

**PC RESOLUTION NO. 24-024**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF POMONA APPROVING MODIFICATION OF CONDITIONAL USE PERMIT (MODCUP-000278-2024; MODCUP-015739-2021; CUPM-06-005; CUP-06-005) TO AMEND CONDITIONS OF APPROVAL REGARDING LIVE ENTERTAINMENT OPERATIONS FOR THE EXISTING SEÑOR SUSHI AND EL JEFE RESTAURANTS AT 101 WEST MISSION BOULEVARD, SUITE #101 (APN 8341008042, 8341008064)**

**WHEREAS**, the applicant, John Pena for Mission Oak Group LLC, has filed an application for a Modification of Conditional Use Permit (MODCUP-000278-2024) modifying the following: Conditional Use Permit (CUP-06-005), Conditional Use Permit (CUPM-06-005), Modification of Conditional Use Permit (MODCUP-010790-2018), and Modification of Conditional Use Permit (MODCUP-015739-2021) to amend conditions of approval related to live entertainment operations. Such amendments include: increasing musical acts to include disc jockeys (DJs) with an amplified sound system, vocalists, and live bands inside the restaurant establishment and outdoor in the patio area; to allow dancing indoors and outdoors in the patio area; and to construct two stages indoors and outdoors in the patio area at a Señor Sushi And El Jefe restaurant establishments.

**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 live entertainment uses; approval by the Planning Commission is required for Modifications to previously approved Conditional Use Permits (CUP-06-005), (CUPM-06-005), (MODCUP-000278-2024), and (MODCUP-015739-2021);

**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 Modification (MODCUP-000278-2024); 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 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.

- 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.*

*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.

- 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 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 requirements of the PCSP to obtain a CUP to allow and/or modify live entertainment 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 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.

- 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 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.

**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 the Conditional Use Permit 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 Development Plan Review.

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 Zoning Administrator.
6. Conditions of Approvals on Plans. Prior to plan check submittal, the applicant shall include all conditions of approval from Planning Commission Resolution No. 24-024 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 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.
9. 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.
10. 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**

11. Restaurant Services. The restaurant establishments shall be operated as a “bona fide public eating place” as defined by the Business and Professions Code, Section 23038. At all time when the premise is open for business, the sale and service of food shall be available.
12. Live Music.
  - a. Hours. Accessory entertainment use operations shall be permitted during the following hours:

| <u>Day(s)</u>      | <u>Time</u>          | <u>Entertainment Type &amp; Location</u>                                 |
|--------------------|----------------------|--|
| Sunday to Thursday | 10:00 AM to 10:00 PM | Performers and amplified music permitted in the outdoor patio area only. |

---

|   |                      |  |
|---|----------------------|--|
| Friday, Saturday, Holidays & Holiday Eves | 10:00 AM to 12:00 AM | Performers and amplified music permitted in the outdoor patio area only. |
| Monday to Sunday                          | 10:00 AM to 2:00 AM  | Performers and amplified music permitted indoors only.                   |

- b. Outdoor amplification. Outdoor amplification music is prohibited during accessory entertainment events. Any outdoor amplification of music associated with the restaurants is limited to the ten (10) outdoor speakers installed on the exterior of the building is permitted.
  - c. 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.
  - d. Nightclub and/or Lounge Use. Nightclubs and/or lounge uses are prohibited. Operator must maintain primary restaurant use for both establishments.
13. Dancing. Dancing shall be permitted indoors only. Dancing area must be clear of tables and chairs as well as any other obstructions. Dancing area to maintain a clear path of travel to exists, restroom facilities, and outdoor areas.
14. 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 Sign Permit from the Planning Division.
15. Loitering. Loitering and panhandling on the premises shall be prohibited.
16. 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.
17. Crime Reporting. All crimes occurring inside and immediately outside of the location shall be reported to the Police Department at the time of occurrence.
18. 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.
19. Live Entertainment Permit. Applicant must obtain a live entertainment permit from the Business License Unit prior to any accessory entertainment events.
20. Conditional Use Permit Inspection. Within six (6) months of approval (May 13, 2025). The 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 Inspection 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.

21. Violations. 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.
22. Planning Commission Review. The Planning Commission directed staff to schedule a public hearing before the Commission within six (6) months of approval (May 13, 2025) to ensure the applicant is in compliance with the provisions set forth herein and the operations are not constituting a nuisance that are detrimental to the public peace, health, safety, or welfare of residents and visitors.
23. 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**

24. California Department of Alcohol Beverage Control (ABC) Operating Restrictions. ABC placed operating restrictions on restaurant establishments. If ABC rescinds or increases restrictions, applicant must provide the Planning Division evidence within one (1) week of reduced or new restrictions. Applicant must maintain and remain in compliance with all ABC operation restrictions, such as:
  - a. Entertainment provided shall not be audible beyond the area under the control of the licensee(s) as depicted on the most recently certified form ABC-257.
  - b. 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. each day of the week.

25. 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
26. 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).
27. 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.
28. Display and Storage of Distilled Spirits. 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. Promotion. All exterior window signage, which advertises the sale or availability of alcohol, shall be prohibited.
30. Alcohol Display. No display or sale of alcohol shall be made from an ice tub.
31. Sales and Delivers 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.
32. Alcohol Ware. No alcohol shall be served in plastic or Styrofoam disposable cups.
33. Off-Sale. The sale of alcoholic beverages for consumption off the premises shall be prohibited.
34. 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.
35. 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.

36. Obstructions. No signs or objects shall be placed on the restaurant entry/exit door that will obstruct visibility of the patio area.
37. 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**

38. This project must comply with 2022 California Building Codes.
39. The design must be reviewed and stamped by an architect or engineer licensed in the State of California – (Business and Professions code Sections 5537, 5538 and 6737.1)
40. A building permit shall be obtained for the proposed construction and site development. The design of the building shall comply with the 2022 California Building Codes.
41. Manufacture’s specification and calculations for all stages must be submitted for plan review and approval.
42. Applicant must provide proposed occupant load for entertainment and dining areas.
43. Site plan must identify all ADA path of travel from parking areas to restaurant establishments.

### **COUNTY OF LOS ANGELES FIRE DEPARTMENT, FIRE PREVENTION DIVISION**

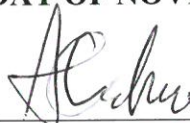
44. Review and approval by the County of Los Angeles Fire Department, Fire Prevention Engineering Section Building Plan Check Unit is required for this project prior to building permit issuance. Contact the Fire Prevention Engineering Unit at 909 569-0758 for additional Fire Department requirements and EPICLA submittal instructions.

### **PUBLIC WORKS DEPARTMENT**

45. Applicant must obtain a Public Works Department permit for all work in the 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.**



\_\_\_\_\_  
ALFREDO CAMACHO  
PLANNING COMMISSION CHAIRPERSON

**ATTEST:**



\_\_\_\_\_  
GEOFFREY STARNs, AICP, AIA, LEED AP  
PLANNING COMMISSION SECRETARY

**APPROVED AS TO FORM:**



\_\_\_\_\_  
MARCO A. MARTINEZ  
ASSISTANT CITY ATTORNEY

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

AYES: Camacho, Ontiveros, Molina, VanderMolen, Rodriguez.  
NOES: None.  
ABSTAIN: None.  
ABSENT: Miranda Meza.

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.