



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Chris Burton

SUBJECT: SEE BELOW

DATE: July 19, 2021

Approved

Date

7/27/2021

COUNCIL DISTRICT: 3

SUBJECT: ADMINISTRATIVE HEARING ON THE APPEAL OF THE PLANNING COMMISSION'S APPROVAL OF CONDITIONAL USE PERMIT FOR THE SERPENTINE PAVILION PROJECT

RECOMMENDATION

- (a) Conduct an Administrative Hearing to consider the appeal of the Planning Commission's approval of a conditional use permit to allow a one-time eight-month outdoor temporary event, including a temporary structure (Serpentine Pavilion) and individual events including but not limited to musical and theatrical performances, speaker series, movie screenings, and media exhibitions with total on-site capacity of up to 500 attendees, including up to five mobile food trucks on a 2.8-acre site located at 300 South 1st Street and 345 South 2nd Street.

- (b) Adopt a resolution denying the permit appeal and approving, subject to conditions, a conditional use permit to allow a one-time eight-month outdoor temporary event, including a temporary structure (Serpentine Pavilion) and individual events including but not limited to musical and theatrical performances, speaker series, movie screenings, and media exhibitions with total on-site capacity of up to 500 attendees, including up to five mobile food trucks on a 2.8-acre site located at 300 South 1st Street and 345 South 2nd Street.

OUTCOME

The hearing before the Council is a de novo hearing pursuant to Section 20.100.280 of the Zoning Ordinance. This means that the Council considers the request anew, along with the staff report and comments from the appellant and applicant and must make the required findings to grant the permit, or determine the required findings cannot be met and deny the permit.

Approving the Conditional Use Permit, and thereby denying the permit appeal, would allow the project applicant to commence the temporary outdoor use as previously described on the approximately 2.8-gross acre site located at 300 South 1st Street and 345 South 2nd Street.

Denying the Conditional Use Permit, and thereby granting the permit appeal, would mean that the project applicant cannot commence with the uses and activities, as previously described.

BACKGROUND

Site Location

The 2.8-gross acre site is generally located south of San Carlos Street between South 1st Street and South 2nd Street. The site is currently occupied by a pay-to-park surface parking lot with approximately 265 parking spaces and the Valley Title office building. The site is surrounded by an art gallery and commercial uses to the south, theater and commercial uses to the west across South 1st Street, multifamily residences, office with a child care center (YWCA) and a post-secondary school (Lincoln Law School) to the east across South 2nd Street, and office uses to the north across East San Carlos Street.

Proposed Project

The subject Conditional Use Permit (CUP) application was filed by SJ Development Holdings LLC on March 22, 2021. The CUP would allow a one-time eight-month outdoor temporary event, including a temporary structure (Serpentine Pavilion) and individual events including, but not limited to musical and theatrical performances, speaker series, movie screenings, and media exhibitions with total on-site capacity of up to 500 attendees, and up to five mobile food trucks for each individual event on the site.

The Serpentine Pavilion is an international travelling exhibition, previously having been held in London and Toronto. The exhibition will activate the site through free programming for the public, as well as private events. The exhibition would provide approximately 308 individual events including, but not limited to artist talks, a speaker series, courses and workshops, private events, public readings, dance, music, and theatrical performances, fashion shows, movie screenings, multi-media events and design charrettes.

The event would mainly occur on the parking lot to the south of the Valley Title building at 300 South 1st Street and to the north of the Anno Domini Galley at 366 South 1st Street and would be enclosed with a movable security perimeter fence. The pavilion would be installed at the center of this parking lot and face South 1st Street. The pavilion would have a footprint of approximately 1,600 square feet and a height of 46 feet. The pavilion and the event area would displace approximately 74 parking spaces.

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The details of the event operation are included in the attached Planning Commission staff report (Exhibit B).

Planning Commission Hearing

In early June 2021, Steve Cohen (Appellant) sent written comments to staff regarding the concerns on the potential impact of parking to the surrounding neighborhood. These written comments were provided to the Planning Commission prior to the hearing.

On June 9, 2021, the Planning Commission approved the proposed Conditional Use Permit. The item was on the Consent Calendar (Item 4.E) and there were no requests to speak at the hearing.

Commissioner Torrens motioned to approve Staff's recommendations for all items on the Consent Calendar. Commissioner Oliverio seconded the motion. The Planning Commission voted (7-0) to approve all items on the Consent Calendar, including the subject project.

Appeal

A timely appeal (Exhibit A) of the Conditional Use Permit was filed on June 21, 2021 by Mr. Steve Cohen (Appellant) who lives within 1,000 feet of the event site. The appeal cited a lack of customer parking and vagueness on food truck proposal. These issues are analyzed and further clarified below.

On June 24, 2021, the Appellant notified staff that the Applicant and the Appellant have been working on a possible resolution that addresses the concerns raised in the appeal. If they reach an agreement before the City Council meeting, the Appellant may request to withdraw the appeal. The Zoning Ordinance allows the appeal to be withdrawn by the Appellant during the appeal period. However, appeal withdrawal request submitted after the appeal period (10 days) must be considered by the City Council during the appeal hearing.

ANALYSIS

Event Parking

Temporary events in Downtown do not require parking pursuant to the Zoning Ordinance. The site is currently occupied by a pay-to-park surface parking lot with approximately 265 parking spaces, which serve the general Downtown area around the site. None of these parking spaces are required parking for specific buildings or uses. The event area would displace approximately 74 parking spaces, leaving 191 spaces available for car parking. Approximately 50 of these spaces would be set aside for attendee parking for most Serpentine Pavilion events, as needed depending on the size of the event, with approximately 140 spaces remaining open for general use parking. For some larger events occurring three to four days per month, an additional 80 spaces would be set aside, still leaving approximately 66 spaces generally available. A portion of

the generally available spaces for all events may be used for event staging and larger events, as well as up to five food trucks. As described above, larger events would occur approximately three to four days per month.

Public transportation options are available for attendees given that the site is within 1,000 feet to two Light Rail stations, San Antonio Station and Convention Center Station and served by several bus routes (Nos. 23, 66, and 68). In addition, there are public parking lot and garages within walking distance to the event area.

Mobile Food Trucks

Per the Operation Plan prepared by the applicant, mobile food trucks associated with the event would operate on the site approximately eight times per month. The food truck hours would follow the allowed event hours, which are 10 AM to 11 PM from Sundays to Wednesdays, 10 AM to 12 AM on Thursdays and 9 AM to 2 AM on Fridays and Saturdays. The applicant clarified that there would be up to five food trucks per each individual event on the site, with some being stationed within the Serpentine Pavilion site, and some within the open parking area. The conditions of approval for the CUP have been updated to reflect this number of food trucks.

Summary

The issues raised in the Conditional Use Permit Appeal do not negate the Conditional Use Permit findings for approval outlined in the appealed Conditional Use Permit Resolution included in the Planning Commission Staff Report (Exhibit B) and the Draft City Council Conditional Use Permit Resolution (Exhibit C).

CONCLUSION

The Conditional Use Permit conforms to the Conditional Use Permit findings set forth in San José Municipal Code Section 20.100.760. Staff recommends that the City Council adopt the proposed resolution denying the appeal and approving Conditional Use Permit No. CP21-004 based on this memorandum, the Planning Commission's Staff Report, and evidence in the administrative record. The subject site has a Downtown General Plan land use designation and is in the Downtown Primary Commercial Zoning District; the subject project conforms to the applicable General Plan policies, Municipal Code, and City Council development policies.

EVALUATION AND FOLLOW UP

If the City Council approves the Conditional Use Permit, the applicant would need to obtain building permit(s) for the project to proceed. The project would be required to adhere to the project's conditions of approval.

CLIMATE SMART SAN JOSE

The recommendation in this memorandum aligns with one or more Climate Smart San José energy, water, or mobility goals. The development of the project would:

- Promote a temporary pedestrian-oriented use.

POLICY ALTERNATIVES

For the decision on the Conditional Use Permit Appeal, the Council may:

- a. Deny the Conditional Use Permit and thereby approving the appeal;
- b. Approve the Conditional Use Permit and thereby denying the appeal; or
- c. Approve the Conditional Use Permit with additional modifications or conditions of approval, thereby denying the appeal.

Staff recommends that the City Council deny the permit appeal and approve the Conditional Use Permit, subject to the same conditions of approval approved by the Planning Commission with a modification on Condition No. 6 which limits the total number of mobile food trucks to five for each event.

PUBLIC OUTREACH

Staff followed City Council Policy 6-30: Public Outreach Policy to inform the public of the proposed project. A sign describing the project has been posted on the project site. Notice of the public hearing were distributed to the owners and tenants of all properties located within 1,000 feet of the project site. Staff has been available to answer questions from the public. The staff report is also posted on the City's website.

COORDINATION

Preparation of this memorandum has been coordinated with the City Attorney's Office.

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CEQA

The project was found to be exempt pursuant to CEQA Guidelines Section 15304(e) for minor temporary use of the land having negligible or no permeant effects on the environmental.

/s/

CHRIS BURTON

Director

Planning, Building and Code Enforcement

For questions, please contact Deputy Director, Robert Manford, at (408) 535-7900.

Attachments: Exhibit A: Appeal Application

Exhibit B: Planning Commission Staff Report and attachments

Exhibit C: Draft City Council Conditional Use Permit Resolution

INSTRUCTIONS FOR FILING A PERMIT APPEAL APPLICATION

WHO MAY APPEAL

The applicant, or any property owner or tenant of a property within one thousand (1,000) feet of the subject site, may appeal a development permit, development variance, or development exception. The applicant, or such property owner or tenant, must sign the permit appeal form. Alternatively, the signature of the applicant's, property owner's or tenant's lawful power of attorney or attorney-in-fact may be accepted so long as a writing evidencing that person's authority to sign the permit appeal for the applicant, property owner or tenant also is provided with the permit appeal form.

Exceptions:

For a **Tree Removal Permit**, property owners or tenants/occupants of the subject site, or property owners or tenants/occupants of properties immediately adjacent or across the street from the subject site may appeal.

For **Tentative Maps**, the subdivider or any interested party may appeal.

TIME LIMIT

A complete Notice of Permit Appeal (see back page) must be filed on or before **ten calendar days** after a copy of the decision by the Planning Commission or the Director of Planning has been placed in the mail to the applicant.

Exceptions:

For **Tentative Maps**, the appeal must be filed within **ten calendar days of the permit approval**.

APPEAL REQUIREMENTS

1. A complete Notice of Permit Appeal including the following within the appropriate time limit:
 - a. Application filing fee, (see Filing Fee Schedule) (applicable only to 1st filing).
 - b. Assessor's parcel map with subject site outlined.
 - c. **If you are the applicant for the permit being appealed you must also provide the following:**
 1. Public Noticing Fee, then

2. If appealed to:

- City Council, 45 (forty-five) copies of 11" x 17", Z-folded, 3 hold punched, stapled plan sets and/or other supporting documents.
- Planning Commission, 30 (thirty) copies of 11" x 17", Z-folded, stapled plan sets and/or other support documents.

- d. **For Tree Removal Permits.** A Public Noticing Fee will be charged.

PROCESSING SCHEDULE

Planning Staff:

- Checks the application for completeness.
- Logs and collects fees.
- Reviews application with previous files and obtains pertinent data.
- Sets a public hearing date and places the item in the agenda.
- Prepares a recommendation to the appropriate decision making body.

Planning Commission:

- considers and acts upon the appeal of a Planned Development, Special Use, Tree Removal Permits, Use Exceptions/Fence Variance and Variance in a public hearing.
- If the appeal is denied, the decision is final.
- If the appeal is granted, the decision shall be effective immediately.

City Council:

- considers and acts upon the appeal of a Conditional Use Permit, and a Tentative Map in a public hearing.
- If the appeal is denied, the decision is final.
- If the appeal is granted, the decision shall be effective immediately.

Please submit this application IN PERSON to the Development Services Center, 1ST FLOOR, City Hall. Appointments are not required but may be accommodated by calling (408) 535-3555 or by visiting the Planning Division's website: <http://www.sanjoseca.gov/index.aspx?nid=3839>. For Assistance, call (408) 535-5680.

NOTICE OF PERMIT APPEAL

TO BE COMPLETED BY PLANNING STAFF

FILE NUMBER CP21-004	RECEIPT # _____
PROJECT LOCATION	AMOUNT _____ DATE _____ BY _____

TO BE COMPLETED BY PERSON FILING APPEAL

PLEASE REFER TO PERMIT APPEAL INSTRUCTIONS BEFORE COMPLETING THIS PAGE. THIS FORM MUST BE ACCOMPANIED BY THE APPROPRIATE FILING FEE.

THE UNDERSIGNED RESPECTFULLY REQUESTS AN APPEAL FOR THE PROPERTY WHICH IS LOCATED AT:
300 S 1st Street & 345 S 2nd Street

REASON(S) FOR APPEAL (For additional comments, please attach a separate sheet.):

Issue with lack of customer parking and vagueness on food truck proposal

PERSON FILING APPEAL

NAME Steve Cohen	DAYTIME TELEPHONE [REDACTED]
ADDRESS [REDACTED]	CITY San Jose STATE CA ZIP CODE 95112
SIGNATURE [REDACTED]	DATE 6-18-21
RELATIONSHIP TO SUBJECT SITE: (e.g., adjacent property owner, property owner within one thousand (1,000) feet) property owner within 1000 feet	

CONTACT PERSON (IF DIFFERENT FROM PERSON FILING APPEAL)

NAME			
ADDRESS	CITY	STATE	ZIP CODE
DAYTIME TELEPHONE ()	FAX NUMBER ()	E-MAIL ADDRESS	

PROPERTY OWNER

NAME Project Valley Title LLC	DATE 6-18-21
ADDRESS 2107 Elliot Ave, #303	CITY Seattle STATE WA ZIP CODE 98121

Please submit this application IN PERSON to the Development Services Center, 1ST FLOOR, City Hall. Appointments are not required but may be accommodated by calling (408) 535-3555 or by visiting the Planning Division's website: <http://www.sanjoseca.gov/index.aspx?nid=3839> . For Assistance, call (408) 535-5680.



Memorandum

TO: PLANNING COMMISSION
SUBJECT: CP21-004

FROM: Chu Chang, Acting Director
DATE: June 9, 2021

COUNCIL DISTRICT: 3

Type of Permit	Conditional Use Permit
Demolition	N/A
Proposed Land Uses	Temporary Structure and Temporary Outdoor Events
New Residential Units	N/A
New Non-Residential Square Footage	N/A
Additional Policy Review Items	None
Tree Removals	None
Project Planner	Angela Wang
CEQA Clearance	Exempt pursuant to CEQA Guidelines Section 15304(e)
CEQA Planner	Thai-Chau Le

RECOMMENDATION

Staff recommends that the Planning Commission take the following actions regarding the 2.8-acre project site located at the south of East San Carlos Street between South 1st Street and South 2nd Street:

1. Consider the Exemption in accordance with CEQA Guidelines Section 15304 (e) for minor temporary use of the land having negligible or no permanent effects on the environment.
2. Adopt a Resolution approving, subject to conditions, a Conditional Use Permit to allow a one-time eight-month outdoor temporary event, including a temporary structure (Serpentine Pavilion) and individual events including but not limited to musical and theatrical performances, speaker series, movie screenings, and media exhibition with total on-site capacity of up to 500 attendees, including outdoor vending (mobile food trucks) on a 2.8-acre site.

PROPERTY INFORMATION

Location	South of East San Carlos Street between South 1st Street and South 2nd Street
Assessor Parcel No.	467-46-080, 081 & 082
General Plan Designation	Downtown
Growth Area	Downtown
Zoning District	Downtown Primary Commercial
Historic Resource	N/A
Annexation Date	Original City
Council District	3
Acreage	2.8
Proposed Density	N/A

PROJECT BACKGROUND

As shown on the attached [Vicinity Map \(Exhibit A\)](#), the 2.8-gross acre site is generally located south of San Carlos Street between South 1st Street and South 2nd Street. The site is currently occupied by a paid surface parking lot with approximately 265 parking spaces and an office building (Valley Title). The site is surrounded by an art gallery and commercial uses to the south, theater and commercial uses to the west across South 1st Street, multifamily residences, office with a child care center (YWCA) and a post-secondary school (Lincoln Law School) to the east across South 2nd Street, and office uses to the north across East San Carlos Street.

SURROUNDING USES			
	General Plan	Zoning District	Existing Use
North	Downtown	Downtown Primary Commercial	Office
South	Downtown	Downtown Primary Commercial	Art gallery and commercial
East	Downtown	Downtown Primary Commercial & Planned Development	Multifamily residences, office with a child care center and post-secondary school
West	Downtown	Downtown Primary Commercial & Public/Quasi-Public	Theater and commercial

On March 22, 2021, SJ Development Holdings LLC submitted an application for a Conditional Use Permit, File No. CP21-004, to allow a one-time eight-month outdoor temporary event, including a temporary structure (Serpentine Pavilion) and individual events including but not limited to musical and theatrical performances, speaker series, movie screenings, and media exhibitions with total on-site capacity of up to 500 attendees, including outdoor vending (mobile food trucks) on a 2.8-acre site.

The Serpentine Pavilion is an international travelling exhibition, previously located in London and Toronto. The exhibition will activate the site through free programming for the public, as well as private events.

The event is scheduled to open approximately September 4th, 2021 for a duration of six to eight months, with an end date between February and April 2022 depending on the opening date and actual duration (up to eight months). The exhibition would provide approximately 308 individual events including but not limited to artist talks, a speaker series, courses and workshops, private events, public readings, dance, music, and theatrical performances, fashion shows, movie screenings, multi-media events and design charrettes. The event also includes mobile food trucks. The largest events anticipate an attendance of up to 500 people. Up to 28 events of this size are planned, with other events ranging from 50 to 200 attendees. The event hours would be from 10 AM to 11 PM from Sundays to Wednesdays, 10 AM to 12 AM on Thursdays and 9 AM to 2 AM on Fridays and Saturdays. For Friday and Saturday events, the event breakdown would not occur after 3 AM. The amplified sound would not occur after 11 PM from Sundays to Thursdays and not occur after midnight on Fridays and Saturdays. The pavilion would have 24-hour on-site security with two staff provided by a private security company. For larger events, additional security staff will be provided.

The event would mainly occur on the parking lot to the south of the Valley Title building and to the north of the Anno Domini Galley at 366 South 1st Street and would be enclosed with a movable security perimeter fence. As shown on Exhibit E, the project plan, the pavilion would be installed at the center of this parking lot and face South 1st Street. The pavilion would have a footprint of approximately 1,600 square feet and a height of 46 feet. The pavilion and the event area would displace 74 parking spaces. All event loading, set-up and break-down would take place either within the fence enclosure, or in the directly adjacent parking lot to the east of the proposed event area. A portion of this large parking lot may be used for certain events. Visitor and staff parking would occur in the remaining portion of the parking lot along South 2nd Street. Pedestrians will enter directly from the South 1st Street sidewalk. A parking lot entrance will also be available for visitors arriving by car or from the east. Catering and support vehicles will access the site via the South 2nd Street parking entrance and be directed to parking areas along the event perimeter fence. Traffic flows in the parking lot will be managed and marked using safety cones, directional signage and other measures.

All staff and patrons would have access to restrooms located inside the Valley Title building to the north of the pavilion at the intersection of San Carlos and South 1st Street. If the restrooms in the Valley Title building are not available, portable toilets will be provided. The Valley Title building's power, water and full-service kitchen would support events and catering.

ANALYSIS

The proposed **Conditional Use Permit** has been analyzed with respect to consistency with:

1. Envision San José 2040 General Plan
2. Municipal Code – Zoning Ordinance
3. California Environmental Quality Act (CEQA)

Envision San José 2040 General Plan Consistency

As shown in the attached **General Plan Map (Figure B)**, the site has a land use designation of **Downtown** in the Envision San José 2040 General Plan Land Use/Transportation Diagram. This designation supports office, retail, service, residential, and entertainment uses. All development within this destination should enhance the “complete community” in downtown, support pedestrian and bicycle circulation, and increase transit ridership.

The temporary outdoor event with arts and entertainment is consistent with the Downtown land use designation. The exhibition will help create a more “complete community” in the downtown area by activating a parking lot with a temporary pedestrian-oriented use providing arts and entertainment experiences.

The project is also consistent with the following key General Plan policies:

1. Land Use Policy LU-3.3. Support the development of Downtown as an arts, cultural, and entertainment center for San José and the region. Promote special events, parades, celebrations, performances, concerts, and festivals.
2. Arts and Culture Policy AC-1.2. Attract new and cultivate existing signature events that add to the quality of life for San José residents, enhance the image of San José, and stimulate economic activity here.
3. Cultural Attractions Policy IE-5.4: Support entertainment offerings and cultural facilities, including but not limited to parks, visual and performing arts, museums, libraries, theatres, historic structures/sites/neighborhoods, festivals, and commercial entertainment venues, particularly those that provide significant social and economic benefit to San José’s community, provide opportunities for community participation, achieve excellence and innovation, and/or reflect the City’s population.
4. Cultural Opportunities Policy VN-4.5: Encourage and provide spaces to support neighborhood based cultural activities such as workshops, festivals, celebrations, and other events.
5. Community Identity Policy PR-4.5: Increase the number of special events that bring neighborhoods together, such as street festivals, resource fairs, holiday parades, movies, theatrical plays, and concerts in local parks, on temporarily closed streets, and/or in plazas.
6. San Jose as the Silicon Valley Cultural Center Policy AC-1.2: Attract new and cultivate existing signature events that add to the quality of life for San José residents, enhance the image of San José, and stimulate economic activity here.

Analysis: The project will provide cultural and entertainment events such as artist talks, a speaker series, courses and workshops, private events, public readings, dance, music, and theatrical performances, fashion shows, movie screenings, multi-media events and design charrettes for residents and visitors to the City, as well as promote increased economic activity.

7. Land Use 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 project would not have significant adverse impacts as discussed further in the report. The operation hours of the events are from 10 AM to 11 PM from Sundays to Wednesdays, 10 AM to 12 AM on Thursdays, and 9 AM to 2 AM on Fridays and Saturdays. The amplified sound would not occur after 11 PM from Sundays to Thursdays and not occur after midnight on Fridays and Saturdays. Trash would be collected daily, and 24-hour on-site security would be available. The applicant will coordinate with Office of Cultural Affairs for event size and schedule, as needed. Traffic flows in the parking lot near the event area will be managed and marked using safety cones, directional signage and other measures. By complying with the project conditions included in the draft Resolution, the project would not result in significant adverse impacts.

Zoning Ordinance Consistency

As shown in the attached **Zoning District Map (Figure C)**, the Project Site is located in the DC Downtown Primary Commercial Zoning District. The DC Zoning District supports uses such as office, retail, service, residential, medical office, hospital, entertainment and recreation related uses.

Use

Under the provisions of Section [20.80.1420.C](#) of the San José Municipal Code, an applicant for an outdoor private property special event that will exceed thirty consecutive days and forty-five total days in any calendar year must obtain a conditional use permit. A conditional use permit is required because the event exceeds the above number of days.

[20.80.1520.A](#) requires the following conditions to be met by the project:

1. All amusement rides, booths, tents and equipment shall be located at least twenty (20) feet from all frontage streets.

The pavilion is greater than 20 feet from the property line along South 1st Street.

2. The outdoor private property special event venue shall have direct vehicular access from a public street.

The direct vehicle access is from South 2nd Street, a public street.

3. The size, configuration and location of the outdoor private property special event venue shall be suitable for the proposed number of attendees taking into account other events which are scheduled to occur during the same time period at locations in proximity to the proposed site for the outdoor private property special event.

The applicant will coordinate with Office of Cultural and Affairs on individual event sizes and scheduling to ensure the site remains suitable for the event, taking into account other events occurring during the same time period in proximity to the subject site.

4. The outdoor private property special event applicant has made provision for each of the following:
 - a. refuse disposal and sufficient trash receptacles within the event site;
 - b. litter removal within a three hundred foot radius of the boundaries of the event site;
 - c. scheduled maintenance of the outdoor private property special event venue during the course of the event, including removal of animal waste, if applicable;
 - d. sanitary facilities, including adequate restrooms and/or portable toilets.

Trash containers will be emptied daily or more frequently to prevent overflow. Food and beverage would be sold by food trucks and which will either provide their own refuse containers or coordinate trash collection and removal with the event. Larger events on nights and weekends would have additional receptacles provided and managed by contracted catering companies. Waste from these events would also be disposed using the Valley Title building's waste facilities. Restrooms would be provided in the Valley Title. If the restrooms in the Valley Title building are not available, portable toilet will be provided.

5. The San José police department has approved the applicant's security and traffic plans, if applicable. The thresholds for requiring either a security or traffic plan or both shall be set forth in the regulations issued pursuant to this part.

The San José Police Department requires on-site security for events which need Alcohol Beverage Control permit(s). The applicant commits to have a minimum of two security staff on site at all times. For larger events, additional security staff will be provided.

6. The applicant shall be responsible for reimbursing the city for the direct cost of police services in the event that the outdoor private property special event requires extra police services in addition to the regular patrol services provided in the police district in which the outdoor private property special event site is located. The criteria for assessing whether the outdoor private property special event will necessitate additional police services shall be set out in the regulations issued pursuant to this part.
7. The applicant shall be responsible for reimbursing the city for the direct cost of litter removal within a three hundred foot radius of the boundaries of the event site in the event that the applicant fails to comply with this requirement.
8. The San José fire department has approved applicant's plans for fire control devices, tents and canopies, cooking equipment, pyrotechnics and emergency vehicle access, if applicable.
9. The California Department of Alcohol Beverage Control has issued a permit for the sale of alcohol or the applicant has certified that the sale of alcohol will not occur.

The draft Resolution contains the above conditions. Therefore, the project will comply with this code section.

Height and Setback

[Section 20.70.210](#) of the Municipal Code does not establish minimum setback requirements for developments in the DC Downtown Primary Commercial Zoning District. The height of development in the Zoning District is limited only to that necessary for the safe operation of the San José International Airport and the requirements of FAA Part 77 as discussed in [Section 20.70.200](#) of the Municipal Code. The proposed temporary structure is 46 feet in height, below the FAA requirement. The temporary structure has a setback of more than 20 feet to the South 1st Street property line, which complies with Zoning Code Section [20.80.1520.A.1](#) as discussed above.

Parking: The Zoning Code does not require parking for events within Downtown Core area per Zoning Code Section 20.80.1480.B. However, the on-site hourly-rate parking establishment to the east of the pavilion would provide parking for event staff and visitors.

PERMIT FINDINGS

Conditional Use Permit Findings

To make the Conditional Use Permit findings pursuant to San José Municipal Code Section 20.100.720 and recommend approval to the Planning Commission, staff must determine that:

1. The conditional use permit, as approved, is consistent with and will further the policies of the general plan and applicable specific plans and area development policies; and

Analysis: As discussed above, the temporary outdoor event use is consistent with the Downtown land use designation. The proposed events would promote increased economic activity and social benefits, which further the General Plan policies.

2. 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 above, the proposed temporary outdoor event use would require a Conditional Use Permit per the Zoning Code. The 46-foot high temporary structure conforms with Downtown Primary Commercial Zoning District development standards which require that structures do not exceed a height that is necessary for the safe operation of the San José International Airport and FAA. The project meets the 20-foot setback from street frontage pursuant to Section 20.80.1250.A.1. There is no parking requirement for temporary outdoor events in the Downtown Core area.

3. The conditional use permit, as approved, is consistent with applicable City Council policies, or counterbalancing considerations justify the inconsistency; and

Analysis: The project is in compliance with [Council Policy 6-30: Public Outreach Policy](#). A development sign has been posted on the site and the project has been noticed for public hearing to a radius of 1,000 feet from the project site.

4. The proposed use at the location requested will not:
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site; or

c. Be detrimental to public health, safety, or general welfare; and

Analysis: The project would not negatively affect the utility or value of surrounding properties in the neighborhood, in that the project includes the installation of a temporary structure and provides arts and social events that will activate the parking lot and promotes economic and social benefits. As discussed above, the project would conform with Zoning Code Section 20.80.125, which address the event management and coordination, vehicle access, trash and sanitary facilities, property management, on-site security, etc. The project would have security staff for events, and would provide access to restrooms and utilities in the Valley Title building at 300 South 1st Street. If the restrooms in the Valley Title building are not available, portable toilets will be provided. Trash will be collected daily. The amplified sound would not occur after 11 PM from Sundays to Thursdays and not occur after midnight on Fridays and Saturdays. The project is in conformance with the City's policies and regulations and is not anticipated to adversely affect the community, impair the value of adjoining property, or be detrimental to public health, safety, or welfare.

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

Analysis: The 2.8-acre site includes a building and a surface parking lot. The area to the south of the building along South 1st Street has adequate space (approximately 273 feet by 137 feet) to accommodate the pavilion (approximately 89 feet by 69 feet) as shown on Exhibit D, the project plan. As discussed above, the building to the north of the pavilion would provide access to restrooms and utilities for events and the rest of the parking lot to the east would provide parking for staff and visitors, and provide space for set-up for certain events.

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

Analysis: The site is within 2,000 feet to Highway 280, is along three major streets (South 1st Street, South 2nd Street, and East San Carlos Street), hosts bus stops serving several bus lines, and is within 1,000 feet to two Light Rail stations, San Antonio Station and Convention Center Station. The site is adequately served by streets of sufficient width as evidenced by the issuance of the Final Public Works Memo dated May 26, 2021.

7. 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 proposes temporary outdoor event use. Except the installation of a temporary structure and the movable fences, there are no other site improvements proposed. Certain events such as dance and music performances would have amplified sound. However, the hours of amplified sound would be regulated not to pass 11 PM from Sundays to Thursdays and not to pass midnight on Fridays and Saturdays. Therefore, the project would not result in significant noise, vibration, dust, drainage, erosion, storm water runoff, and odor impact and would not have an unacceptable negative affect on adjacent property or properties.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Under the provisions of Section 15304(e) of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. CEQA Guidelines Section 15304(e) consists of minor public or private alterations in the condition of land, water and/or vegetation which do not involve removal of healthy, mature, scenic trees, and including the minor temporary use of land having negligible or no permanent effects on the environment.

The proposed project would allow a one-time eight-month outdoor temporary event, including a temporary structure (Serpentine Pavilion) and individual events including but not limited to musical and theatrical performances, speaker series, movie screenings, and media exhibitions with total on-site attendance up to 500, including outdoor vending (mobile food trucks) on a 2.8-acre site. The temporary structure would be removed at the end of the permit use. Furthermore, depending on the events, there will be temporary set-up of other structures, such as tents, for vendor uses. The event would be required to coordinate with applicable departments, such as Office of Cultural Affairs, prior to each event of certain size, consistent with the Municipal Code.

All structures are temporary and would be located on an existing paved parking lot and therefore, would not result in a permanent impact to the environment. This project consists of temporary, minor alterations to an existing facility. Additionally, the project will not involve the removal of healthy, mature, or scenic trees. It is a minor temporary use of land resulting in negligible or no permanent effects on the environment.

PUBLIC OUTREACH

Staff followed Council Policy 6-30: Public Outreach Policy to inform the public of the proposed project. An on-site sign was posted on the property. A notice of the public hearing was distributed to the owners and tenants of all properties located within 1,000 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.

Project Manager: Angela Wang

Approved by: /s/ , Deputy Director for Chu Chang, Acting Director

ATTACHMENTS:	
Exhibit A:	Vicinity Map, Aerial
Exhibit B:	General Plan Land Use Designation
Exhibit C:	Zoning District
Exhibit D:	Draft Resolution
Exhibit E:	Plan Set
Exhibit F:	Operation Plan

Applicant	Property Owner:
SJ Development Holdings LLC Isabelle Glotman 2107 Elliott Avenue, #303 Seattle, WA 98121	Project Valley Title LLC Isabelle Glotman 2107 Elliott Avenue, #303 Seattle, WA 98121

CP21-004 Links to Attachments

Exhibit A: [Vicinity Map, Aerial](#)

Exhibit B: [General Plan Land Use Designation](#)

Exhibit C: [Zoning District](#)

Exhibit D: [Draft Resolution](#)

Exhibit E: [Plan Set](#)

Exhibit F: [Operation Plan](#)

[Correspondence Received After June 2, 2021](#)

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE DENYING AN APPEAL AND APPROVING, SUBJECT TO CONDITIONS, A CONDITIONAL USE PERMIT (FILE NO. CP21-004) TO ALLOW A ONE-TIME EIGHT-MONTH OUTDOOR TEMPORARY EVENT, INCLUDING A TEMPORARY STRUCTURE (SERPENTINE PAVILION) AND INDIVIDUAL EVENTS INCLUDING BUT NOT LIMITED TO MUSICAL AND THEATRICAL PERFORMANCES, SPEAKER SERIES, MOVIE SCREENINGS, AND MEDIA EXHIBITIONS WITH TOTAL ON-SITE CAPACITY OF UP TO 500 ATTENDEES, INCLUDING UP TO FIVE MOBILE FOOD TRUCKS ON A 2.8-ACRE SITE LOCATED ON THE SOUTH SIDE OF EAST SAN CARLOS STREET, BETWEEN SOUTH 1ST STREET AND SOUTH 2ND STREET (300 SOUTH 1ST STREET & 345 S 2ND STREET)

FILE NO. CP21-004

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on March 22, 2021, an application (File No. **CP21-004**) was filed by the applicant, Isabelle Glotman of SJ Development Holdings LLC, with the City of San José for a Conditional Use Permit to allow a one-time eight-month outdoor temporary event, including a temporary structure (Serpentine Pavilion) and individual events including but not limited to musical and theatrical performances, speaker series, movie screenings, and media exhibitions with total on-site capacity of up to 500 attendees, including up to five mobile food trucks on a 2.8-acre site, on that certain real property situated in the DC Downtown Primary Commercial Zoning District and located on the south side of East San Carlos Street, between South 1st Street and South 2nd Street (300 South 1st Street & 345 S 2nd Street, 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, the Planning Commission conducted a hearing on said application on June 9, 2021, notice of which was duly given; and

WHEREAS, at said hearing, the Planning Commission gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter; and

WHEREAS, at said hearing, the Planning Commission approved the requested Conditional Use Permit; and

WHEREAS, on June 21, 2021, a timely appeal of the Planning Commission's approval of the Conditional Use Permit was filed by Steve Cohen, a neighbor of the subject property, citing the reasons for the appeal being a lack of customer parking and vagueness on mobile food truck approval; 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 *de novo* hearing on said application and the appeal of the Planning Commission's decision, 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 and considered the reports and recommendations of the City's Director of Planning, Building and Code Enforcement; and

WHEREAS, at said hearing, this City Council received in evidence a plan for the subject property entitled, "File No. CP21-004, 300 S 1st Street and 345 South 2nd Street, San José, CA 95113", dated revised May 19, 2021, 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

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

After considering all of the 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 2.8-gross acre site is generally located south of San Carlos Street between South 1st Street and South 2nd Street. The site is currently occupied by a paid surface parking lot with approximately 265 parking spaces and an office building (Valley Title). The site is surrounded by an art gallery and commercial uses to the south, theater and commercial uses to the west across South 1st Street, multifamily residences, office with a childcare center (YWCA) and a post-secondary school (Lincoln Law School) to the east across South 2nd Street, and office uses to the north across East San Carlos Street.
2. **Project Description.** The Serpentine Pavilion is an international travelling exhibition, previously located in London and Toronto. The exhibition will activate the site through free programming for the public, as well as private events. The event is scheduled to open approximately September 4, 2021 for a duration of six to eight months, with an end date between February and April 2022 depending on the opening date and actual duration (up to eight months from opening date). The exhibition would provide approximately 308 individual events including, but not limited to, artist talks, speaker series, courses and workshops, private events, public readings, dance, music, and theatrical performances, fashion shows, movie screenings, multi-media events and design charrettes. The event also includes up to five mobile food trucks. The largest events anticipate an attendance of up to 500 people. Up to 28 events of this size are planned, with other events ranging from 50 to 200 attendees.

The event hours would be from 10:00 AM to 11:00 PM from Sundays to Wednesdays, 10:00 AM to 12:00 AM on Thursdays and 9:00 AM to 2:00 AM on Fridays and Saturdays. For Friday and Saturday events, the event break-down would not occur after 3:00 AM. The amplified sound would not occur after 11:00 PM from Sundays to Thursdays and not after midnight on Fridays and Saturdays. The pavilion would have 24-hour on-site security with two staff provided by a private security company. For

larger events with 201 to 500 attendees, additional security staff will be provided.

The event would mainly occur on the parking lot to the south of the Valley Title building and to the north of the Anno Domini Gallery at 366 South 1st Street and would be enclosed with a movable security perimeter fence. The pavilion would be installed at the center of this parking lot and face South 1st Street. The pavilion would have a footprint of approximately 1,600 square feet and a height of 46 feet. The pavilion and the event area would displace approximately 74 parking spaces, leaving 191 spaces available for car parking. Approximately 50 of these spaces would be set aside for attendee parking for most Serpentine Pavilion events, as needed depending on the size of the event, with approximately 140 spaces remaining open for general use parking. For some larger events occurring three to four days per month, an additional 80 spaces would be set aside, still leaving approximately 66 spaces generally available. A portion of the generally-available spaces for all events may be used for event staging and larger events.

All event loading, set-up and breakdown would take place either within the fenced enclosure, or in the directly adjacent parking lot to the east of the event area as described above. Visitor and staff parking would occur in the remaining portion of the parking lot along South 2nd Street. Pedestrians will enter directly from the South 1st Street sidewalk. A parking lot entrance will also be available for visitors arriving by car or from the east. There would be up to five food trucks on site, with some being stationed within the Serpentine Pavilion site, and some within the open parking area. Catering and support vehicles will access the site via the South 2nd Street parking entrance and be directed to parking areas along the event perimeter fence. Traffic flows in the parking lot will be managed and marked using safety cones, directional signage and other measures.

All staff and patrons would have access to restrooms located inside the Valley Title building to the north of the pavilion at the intersection of San Carlos and South 1st Street. If the restrooms in the Valley Title building are not available, portable toilets will be provided. The Valley Title building's power, water and full-service kitchen would support events and catering.

- 3. General Plan Conformance.** The site has a land use designation of Downtown in the Envision San José 2040 General Plan Land Use/Transportation Diagram. This designation supports office, retail, service, residential, and entertainment uses. All development within this destination should enhance the “complete community” in downtown, support pedestrian and bicycle circulation, and increase transit ridership. The temporary outdoor event with arts and entertainment is consistent with the Downtown land use designation. The exhibition will help create a more “complete community” in the downtown area by activating a parking lot with a temporary pedestrian-oriented use providing arts and entertainment experiences.

The project is also consistent with the following key General Plan policies:

- a. Land Use Policy LU-3.3. Support the development of Downtown as an arts, cultural, and entertainment center for San José and the region. Promote special events, parades, celebrations, performances, concerts, and festivals.
- b. Arts and Culture Policy AC-1.2. Attract new and cultivate existing signature events that add to the quality of life for San José residents, enhance the image of San José, and stimulate economic activity here.
- c. Cultural Attractions Policy IE-5.4: Support entertainment offerings and cultural facilities, including but not limited to parks, visual and performing arts, museums, libraries, theatres, historic structures/sites/neighborhoods, festivals, and commercial entertainment venues, particularly those that provide significant social and economic benefit to San José's community, provide opportunities for community participation, achieve excellence and innovation, and/or reflect the City's population.
- d. Cultural Opportunities Policy VN-4.5: Encourage and provide spaces to support neighborhood based cultural activities such as workshops, festivals, celebrations, and other events.
- e. Community Identity Policy PR-4.5: Increase the number of special events that bring neighborhoods together, such as street festivals, resource fairs, holiday parades, movies, theatrical plays, and concerts in local parks, on temporarily closed streets, and/or in plazas.
- f. San Jose as the Silicon Valley Cultural Center Policy AC-1.2: Attract new and cultivate existing signature events that add to the quality of life for San José residents, enhance the image of San José, and stimulate economic activity here.

Analysis: The project will provide cultural and entertainment events such as artist talks, speaker series, courses and workshops, private events, public readings, dance, music, and theatrical performances, fashion shows, movie screenings, multi-media events and design charrettes for residents and visitors to the City, as well as promote increased economic activity.

- g. Land Use 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 project would not have significant adverse impacts in that the event has a limited eight-month duration and limited numbers of individual events and operation hours. The operation hours of the events are from 10 AM to 11 PM from Sundays to Wednesdays, 10 AM to 12 AM on Thursdays, and 9 AM to 2 AM on Fridays and Saturdays. Amplified sound would not occur after 11 PM from Sundays to Thursdays and not occur after midnight on Fridays and Saturdays. Trash would be collected daily, and 24-hour on-site security would be available. The applicant will coordinate with Office of Cultural Affairs for event size and

schedule. Traffic flows in the parking lot near the event area will be managed and marked using safety cones, directional signage and other measures. By complying with the approved permit conditions, the project would not result in significant adverse impacts.

4. Zoning Ordinance Conformance.

The Project Site is located in the DC Downtown Primary Commercial Zoning District. The DC Zoning District supports uses such as office, retail, service, residential, medical office, hospital, entertainment and recreation related uses.

Use

Under the provisions of Section [20.80.1420.C](#) of the San José Municipal Code, an applicant for an outdoor private property special event that will exceed thirty consecutive days and forty-five total days in any calendar year must obtain a conditional use permit. A conditional use permit is required because the event exceeds the above number of days.

Section [20.80.1520.A](#) requires the following conditions to be met by the project:

- a. All amusement rides, booths, tents and equipment shall be located at least twenty (20) feet from all frontage streets.

The pavilion is greater than 20 feet from all frontage streets. The closest is approximately 26 feet from South 1st Street.

- b. The outdoor private property special event venue shall have direct vehicular access from a public street.

The direct vehicle access is from South 2nd Street, a public street.

- c. The size, configuration and location of the outdoor private property special event venue shall be suitable for the proposed number of attendees taking into account other events which are scheduled to occur during the same time period at locations in proximity to the proposed site for the outdoor private property special event.

The applicant will coordinate with Office of Cultural Affairs on individual event sizes and scheduling.

- d. The outdoor private property special event applicant has made provision for each of the following:

- i. refuse disposal and sufficient trash receptacles within the event site;
- ii. litter removal within a three hundred foot radius of the boundaries of the event site;
- iii. scheduled maintenance of the outdoor private property special event venue during the course of the event, including removal of animal waste, if applicable;

iv. sanitary facilities, including adequate restrooms and/or portable toilets.

Trash containers will be emptied daily or more frequently to prevent overflow. Food and beverage would be sold by authorized food trucks, which will either provide their own refuse containers or coordinate trash collection and removal with the event. Larger events on nights and weekends would have additional receptacles provided and managed by contracted catering companies. Waste from these events would also be disposed using the Valley Title building's waste facilities. Restrooms would be accessible in the Valley Title building. If the restrooms in the Valley Title building are not available, portable toilet facilities will be provided. These facilities will be available during events and the set up and break down hours.

- e. The San José police department has approved the applicant's security and traffic plans, if applicable. The thresholds for requiring either a security or traffic plan or both shall be set forth in the regulations issued pursuant to this part.

Based on the email correspondence with San Jose Police Department dated May 26, 2021, the San José Police Department requires on-site security for events which need Alcohol Beverage Control permit(s). The applicant voluntarily commits to have a minimum of two security staff on site at all times regardless whether an event requires an Alcohol Beverage Control permit. For larger events with 201 to 500 attendees, additional security staff will be provided.

- f. The applicant shall be responsible for reimbursing the city for the direct cost of police services in the event that the outdoor private property special event requires extra police services in addition to the regular patrol services provided in the police district in which the outdoor private property special event site is located. The criteria for assessing whether the outdoor private property special event will necessitate additional police services shall be set out in the regulations issued pursuant to this part.
- g. The applicant shall be responsible for reimbursing the city for the direct cost of litter removal within a three-hundred-foot radius of the boundaries of the event site in the event that the applicant fails to comply with this requirement.
- h. The San José fire department has approved applicant's plans for fire control devices, tents and canopies, cooking equipment, pyrotechnics and emergency vehicle access, if applicable.
- i. The California Department of Alcohol Beverage Control has issued a permit for the sale of alcohol or the applicant has certified that the sale of alcohol will not occur.

The Resolution contains the above conditions. Therefore, the project will comply with this code section.

Height and Setback

[Section 20.70.210](#) of the Municipal Code does not establish minimum setback requirements for developments in the DC Downtown Primary Commercial Zoning District. The height of development in the Zoning District is limited only to that necessary for the safe operation of the San José International Airport and the requirements of FAA Part 77 as discussed in [Section 20.70.200](#) of the Municipal Code. The proposed temporary structure is 46 feet in height, below the FAA requirement. The temporary structure has a setback of more than 20 feet to the South 1st Street property line, which complies with Zoning Code Section [20.80.1520.A.1](#) as discussed above.

Parking: The Zoning Code does not require parking for events within Downtown Core area per Zoning Code Section 20.80.1480.B. However, the on-site hourly-rate parking establishment to the east of the pavilion would provide parking for event staff and visitors.

As discussed previously, the site is currently occupied by a pay-to-park surface parking lot with approximately 265 parking spaces, which serve the general Downtown area around the site. None of these parking spaces are required parking for specific buildings or uses. The event area would displace approximately 74 parking spaces, leaving 191 spaces available for car parking. Approximately 50 of these spaces would be set aside for attendee parking for most Serpentine Pavilion events, as needed depending on the size of the event, with approximately 140 spaces remaining open for general use parking. For some larger events occurring three to four days per month, an additional 80 spaces would be set aside, still leaving approximately 66 spaces generally available. A portion of the generally-available spaces for all events may be used for event staging and larger events.

5. **California Environmental Quality Act.** Under the provisions of Section 15304(e) of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. CEQA Guidelines Section 15304(e) consists of minor public or private alterations in the condition of land, water and/or vegetation which do not involve removal of healthy, mature, scenic trees, and including the minor temporary use of land having negligible or no permanent effects on the environment.

The project would allow a one-time eight-month maximum outdoor temporary event, including a temporary structure (Serpentine Pavilion) and individual events including but not limited to musical and theatrical performances, speaker series, movie screenings, and media exhibitions with total on-site attendance up to 500, including outdoor vending (up to five mobile food trucks) on a 2.8-acre site. The temporary structure would be removed at the end of the permit use. Furthermore, depending on the events, there will be temporary set-up of other structures, such as tents, for vendor uses and portable toilets. The event would be required to coordinate with the City's Office of Cultural Affairs which is consistent with the Municipal Code.

All structures are temporary and would be located on an existing paved parking lot and therefore, would not result in a permanent impact to the environment. This project consists of temporary, minor alterations to an existing facility. Additionally, the project will not involve the removal of healthy, mature, or scenic trees. It is a minor temporary use of land resulting in negligible or no permanent effects on the environment.

6. **Conditional Use Permit.** Section 20.100.700 of the Zoning Ordinance specifies the required findings for approval of a Conditional Use Permit. These findings are made for the project based on the analysis related to General Plan, Zoning Ordinance, and CEQA conformance and subject to the conditions set forth in the 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.

Analysis: As discussed above, the temporary outdoor event use is consistent with the Downtown land use designation. The events would promote increased economic activity and social benefits, which further the General Plan policies.

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.

Analysis: As discussed above, the temporary outdoor event use would require a Conditional Use Permit per the Zoning Code. The 46-foot high temporary structure conforms with Downtown Primary Commercial Zoning District development standards which require that structures do not exceed a height that is necessary for the safe operation of the San José International Airport and FAA. The project meets the 20-foot setback from street frontage pursuant to Section 20.80.1250.A.1. There is no parking requirement for temporary outdoor events in the Downtown Core area.

c. The Conditional Use Permit, as approved, is consistent with applicable city council policies, or counter Conditional Use Permit balancing considerations justify the inconsistency.

Analysis: The project is in compliance with [Council Policy 6-30: Public Outreach Policy](#). A development sign has been posted on the site and the project has been noticed for public hearing to a radius of 1,000 feet from the project site.

d. The proposed use at the location requested will not adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or impair the utility or value of property of other persons located in the vicinity of the site; or be detrimental to public health, safety or general welfare.

Analysis: The project would not negatively affect the utility or value of surrounding properties in the neighborhood, in that the project includes the installation of a temporary structure and provides arts and social events that will activate the parking lot and promotes economic and social benefits. As discussed above, the project would conform with Zoning Code Section 20.80.125, which address the

event management and coordination, vehicle access, trash and sanitary facilities, property management, on-site security, and other event-related activities. The project would have security staff for events, and would provide access to restrooms and utilities in the Valley Title building at 300 South 1st Street. If the restrooms in the Valley Title building are not available, portable toilets will be provided. Trash will be collected daily. Amplified sound would not occur after 11 PM from Sundays to Thursdays and not after midnight on Fridays and Saturdays. And the event break-down activities would not occur after one hour of the event time. The project is in conformance with the City's policies and regulations and is not anticipated to adversely affect the community, impair the value of adjoining property, or be detrimental to public health, safety, or welfare.

- e. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and 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 areas.

Analysis: The 2.8-acre site includes a building and a surface parking lot. The area to the south of the building along South 1st Street has adequate space (approximately 273 feet by 137 feet) to accommodate the pavilion (approximately 89 feet by 69 feet) as shown in the project plans. As discussed above, the building to the north of the pavilion would provide access to restrooms and utilities for events and the rest of the parking lot to the east would provide parking for staff and visitors, and provide space for set-up for certain events.

- f. The proposed site is adequately served by highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate, and by other public or private service facilities as are required.

Analysis: The site is within 2,000 feet to Highway 280, is along three major streets (South 1st Street, South 2nd Street, and East San Carlos Street), hosts bus stops serving several bus lines, and is within 1,000 feet to two Light Rail stations, San Antonio Station and Convention Center Station. The site is adequately served by streets of sufficient width as evidenced by the issuance of the Final Public Works Memo dated May 26, 2021.

- g. 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 proposes temporary outdoor event use. Except for the installation of a temporary structure and the movable fences, there are no other site improvements proposed. Certain events such as dance and music performances would have amplified sound. However, the hours of amplified sound would not occur after 11 PM from Sundays to Thursdays and not occur after midnight on Fridays and

Saturdays. Therefore, the project would not result in significant noise, vibration, dust, drainage, erosion, storm water runoff, and odor impact and would not have an unacceptable negative affect on adjacent property or properties.

In accordance with the facts and findings set forth above, the permit appeal is **denied** and a Conditional Use Permit for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby **approved**. The City Council expressly declares that it would 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) of Title 20 of the San José Municipal Code, 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 eight months after the first event commences. This permit shall automatically expire four years from and after the date of issuance hereof by the City Council, if within such time period the use 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.
4. **Fire Special Event Permit Required.** Annual Special Event Permits are required in accordance with San Jose Fire Department Bureau of Fire Prevention regulations.

5. **Santa Clara County Department of Health Permits Required.** Food Permits from the Santa Clara County Department of Health shall be obtained for each outdoor vending facility prior to its operation.
6. **Scope and Use Authorization of the Conditional Use Permit.** Subject to all conditions herein and as provided in the Project Description, this Conditional Use Permit will allow a one-time eight-month maximum outdoor temporary event, including a temporary structure (Serpentine Pavilion) and individual events not exceeding 500 attendees including but not limited to musical and theatrical performances, speaker series, movie screenings, and media exhibitions, and up to five mobile food trucks on a 2.8-acre site. Temporary structures (e.g., pop-up vendor tents, etc.) erected for no more than three consecutive days will not require any additional Planning permits. This Permit shall automatically expire eight months after the first event commences, as specified in Condition No. 2.
 - a) Maximum total on-site capacity shall be 500 attendees. Maximum 28 total days are permitted for events with 201 to 500 attendees. There are no limitations to the number of days for events with 200 or less attendees.
 - b) Hours of operation: Sundays through Wednesdays from 10:00 AM to 11:00 PM, Thursdays from 10:00 AM to 12:00 AM, and Fridays and Saturdays from 9:00 AM to 2:00 AM. Break down of the events shall not occur one hour after the hours of operation. Amplified sound shall not occur after 11:00 PM from Sundays to Thursdays, and not occur after midnight on Fridays and Saturdays.
 - c) All vendors, vendor employees, and patrons shall have access to the bathrooms located in the Valley Title Building at 300 South 1st Street during event operation hours. In the event of the Valley Title Building restrooms are not available for event access, then temporary facilities shall be provided on-site for use during the event operation hours and the set up and break down hours.
 - d) Traffic flows in the parking lot shall be managed using marked using safety cones, directional signage, and other safety measures.
 - e) The event shall have 24-hour security with a minimum of two security staff provided. The San José Police Department shall determine through the ABC Permit process whether additional on-site security or police officers (off-duty or uniformed) will be required.
7. **Conformance to Plans.** The development of the site shall conform to the approved Conditional Use Permit plans entitled, “File No. CP21-004, 300 S 1st Street and 345 South 2nd Street”, dated revised May 19, 2021, on file with the Department of Planning, Building and Code Enforcement as may be amended and approved by the Director of Planning, Building, and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 24). The plans are referred to herein as the “approved plans” or the “Approved Plan Set.”

8. Conformance with Municipal Code. No part of this approval shall be construed to permit violation of any part of the San Jose Municipal Code.

- a. The project shall conform with Section 20.80.1520 conditions for issuance of permits for outdoor private property special events, as follows:
 - i. No event permit for an outdoor private property special event shall be issued unless the following conditions have been met and the permittee agrees in writing to comply with these conditions:
 - 1) All temporary structures and equipment shall be maintained at least twenty (20) feet from all frontage streets.
 - 2) The outdoor private property special event venue shall maintain direct vehicular access from a public street.
 - 3) The permittee shall coordinate with the Office of Cultural Affairs to ensure the size, configuration and location of the outdoor private property special event venue remains suitable for the number of attendees taking into account other events which are scheduled to occur during the same time period at locations in proximity to the proposed site for the outdoor private property special event.
 - 4) The outdoor private property special event permittee shall maintain each of the following:
 - a) Refuse disposal and sufficient trash receptacles within the event site;
 - b) litter removal within a three-hundred-foot radius of the boundaries of the event site;
 - c) scheduled maintenance of the outdoor private property special event venue during the course of the event;
 - d) sanitary facilities, including adequate restrooms and/or portable toilets.
 - 5) The permittee shall be responsible for reimbursing the City for the direct cost of litter removal within a three-hundred-foot radius of the boundaries of the event site in the event that the permittee fails to comply with this requirement.
 - 6) The permittee shall be responsible for reimbursing the City for the direct cost of police services in the event that the outdoor private property special event requires extra police services in addition to the regular patrol services provided in the police district in which the outdoor private property special event site is located. The criteria for assessing whether the outdoor private property special event will necessitate additional police services shall be set out in the regulations issued pursuant to this Part 16 of Chapter 20.80 of the Zoning Ordinance.

9. **Disturbance Coordinator.** The Permittee shall implement the following:
 - a. Provide an on-site disturbance coordinator during all hours of operations;
 - b. Post contact information for the disturbance coordinator in a prominent location within the establishment near the primary entrance;
 - c. Maintain a complaint log including the time and content of all complaints and a summary of the time and nature of the establishment's response to each complaint;
 - d. Ensure that the log is kept current and is available on the project site for inspection by City staff.
10. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local and state laws. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code. This Permit shall be subject to revocation if the subject
11. **Discretionary Review.** The Director of Planning, Building and Code Enforcement 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. **Alcohol Service and Sale.** Any alcohol service shall be conducted in full compliance with the issued ABC license.
13. **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.
14. **Anti-Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris:
 - a. Cleaning shall include keeping all publicly used areas free of litter, trash, cigarette butts and garbage and shall include daily damp washing of all exterior walls and sidewalks along the project's frontage.
 - b. The permittee shall clean the public right-of-way immediately adjacent to the subject site before 8:00 a.m. each day.
 - c. Mechanical equipment used for outside maintenance, including blowers and street sweepers may not be used between 10:00 p.m. and 6:00 a.m. daily.
15. **No Sign Approval.** Any signage shown on the Approved Plan Set are 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 separate Sign Permit application.
16. **No Generators Approved.** This Permit does not include the approval of any stand-by/backup electrical power generation facility. Any future stand-by/backup generators

shall secure appropriate permits and shall conform to the regulations of Title 20 of the Municipal Code.

17. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the approved plan set.
18. **Lighting.** Any changes to the on-site lighting will require a Permit Adjustment.
19. **Building Division Clearance for Issuing Permits.** Prior to the issuance of any Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
 - a. *Construction Plans.* This permit file number *CP21-004* shall be printed on all construction plans submitted to the Building Division.
 - b. *Americans with Disabilities Act.* The permittee shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
 - c. *Construction Plan Conformance.* A project construction plan conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan check submittal to the Building Division. Prior to any building permit issuance, building permit plans shall conform to the approved Planning development permits and applicable conditions.
20. **Bureau of Fire Department Clearance for Issuing Permits.** Prior to the issuance of any Building Permit, the project must comply with the 2019 California Fire Code.
21. **Public Works Clearance for Building Permit(s):** Prior to the approval of the Tract or Parcel Map (if applicable) by the Director of Public Works, or the issuance of Building permits, whichever occurs first, the Permittee will be required to have satisfied all of the following Public Works conditions. The applicant is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits. Standard review timelines and submittal instructions for Public Works permits may be found at <http://www.sanjoseca.gov/devresources>.
 - a. **Site Utilization Plan and Revocable Encroachment Permit (Street/Sidewalk Closures):** At the Implementation stage, Permittee shall provide to the Public Works Project Engineer a Site Utilization Plan with the application of a Revocable Encroachment Permit for any proposed sidewalk and lane closures to support the onsite construction activities.
 - i. The following should be included with the Site Utilization Plan and Revocable Permit application, but are not limited to:
 - ii. **Site Utilization Plan and Letter of Intent:** The site utilization plan shall provide a detailed plan of the location of the temporary facilities within the boundary of the construction site. The Letter of Intent shall provide a description of operations of the site as well as the reasons for the sidewalk/lane closures and why the activities/uses that are proposed within

the Public right-of-way can't occur within the construction site. These include the use of the right of way for temporary facilities and activities such as man lifts, baker tanks, staging area, concrete pumping activities, etc. The letter must also provide a detailed discussion if covered pedestrian walkways are infeasible (ex. swinging loads over the sidewalk are not safe for pedestrians).

- iii. **Multi-Phased Site Specific Sketches:** These sketches shall show the phased closures during the course of construction with a provided timeframe estimate of when each phase would be implemented. These sketches shall include the type and location of the work to be accomplished within the right-of-way. The exhibit shall show in detail the vehicular and/or pedestrian diversion route that shows the appropriate safety equipment, such as barricades, cones, arrow boards, signage, etc.
- b. Permittee shall minimize potential impact to vehicular and pedestrian traffic by:
 - i. Implementing the closures at the time the onsite activities dictate the need for the closure.
 - ii. Minimizing the closure timeframes to accomplish the onsite tasks and implement the next phase of the closure as outlined in Condition 21.a.ii, above.
- c. If the lane and parking closures are a part of the Revocable Permit Application, Permittee shall submit Downtown Lane Closure and Tow Away Permit Applications to Department of Transportation (DOT). These applications may be obtained at: <http://www.sanjoseca.gov/?navid=1629>. Permittee shall contact DOT at (408) 535-8350 for more information concerning the requirements of these applications.
- d. **Assessment:** This project is located within the Premium Zone of the Downtown San José Property-Based Business Improvement District, which provides enhanced cleaning, information and safety services, beautification activities, and business retention and growth programs within the boundaries of the district. Benefiting properties within the district pay for services through annual assessments placed on the County property tax bills, which may be increased by up to 5% each year. The assessment is calculated based on the land use and its building and lot square footages. For 2020-2021, commercial properties pay \$0.130274193 and residential properties pay \$0.104996758 per building and lot square footages. Future year assessments will be adjusted accordingly and will continue to be collected through the County property tax bills listed under Tax Code 0916 "DOWNTOWN PBID". Any questions may be directed to the Special Districts Program Manager at Public Works Department at (408) 535-6831.

22. 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 _____, 2021, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
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.