

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING, SUBJECT TO CONDITIONS, A CONDITIONAL USE PERMIT TO ALLOW THE OPERATION OF A DRINKING ESTABLISHMENT (OCCUPANCY GREATER THAN 250) WITH LATE NIGHT USE UNTIL 2:00 AM IN THE BASEMENT OF AN EXISTING COMMERCIAL BUILDING, INCLUDING EXTENDED CONSTRUCTION HOURS (MONDAY THROUGH SATURDAY 5:00 AM TO 7:00 PM) ON AN APPROXIMATELY 0.28-GROSS-ACRE SITE, LOCATED AT THE SOUTHWEST CORNER OF WEST SANTA CLARA STREET AND SOUTH 1ST STREET (2 WEST SANTA CLARA STREET) (APN: 259-40-074)

FILE NO. CP23-003

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on March 3, 2023, an application (File No. CP23-003) was filed by the owner and applicant, Michael Pelletier, with the City of San José for a Conditional Use Permit to allow the operation of a drinking establishment (occupancy greater than 250) with late night use until 2:00 AM in the basement of an existing commercial building, including extended construction hours (Monday through Saturday 5:00 AM to 7:00 PM), on that certain real property situated in the DC Downtown Primary Commercial Zoning District and located at the southwest corner of West Santa Clara Street and South 1st Street (2 West Santa Clara Street, APN: 259-40-074, San José, which real property is sometimes referred to herein as the “subject property”); and

WHEREAS, the subject property is all that real property more particularly described in Exhibit "A," entitled “Legal Description,” which is attached hereto and made a part hereof by this reference as if fully set forth herein; and

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, this City Council conducted a hearing on said application, notice of which was duly given; and

WHEREAS, at said hearing, this City Council gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter; and

WHEREAS, at said hearing, this City Council received in evidence a plan for the subject property entitled, “Conditional Use Permit For: 2 West Speakeasy” dated July 17, 2023, said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested herein, and said plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

WHEREAS, said public hearing before the City Council was conducted in all respects as required by the San José Municipal Code and the rules of this City Council; and

WHEREAS, this City Council has heard and considered the testimony presented to it at the public hearing, and has further considered written materials submitted on behalf of the project applicant, City staff, and other interested parties;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

After considering evidence presented at the public hearing, the City Council finds that the following are the relevant facts and findings regarding this proposed project:

- 1. Site Description and Surrounding Uses.** The subject 0.28-gross-acre site is located at the southwest corner of West Santa Clara Street and South First Street (2 West Santa Clara Street) in the Downtown part of San José. The site is currently developed with a nine-story office building. The site is surrounded by commercial office uses to the north, south, east, and west. The subject site is currently accessible to pedestrians from both West Santa Clara and South First streets.
- 2. Project Description.** The project consists of a Conditional Use Permit to allow the operation of a drinking establishment with late night use until 2:00 AM in the basement

of an existing commercial building, including extended site construction hours (Monday through Saturday 5:00 AM to 7:00 PM) on an approximately 0.28-gross-acre site.

The drinking establishment will occupy the basement area of the existing commercial office building at 2 West Santa Clara Street. The drinking establishment will operate with a Type 48 California Department of Alcoholic Beverage Control (ABC) license. There will be no food kitchen, although bar snacks may be served. No minors are allowed on the premises. Depending on the event and anticipated attendance, the venue will employ between three to ten employees and two to four security personnel. The venue will have one security person per 50 customers. The maximum capacity of the venue is anticipated to be 309 patrons. Although queueing will not be typical, if any were to occur during more popular nights, it will take place along Santa Clara Street. A rope line will be provided if a significant queue along the street forms.

Analysis of City Council Policy 6-23: Guidelines for Evaluation of Nightclubs and Bars and City Council Policy 6-27: Evaluation of 24-Hour Uses is required, as the drinking establishment will operate past 12:00 AM. The proposed drinking establishment is found to be consistent with both City Council Policies. The Police Memorandum dated March 23, 2023, states that the Police Department is neutral to the late-night drinking establishment. The establishment is required to adhere to the Management Plan provided, which includes provisions for site security, staffing, site maintenance, pedestrian queuing, lighting, noise, and garbage/litter.

In addition to the operation of the bar, the applicant has requested extended construction hours for interior construction work from 5:00 AM to 7:00 PM Monday through Saturday.

- 3. General Plan Conformance.** The site is designated Downtown on the Envision San José 2040 General Plan Land Use/Transportation Diagram. This designation includes office, retail, service, residential, and entertainment uses in the Downtown. Redevelopment should be at very high intensities unless incompatibility with other major policies within the Envision General Plan (such as Historic Preservation Policies) indicates otherwise. All development within this designation should enhance the “complete community” in downtown, support pedestrian and bicycle circulation, and increase transit ridership.

Analysis: The drinking establishment will provide a new commercial use within an existing vacant Downtown tenant space. The drinking establishment will support pedestrian circulation, as the site is within walking distance of other restaurants. The project site is accessed by several bus stops within 500 feet, serving the 22, 64A, 64B, 68, Rapid 500, Rapid 522, and Rapid 568 VTA bus lines. In addition, the project site is located directly in front of the Santa Clara Station (N) and 500 feet from Santa Clara Station (S), which serves the VTA Blue and Green Lines.

The project is consistent with the following General Plan Goals and Policies:

- a. Business Growth and Retention Policy IE-2.6: Promote retail development to the maximum extent feasible, consistent with other General Plan goals and policies, in order to generate City revenue, create jobs, improve customer convenience, and enhance neighborhood livability.
- b. Cultural Attractions Policy IE-5.3: Support private efforts to achieve a stronger mix of evening and late-night uses in Downtown that promote a vibrant, 24-hour City center to generate jobs, increase revenues and attract visitors and workers to San José.
- c. Downtown Policy LU-3.4: Facilitate development of retail and service establishments in Downtown and support regional- and local-serving businesses to further primary objectives of this Plan.
- d. Downtown Policy LU-3.7: Recognize the urban nature of Downtown and support 24-hour uses and outdoor uses, so long as significant adverse impacts do not occur.

Analysis: The drinking establishment will occupy a currently vacant tenant space in the basement of a Downtown commercial office building at the southwest intersection of West Santa Clara Street and South First Street. The drinking establishment will generate City revenue, create jobs, and improve customer convenience due to the site's proximity to other businesses and entertainment areas within Downtown. The project will enhance pedestrian activity as the drinking establishment will operate during daytime and nighttime hours. Adverse impacts to surrounding uses will not occur as the site is surrounded by commercial office uses, and the project will implement an operations plan that includes provisions for site security, employee training, maintenance, and customer queueing.

- e. Noise Policy EC-1.2: Minimize the noise impacts of new development on land uses sensitive to increased noise levels (Categories 1, 2, 3 and 6) by limiting noise generation and by requiring use of noise attenuation measures such as acoustical enclosures and sound barriers, where feasible. The City considers significant noise impacts to occur if a project will:
 - a. Cause the DNL at noise sensitive receptors to increase by five dBA DNL or more where the noise levels will remain “Normally Acceptable;” or
 - b. Cause the DNL at noise sensitive receptors to increase by three dBA DNL or more where noise levels will equal or exceed the “Normally Acceptable” level.
- f. Noise Policy EC-1.7: Require construction operations within San José to use best available noise suppression devices and techniques and limit construction hours near residential uses per the City’s Municipal Code. The City considers significant construction noise impacts to occur if a project located within 500 feet of residential uses or 200 feet of commercial or office uses will:

- a. Involve substantial noise generating activities (such as building demolition, grading, excavation, pile driving, use of impact equipment, or building framing) continuing for more than 12 months.

Analysis: The project includes extended construction hours for interior construction from 5:00 AM to 7:00 PM Monday through Saturday. Project construction activities will be minor as there are no proposed changes to the exterior of the building. All construction activities will occur indoors utilizing hand tools. Exterior noise sources will be limited to the arrival and departure of construction workers and the transportation of project materials and tools. To analyze potential noise impacts from the extended construction hours, a Noise Study was prepared by Illingworth and Rodkin, dated July 14, 2023 . Based on the noise study provided, the project will not result in substantial temporary or permanent noise impacts on any residential or commercial land uses within the city. The nearest residential use is approximately 400 feet to the west across South Market Street. The project's location in the basement of an existing building and the attenuation afforded by closed doors during construction and operations will ensure that project-generated noise levels will not exceed existing ambient noise conditions or measurably increase ambient DNL noise levels at residential uses in the vicinity. Project construction is expected to be completed in no more than 12 months.

4. Zoning Ordinance Compliance.

Use

Pursuant to Table 20-140 in Section 20.70.100, drinking establishments within the **DC** Downtown Primary Commercial Zoning District require an approved Special Use Permit. However, since the drinking establishment will operate past 12:00 AM, an approved Conditional Use Permit is required, pursuant to Council Policy 6-27: Evaluation of 24-Hour Uses.

Pursuant to Section 20.100.220 of the Zoning Code, drinking establishments operating past 12:00 AM with an approved maximum occupancy load over 250 persons require a Conditional Use Permit heard at a City Council hearing, rather than a Planning Commission hearing. The project plan set (Sheet A0.0) indicates a maximum occupancy load of 309 persons. Therefore, the City Council will be the final decision-making body for this Conditional Use Permit.

Development Standards

Pursuant to Section 20.70.200, properties located in the DC Downtown Primary Commercial Zoning District shall only be subject to the height limitations necessary for the safe operation of the San José International Airport. No exterior changes to the existing nine-story building height proposed. The proposed use will operate in the basement of an existing building.

Pursuant to Section 20.70.210, properties located in the DC Downtown Primary Commercial Zoning District are not subject to any minimum setback requirements. The building was constructed with 0 setbacks along West Santa Clara Street and South First Street. As previously stated, the project does not include any exterior alterations to the existing commercial building. Therefore, the project conforms with all required height and setback standards pursuant to the DC Downtown Primary Commercial Zoning District.

Parking

The project does not require off-street vehicle parking spaces, pursuant to Table 20-140 in Section 20.70.100. Two-wheeled motorized vehicle parking spaces are also not required, as two-wheeled motorized vehicle parking is based on the number of vehicle parking spaces provided.

Section 20.90.020.A states that “Every building for which a building permit application for new square footage was submitted on or after January 1, 2011, shall provide the required bicycle parking spaces in compliance with the provisions of this chapter.” Based on available building permits, the existing building was constructed prior to 2011. Therefore, as the project will not increase the square footage of the existing commercial building, new bicycle parking spaces are not required.

Noise

Chapter 20.70, which includes regulations for the Downtown Zoning Districts, does not include performance standards or noise requirements. Noise regulations are included in City Council Policies 6-23 and 6-27, discussed below.

5. City Council Policy 6-23: Guidelines for Evaluation of Nightclubs and Bars

Nightclubs and bars that plan to operate late at night are required to meet the City Council Policy on the Guidelines for Evaluation of Nightclubs and Bars. This City Council Policy is intended to facilitate the evaluation process for individual permit applications by identifying the needed project characteristics that are necessary for approval. The relevant policy areas from City Council Policy 6-23 are discussed below:

a. Land Use Compatibility

- i. Nightclubs should be encouraged throughout the Downtown Core to promote a diversity of uses, provided that they do not adversely impact existing or planned residential uses or conflict with other General Plan Goals and Policies.

Analysis: The drinking establishment will be located within the Downtown Core. The site is surrounded by commercial office uses. The nearest residential uses are approximately 400 feet to the west, across South Market Street. . The drinking establishment will operate in the basement of an existing commercial building with occasional live music and DJ's. As conditioned in this Conditional Use Permit Resolution, all amplified sound shall be contained

within the buildings and the buildings shall be adequately insulated to prevent sound from emanating outside. All windows and doors shall be kept close after 10:00 PM. Mechanical equipment used for outside maintenance, including blowers and street sweepers, etc., shall not be used between 10:00 p.m. and 6:00 a.m. if the clean-up occurs within 500 feet of existing residential uses. Therefore, adverse impacts to surrounding uses would not occur.

- ii. New nightclubs and bars should be discouraged from locating adjacent to or near any existing residential uses or any areas planned for residential uses in the adopted Horizon 2000 General Plan. Nightclubs may be located near areas designated Core Area Commercial with Residential Support for the Core Area overlay and parcels fronting Santa Clara Street. New nightclubs and bars adjacent to hotel uses should minimize the potential negative impacts on the guests of those facilities.

Analysis: The nearest hotel (Hotel Clariana) is located approximately 800 feet east of the project site, on the corner of East Santa Clara and Third streets. Therefore, the drinking establishment will not impact hotel guests negatively.

- iii. New nightclubs and bars that are not open during daytime hours should not occupy more than 30 percent of the street frontage on any one side of the street. Basement and upper story nightclubs are exempt from this provision provided that the entrance to those facilities is clearly the sole use at the ground level along the street frontage.

Analysis: The drinking establishment is located within the basement of an existing commercial building. Therefore, the project is exempt from this provision.

- iv. New nightclubs should include sufficient space to accommodate queuing for patrons. This space should be provided on-site to the greatest extent possible. If the public right-of-way is proposed for queuing, a management plan to control crowds and litter as well as to ensure adequate pedestrian circulation should be part of the nightclub proposal.

Analysis: The Management Plan includes a plan for customer queueing. Although queueing will not be typical, if any were to occur, it will take place along Santa Clara Street. Patrons will enter at the main door located along Santa Clara Street. A rope line will be provided if a significant queue on the public right-of-way forms.

- v. It is the responsibility of the Chief of Police to evaluate all bar and nightclub proposals to ensure the safety and security of both patrons and the public. Conditions may be imposed to monitor bars and nightclubs and to discourage nuisance activities. These conditions may include such requirements as interior or exterior security guards, additional lighting, limited occupancy, and modifications of controls or procedures to increase effective law enforcement.

Analysis: The Police Department evaluated the site's drinking establishment and late-night use and issued a memorandum on March 23, 2023. The Police Department is neutral to the proposed drinking establishment. The subject site is located in San Jose Police Beat E3. The reported crime statistics as defined by Business and Professions Code (B&P) Section 23958.4(c) are not over the 20% crime index, therefore the location is not considered unduly concentrated per B&P Section 23958.4(a)(1) for on-sale establishments.

- vi. New nightclubs and bars are discouraged from locating in areas where there have been above-average police calls for service.

Analysis: As discussed in the March 23, 2023 Police Department Memorandum, the Police Department is neutral to the proposed drinking establishment. The subject site is located within San José Police Beat E3. The reported crime statistics as defined by Business and Professions (B&P) Code Section 23958.4(c) are not over the 20% crime index, therefore the location is not considered unduly concentrated per B&P Section 23958.4(a)(1) for on sale establishments.

b. Noise

- i. Both new construction and renovation of existing structures should meet the City's noise standards as specified in the Horizon 2000 General Plan. Sound attenuation techniques may be required to buffer adjacent interior and exterior spaces from noise generated by a nightclub or bar use.
- ii. Windows and doors should not be open during the operation of the facility where noise impacts the surrounding area. Adequate ventilation should be provided so that openings to the outside can be closed when the bar or club is at full capacity.
- iii. Outdoor areas for entertainment, including areas with roof openings, should not be allowed where noise impacts the surrounding area. Hours of operation and/or amplified sound should be carefully regulated to ensure compatibility with adjacent uses.

Analysis: The drinking establishment will operate within an existing building with no change to the structure's exterior. No outdoor entertainment uses are included. This Conditional Use Permit Resolution includes approval conditions requiring windows and doors to be closed after 10:00 PM to reduce any noise impacts. No additional noise attenuation is required.

c. Garbage and Litter

- i. Nightclub and bar operators should provide daily cleaning of the public right-of-way up to 200 feet from the property lines of the site of the facility. This cleaning should occur before 8:00 AM. each day.

- ii. Mechanical equipment used for outside maintenance, including blowers and street sweepers, etc., should not be used between 10:00 PM and 6:00 AM if the clean-up occurs within 500 feet of existing residential uses.

Analysis: The above requirements are included as conditions of approval in this Conditional Use Permit. Mechanical equipment shall not be used between 10:00 PM and 7:00 AM, pursuant to the Cleaning and Maintenance provision of City Council Policy 6-27, as City Council Policy 6-27 contains the more restrictive provision.

d. Typical Use Restrictions

- i. Admittance to bars and nightclubs will be restricted to patrons 21 years of age and older.

Analysis: Pursuant to the California Department of Alcoholic Beverage Control (ABC), minors are not allowed to enter bars and nightclubs operating under a Type 48 License. This is stated in the Operations Plan.

- ii. Nightclubs and bars should not operate after 2:00 AM, daily.

Analysis: The drinking establishment will operate until 2:00 AM, seven days a week. This is stated in the Management Plan.

- iii. The maximum occupancy of a nightclub or bar is limited to the number identified by the Fire Marshall and may be further limited in the Conditional Use Permit based on parking availability or other land use compatibility issues.

Analysis: The applicant shall follow the maximum occupancy identified by the Fire Marshall during the Building Permit process. A condition of approval requiring the project to adhere to the Fire Code is included in this Conditional Use Permit.

- iv. Amplified sound, amusement games and pool/billiard tables may be restricted based on potential incompatibility with adjacent uses.

Analysis: Amusement games, pool/billiard tables, and other entertainment uses will not occur at this drinking establishment. Amplified sound will not cause adverse impacts to adjacent uses as the drinking establishment does not include entertainment uses. Windows and doors will be kept closed after 10:00 PM, pursuant to the noise provisions above.

6. City Council Policy 6-27: Evaluation of 24-Hour Uses

- a. Any uses operating between 12:00 AM midnight and 6:00 AM are required to meet the City Council Policy on the Evaluation of 24-Hour Uses. This City Council Policy is intended to ensure compatibility of late-night and early-morning uses with surrounding land uses. The relevant policy areas from City Council Policy 6-27 are discussed below:

- b. Area Use Compatibility. Twenty-four-hour uses should not be approved unless the facility can operate without detriment to nearby residential uses or the general welfare of the surrounding area. Users which are largely take-out and convenience in nature tend to have the most problematic neighborhood impacts, specifically: higher traffic volumes, quick turnover with vehicles left running and radios on, litter problems, consuming food and beverages in cars while on site. Given the potential for problems arising from such uses which may or may not have been anticipated at the time of approval, all such permits should include a condition for a Compliance Review based on written complaints, and all such complaints should be referred to the City Council.

Analysis: The drinking establishment will operate without detriment to nearby residential uses and the general welfare of the surrounding area, as the establishment does not include outdoor entertainment uses. As previously stated, windows and doors will be kept closed after 10:00 PM, pursuant to the noise provisions of City Council Policy 6-23.

- c. Use Separation. Physical separation of incompatible uses is the best means to avoid potential problems. Generally, 24-hour uses should not be located within 300 feet (measured from the building entrance and "Designated Parking Area" and/or "Outdoor Use Area" to the residential property line) from any property residentially zoned, planned, or used. Exceptions to the 300-foot separation may be made if the project site is located within the Downtown Core Area or in transition areas where the proximate residential uses are not zoned or planned for residential uses in the long term. The 300-foot separation requirement may be increased or decreased on a case-by-case review of the specific circumstances of the site and proposed use based on the intensity of use, location of other buildings and physical features, neighborhood input or other relevant criteria. Examples of circumstances which might mitigate the 300-foot separation requirement:

- i. Separation for residential by a major thoroughfare of at least four moving lanes and a sound wall at the residential property.
- ii. Complete physical separation from residential by other non-residential buildings.
- iii. One-hour extensions on Friday and Saturday nights and/or one hour from 5:00 a.m. to 6:00 a.m. daily.

Analysis: The site is within the Downtown Core Area and is not adjacent to residential uses. The nearest residences are approximately 400 feet to the west, across South Market Street. A noise study is not required, as there are no outdoor entertainment uses that will produce amplified sound.

- d. Outdoor Activities. Outdoor activities may be limited for 24-hour operations except in the Downtown Core Area. Due to the unique combination of uses in the Downtown

Core Area, 24-hour outdoor activities will be evaluated on a case-by-case basis. Services and sales should be conducted entirely within interior spaces between the hours of 12:00 midnight and 6:00 AM, except for specific development types identified under Policy 2. More restrictive hours and days of operation may be imposed in order to implement policy requirements. Other late night outdoor activities on the site such as truck deliveries, maintenance and garbage collection should be reviewed and may be conditioned to minimize noise impacts.

Analysis: The drinking establishment will operate without detriment to nearby residential uses and the general welfare of the surrounding area, as the establishment does not include outdoor entertainment uses. All operations will take place in the basement of an existing commercial office building.

- e. Police Issues. Crime statistics and police safety issues which are directly related to uses operating between 12:00 midnight and 6:00 AM. will be analyzed and considered in determining the appropriateness of 24-hour uses. The Chief of Police should provide a written memorandum with this analysis, including a recommendation with or without conditions, for each Conditional Use Permit application for a 24-hour use. Conditions may be imposed to monitor 24-hour uses and minimize nuisance activities. These conditions may include such requirements as interior or exterior security guards, video cameras, additional lighting, limited occupancy, and modifications of controls or procedures to increase effective law enforcement. The likelihood of impacts caused by the disorderly conduct of late-night patrons on the surrounding neighborhood should be considered in the review process, especially as it relates to proximity of residential uses.

Analysis: As stated in the Police Department Memorandum dated March 23, 2023, the Police Department is neutral to the late-night drinking establishment. The subject site is located in San Jose Police Beat E3. The reported crime statistics as defined by Business and Professions Code (B&P) Section 23958.4(c) are not over the 20% crime index, therefore the location is not considered unduly concentrated per B&P Section 23958.4(a)(1) for on-sale establishments.

- f. Restroom Facilities. Restroom facilities required by other codes or policies shall remain open and be available during late night business hours. Customer access to restrooms is not required for drive-through facilities when there is no customer access permitted to interior areas. Restrooms that have exterior access will be analyzed from a safety and surveillance aspect and will remain open on a case-by-case basis.

Analysis: The drinking establishment will provide two interior restroom facilities. A condition of approval is included in this Conditional Use Permit requiring the restroom facilities to be open and available during late-night business hours.

Noise. Use of sound attenuation walls and landscaping may be required at property lines in order to minimize noise emanating from the site. Special attention should be paid to the possibility of noise at late night hours such as car stereos, cars starting

and conversations which may not be quantifiable, but can reasonably be expected to occur. No amplified sound is permitted between 10:00 p.m. and 7:00 a.m., except low-volume drive-through speakers specifically approved in conjunction with 24-hour drive-through use.

Analysis: The drinking establishment does not include any outdoor use or outdoor entertainment uses that will produce amplified sound. As conditioned in this Conditional Use Permit Resolution, all amplified sound shall be contained within the buildings and the buildings shall be adequately insulated to prevent sound from emanating outside. All windows and doors shall be kept closed after 10:00 PM. Mechanical equipment used for outside maintenance, including blowers and street sweepers, etc., shall not be used between 10:00 p.m. and 6:00 a.m. if the clean-up occurs within 500 feet of existing residential uses.

- g. Cleaning and Maintenance. Cleaning and maintenance for outdoor areas utilizing mechanical blowers, vacuums or other noise generating equipment shall not be used between the hours of 10:00 p.m. and 7:00 a.m. Special conditions to control on-and off-site litter may be required on a case-by-case basis.

Analysis: A condition of approval is included in the Conditional Use Permit prohibiting the use of outdoor noise generating equipment between the hours of 10:00 PM and 7:00 AM.

7. City Council Policy 6-30: Public Outreach Policy for Pending Land Use Decisions.

To inform the public of the project, staff followed Council Policy 6-30: Public Outreach Policy. An on-site sign has been posted on the project frontage since April 17, 2023. A notice of the public hearing was distributed to the owners and tenants of all properties located within 500 feet of the project site and posted on the City website. The staff report is also posted on the City's website. Staff has been available to respond to questions from the public.

8. Environmental Review.

Under the provisions of Section 15301(a) for Existing Facilities of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA) as stated below, this project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Zoning Code, implementing the California Environmental Quality Act of 1970, as amended.

Class 1 Categorical Exemption consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. The key consideration is whether the project involves negligible or no expansion of an existing use. The project does not involve any structural modifications or expansion to the footprint of the existing retail building.

The project will allow a new drinking establishment within an existing vacant basement tenant space and will include interior modifications to allow for its operation. The drinking establishment will operate wholly inside the building. Based on the discussion and findings in the sections above, the project will not have a significant effect on the environment. Therefore, the project is categorically exempt pursuant to CEQA Section 15301(a) for Existing Facilities.

9. Conditional Use Permit Findings: Section 20.100.720 of the San José Municipal Code specifies the required findings for the approval of a Conditional Use Permit.

- a. The Conditional Use Permit, as approved, is consistent with and will further the policies of the general plan, applicable specific plans, and area development policies; and

Analysis: The project is consistent with the General Plan Land Use Designation of Downtown, which is intended for office, retail, service, residential, and entertainment uses. The project is consistent with General Plan policies regarding business growth and retention, Downtown retail development, and 24-hour uses. The project will develop a currently vacant tenant space in the basement of an existing commercial office building, generating City revenue, and creating jobs. The project will also enhance pedestrian activity and improve customer convenience as the project site is located within walking distance of several other restaurants and businesses.

- b. The Conditional Use Permit, as approved, conforms with the zoning code and all other provisions of the San José Municipal Code applicable to the project; and

Analysis: As discussed in the San José Municipal Code Conformance section above, the project is consistent with all required setbacks, heights, and parking requirements of the DC Downtown Primary Commercial Zoning District.

- c. The Conditional Use Permit, as approved, is consistent with applicable city council policies, or counterbalancing considerations justify the inconsistency; and

Analysis: The project was analyzed for consistency with Council Policy 6-23: Guidelines for Evaluation of Nightclubs and Bars and Council Policy 6-27: Evaluation of 24-Hour Uses. The project was found to be consistent with both policies, as discussed in their respective sections above.

Council Policy 6-30: Public Outreach Policy was implemented in order to inform the public of the project. An on-site sign has been posted on the project frontage since April 17, 2023. A notice of the public hearing was distributed to the owners and tenants of all properties located within 500 feet of the project site and posted on the City's website. Staff has also been available to respond to questions from the public.

- d. The proposed use at the location requested will not:
- i. Adversely affect the peace, health, safety, morals, or welfare of persons residing or working in the surrounding area; or
 - ii. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - iii. Be detrimental to public health, safety, or general welfare; and

Analysis: As discussed in the City Council Policy sections above, the drinking establishment will not include outdoor entertainment uses that will produce amplified sound. Operations of the drinking establishment will occur entirely indoors. The Management Plan includes provisions for security—one security guard will be present for every 50 patrons. If any outdoor queueing occurs, it will be organized to prevent impacts to pedestrian circulation along West Santa Clara Street. Therefore, the drinking establishment will not adversely affect surrounding uses.

- e. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding area; and

Analysis: The project site is a vacant tenant space within the basement of an existing commercial building. The tenant space is adequate in size to accommodate indoor use as a drinking establishment.

- f. The proposed site is adequately served:
- i. By highways or streets of sufficient width and improved as necessary to carry the kind and quantity of traffic such use will generate; or by other forms of transit adequate to carry the kind and quantity of individuals such use will generate; and
 - ii. By other public or private service facilities as are required.

Analysis: The project site is directly accessible from both West Santa Clara Street and South First Street. The project site is accessed by several bus stops within 500 feet, serving the 22, 64A, 64B, 68, Rapid 500, Rapid 522, and Rapid 568 VTA bus lines. In addition, the project site is located directly in front of the Santa Clara Station (North) and 500 feet from Santa Clara Station (South), which serve the VTA Blue and Green Lines.

- 10.** The environmental impacts of the project, including but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative affect on adjacent property or properties.

Analysis: The project will not result in any environmental impacts related to noise, vibration, dust, drainage, erosion, storm water runoff, and odor as all construction will occur entirely indoors. All construction activity will adhere to standard construction conditions, best management practices, and any regulatory agency requirements. A Construction Disturbance Coordinator shall be appointed to address any construction-related complaints. The project will conform with all applicable noise requirements of the City Council Policies 6-23 and 6-27. Therefore, the project will not have an unacceptable negative effect on adjacent properties.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby **granted**. This City Council expressly declares that it will not have granted this Permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the Permittee fail to file a timely and valid appeal of this Conditional Use Permit ("Permit") within the applicable appeal period, such inaction by the Permittee shall be deemed to constitute all of the following on behalf of the Permittee:
 - a. Acceptance of the Permit by the Permittee; and
 - b. Agreement by the Permittee to be bound by, to comply with, and to do all things required of or by the Permittee pursuant to all of the terms, provisions, and conditions of this Permit or other approval and the provisions of Title 20 of the San José Municipal Code applicable to such Permit.
2. **Permit Expiration.** This Permit shall automatically expire four (4) years from and after the date of issuance hereof by the City Council, if within such time period, the proposed use of the site or the construction of buildings (if a Building Permit is required) has not commenced, pursuant to and in accordance with the provision of this Permit. The date of issuance is the date this Permit is approved by the City Council. However, the Director of Planning, Building, and Code Enforcement may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment/Amendment must be approved prior to the expiration of this Permit.
3. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this Permit shall be deemed acceptance of all conditions specified in this Permit and the Permittee's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group

of occupancies as described in the Building Code shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San José Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.

4. **Sewage Treatment Demand.** Pursuant to Chapter 15.12 of Title 15 of the San José Municipal Code, acceptance of this Permit by Permittee shall constitute acknowledgement of receipt of notice by Permittee that (1) no vested right to a Building Permit shall accrue as the result of the granting of this Permit when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José - Santa Clara Regional Wastewater Facility- represented by approved land uses in the area served by said Facility will cause the total sewage treatment demand to meet or exceed the capacity of San José - Santa Clara Regional Wastewater Facility to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region; (2) substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority; (3) issuance of a Building Permit to implement this Permit may be suspended, conditioned or denied where the City Manager makes a determination that such action is necessary to remain within the aggregate operational capacity of the sanitary sewer system available to the City of San José or to meet the discharge standards of the sanitary sewer system imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region.
5. **Use Authorization.** Subject to all conditions herein, this Permit allows allow the operation of a drinking establishment (occupancy greater than 250) with late night use until 2:00 AM in the basement of an existing commercial building, including extended construction hours (Monday through Saturday 5:00 AM to 7:00 PM) on an approximately 0.28-gross-acre site. The project will adhere to following:
6. **Conformance to Plans.** The development of the site and all associated development and improvements shall conform to the approved Planned Development Permit plans entitled, "Conditional Use Permit for: 2 West Speakeasy" dated July 17, 2023, on file with the Department of Planning, Building and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 24), as amended. The plans are referred to herein as the "approved plans" or the "Approved Plan Set."
7. **Conformance with ABC Requirements.** The project is required to conform with all applicable requirements for the obtainment and operation of a valid Type 48 license from the California Department of Alcoholic Beverage Control (ABC).
8. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City of San José.
9. **Amplified Sound.** No amplified sound is permitted between 10:00 PM and 7:00 AM. All amplified sound shall be contained within the buildings and the buildings shall be

adequately insulated to prevent sound from emanating outside. All windows and doors shall be kept closed after 10:00 PM. Mechanical equipment used for outside maintenance, including blowers and street sweepers, etc., shall not be used between 10:00 p.m. and 6:00 a.m. if the clean-up occurs within 500 feet of existing residential uses.

10. **Compliance with Local, State, and Federal Laws.** The subject use shall be conducted in full compliance with all local, state, and federal laws.
11. **Discretionary Review.** The City maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of the San José Municipal Code.
12. **Refuse.** All trash and refuse storage areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the trash or refuse container(s). Trash areas shall be maintained in a manner to discourage illegal dumping.
13. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the Approved Plan Set.
14. **Utilities.** All new on-site telephone, electrical, and other service facilities shall be placed underground.
15. **Anti-Graffiti.** All graffiti shall be removed from buildings and wall surfaces, including job sites for projects under construction, within 48 hours of defacement.
16. **Anti-Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris. Cleaning shall include keeping all publicly used areas free of litter, trash, cigarette butts, and garbage.
17. **No Sign Approval.** Any signage shown on the Approved Plan Set is conceptual only. No signs are approved at this time. Any signs shall be subject to review and approval by the Director of Planning, Building, and Code Enforcement through a subsequent Permit Adjustment.
18. **Building and Property Maintenance.** The property shall be maintained in good visual and functional condition. This shall include, but not be limited to, all exterior elements of the buildings such as paint, roof, paving, signs, lighting, and landscaping. The permittee shall provide daily cleaning of the public right-of-way up to 200 feet from the property lines of the site of the facility. This cleaning should occur before 8:00 AM. each day.
19. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
20. **Extended Construction Hours.** Construction hours, including staging of vehicles, equipment and construction materials, shall be limited to between the hours of 5:00 AM to 7:00 PM Monday through Saturday. Permitted work activities shall be

conducted exclusively within the interior of enclosed building structures provided that such activities are inaudible to existing adjacent residential uses. Exterior generators, water pumps, compressors and idling trucks are not permitted. Permittee shall be responsible for educating all contractors and subcontractors of said construction restrictions. The Director of Planning, Building, and Code Enforcement, at their discretion, may rescind provisions to allow extended hours of construction activities on weekends upon written notice to the Permittee.

21. **Construction Disturbance Coordinator.** Rules and regulations pertaining to all construction activities and limitations identified in this Permit, along with the name and telephone number of a Permittee-appointed disturbance coordinator, shall be posted in a prominent location at the entrance to the job site.
22. **Building Division Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
 - a. *Construction Plans.* This permit File No. CP23-003 shall be printed on all construction plans submitted to the Building Division.
 - b. *San José's Natural Gas Infrastructure Prohibition and Reach Code Ordinances.* The City's Natural Gas Infrastructure Prohibition and Reach Code Ordinances apply to this project and all requirements shall be met. For more information, please visit www.sjenvironment.org/reachcode.
 - c. *Americans with Disabilities Act.* The Permittee shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
 - d. *Project Addressing Plan.* Prior to issuance of a Building Permit, the following requirements shall be met to the satisfaction of the Chief Building Official: The project Permittee shall submit an addressing plan for approval for the subject development (residential, mixed use, complex commercial or industrial). The addressing plan should include proposed street names for the streets (as referenced on an approved tentative map) and the type of addressing (i.e., individual street addresses as compared to unit number off of a primary street
 - e. *Other.* Such other requirements as may be specified by the Chief Building Official.
23. **Bureau of Fire Department Clearance for Issuing Permits:** Prior to the issuance of any Building Permit, the project must comply with the California Fire Code as adopted or updated by the City.
24. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the City Council, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 2, Chapter 20.100, Title 20 of the San José Municipal Code it finds:

- a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
- b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
- c. The use as presently conducted creates a nuisance.

In accordance with the findings set forth above, a permit to use the subject property for said purpose specified above is hereby approved.

ADOPTED this _____ day of _____, 2023, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

MATT MAHAN
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

NOTICE TO PARTIES

The time within which judicial review must be sought to review this decision is governed by the provisions of the California Code of Civil Procedure Section 1094.6.

EXHIBIT A

LEGAL DESCRIPTION

REAL PROPERTY IN THE CITY OF SAN JOSE, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTHEASTERLY LINE OF SANTA CLARA STREET WITH THE SOUTHWESTERLY LINE OF FIRST STREET; THENCE SOUTH 59° 20' 10" WEST ALONG SAID SOUTHEASTERLY LINE OF SANTA CLARA STREET, 137.44 FEET; THENCE SOUTH 30° 40' EAST AND PARALLEL WITH SAID SOUTHWESTERLY LINE OF FIRST STREET 133.42 FEET; THENCE NORTH 59° 20' 10" EAST AND PARALLEL WITH SAID SOUTHEASTERLY LINE OF SANTA CLARA STREET 37.02 FEET; THENCE NORTH 30° 40' WEST AND PARALLEL WITH SAID SOUTHWESTERLY LINE OF FIRST STREET 25.67 FEET; THENCE NORTH 59° 20' 10" EAST AND PARALLEL WITH SAID SOUTHEASTERLY LINE OF SANTA CLARA STREET 19.87 FEET; THENCE NORTH 30° 40' WEST AND PARALLEL WITH SAID SOUTHWESTERLY LINE OF FIRST STREET 43.000 FEET; THENCE NORTH 59° 20' 10" EAST AND PARALLEL WITH SAID SOUTHEASTERLY LINE OF SANTA CLARA STREET 80.55 FEET TO SAID SOUTHWESTERLY LINE OF FIRST STREET; THENCE NORTH 30° 40' WEST ALONG SAID LAST NAMED LINE 64.75 FEET TO THE POINT OF BEGINNING, AND BEING A PORTION OF LOT 1 IN BLOCK 1, RANGE 1 NORTH OF THE BASE LINE OF THE CITY OF SAN JOSE.