed within the enclosed portion of the premises equipped to receive incoming calls. There shall be no new payphones of any kind installed on the exterior of the premises.

6. **Security:** Designated areas for storage of beer and wine shall be equipped with a locking mechanism. Interior and exterior site video surveillance equipment shall be provided with signage advising customers that video recording devices are in use. Recordings shall be digital and recorded in high-definition, kept a minimum of ninety (90) days and shall record all activity on surrounding public right-of-ways as well as the subject site. Prior to installation of the video surveillance equipment, a video surveillance plan shall be submitted for review and the privileges afforded under this resolution shall not be enjoyed prior to approval of such video surveillance plan by the Pomona Police Department.
7. **Police/City Contact:** All crimes occurring inside and outside of the location shall be reported to the Police Department at the time of the occurrence. At any time when the licensee is absent from the premises, a responsible party shall be designated who can respond to any inquiries from City officials. The business shall provide a list annually of no less than three employees who can be contacted twenty-four hours a day, to the Pomona Police Department's Records Bureau. The list of names will be used to facilitate a Police response to the location in the event of an emergency or other problem that requires entry into the location during non-business hours.
8. **Noise:** 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.

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

**APPROVED AND PASSED THIS 12<sup>th</sup> DAY OF FEBRUARY, 2020.**

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KYLE D. BROWN  
PLANNING COMMISSION CHAIRPERSON

**ATTEST:**

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GUSTAVO N. GONZALEZ, AICP  
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."