

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING, SUBJECT TO CONDITIONS, A CONDITIONAL USE PERMIT TO ALLOW THE CONVERSION OF AN EXISTING APPROXIMATELY 10,220-SQUARE-FOOT BUILDING TO A MUSIC VENUE WITH THE ADDITION OF TWO MEZZANINES TOTALING APPROXIMATELY 1,454 SQUARE FEET, AND TO ALLOW ENTERTAINMENT AND ON-SITE ALCOHOL SALES AND CONSUMPTION (FOR MORE THAN 250 PEOPLE), AND LATE-NIGHT OPERATION UNTIL 2:00 AM ON AN APPROXIMATELY 0.24-GROSS-ACRE SITE, LOCATED ON THE WEST SIDE OF SOUTH 1ST STREET, APPROXIMATELY 180 FEET SOUTH OF WEST SAN SALVADOR STREET (439 SOUTH 1ST STREET) (APN: 264-30-086)

FILE NO. CP24-030

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on August 29, 2024, Rena Be on behalf of the applicant, Pete Be Center, filed an application (File No. CP24-030) with the City of San José (“City”) for a Conditional Use Permit to allow the conversion of an existing approximately 10,220-square-foot building to a music venue with the addition of two mezzanines totaling approximately 1,454 square feet, and to allow entertainment and on-site alcohol sales and consumption (for more than 250 people), and late-night operation until 2:00 AM on an approximately 0.24-gross-acre site (the “project”) situated in the DC Downtown Primary Commercial Zoning District and located on the west side of South 1st Street, approximately 180 feet south of West San Salvador Street (439 South 1st Street, APN 264-30-086)(the “subject property”); and

WHEREAS, a legal description of the subject property is attached as Exhibit “A” and incorporated by reference; and

WHEREAS, on February 11, 2025, this City Council conducted a duly noticed public hearing on the Project, giving all persons full opportunity to be heard and to present evidence and testimony; and

WHEREAS, at said hearing, this City Council received in evidence a plan for the subject property entitled, "Pete Be Center" dated January 2, 2025; said plan is on file in the Department of Planning, Building and Code Enforcement, available for inspection, and incorporated by reference; and

WHEREAS, this City Council has heard and considered the testimony presented 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:

The foregoing recitals are hereby incorporated by reference, and, 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 0.24-gross-acre site is located on the west side of South 1st Street, approximately 180 feet south of West San Salvador Street. The site is currently developed with an existing commercial building, surrounded by commercial office uses to the north and south, indoor recreation to the east across South 1st Street, and the San José Convention Center to the west across Market Street. The subject site is accessible to pedestrians from both South Market Street and South 1st Street.
- 2. Project Description.** The project consists of a Conditional Use Permit application to allow the conversion of an existing approximately 10,220-square-foot building to a music venue with the addition of two mezzanines totaling approximately 1,454 square feet, and to allow entertainment and on-site alcohol sales and consumption, and late-night operation until 2:00 AM on an approximately 0.24-gross acre site. There are no proposed changes to the building exterior. Only interior alterations are proposed. The estimated capacity of the venue is anticipated to be 1,142 persons, but this is subject to change based on the review by the Fire Department and Building Division.

Based on the Operations Plan on file dated January 2, 2025, the subject building will be used as a music venue and an event center. The venue will only be open for scheduled events, and operational hours will vary depending on the event. The general hours will range from 9:00 AM to 2:00 AM. All entertainment activities will cease at 1:30 AM. No kitchen facilities or food will be provided on-site. The establishment will operate with a valid California Department of Alcoholic Beverage Control (ABC) Type 90 License (on sale general, music venue). Per the Type 90 license, the sale, service, and consumption of alcoholic beverages is limited to the time period from two hours before a live performance until one hour after the live performance. Alcoholic beverages cannot be sold, served, or consumed between the hours of 2:00 AM and 6:00 AM.

The primary entrance to the venue will be from South 1st Street, and artists will enter the venue from South Market Street. The venue will include a main hall with a performance stage and two bars. The venue will have at least one security person per 50 customers. If queueing occurs, security will manage queueing and direct patrons to line up against the building on the south side of South 1st Street, leaving adequate space for the general public right-of-way.

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 music venue with a drinking establishment will operate past 12:00 AM midnight. The proposed project is consistent with both City Council Policies, as analyzed below. The Police Memorandum dated October 17, 2024 states that the Police Department is neutral to the project with certain conditions which have been included in this Conditional Use Permit Resolution. The operation of this facility must adhere to the Operations Plan, which includes provisions for site security, staffing, site maintenance, pedestrian queueing, lighting, noise, and garbage/litter.

- 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, which should enhance the “complete community” Downtown, support pedestrian and bicycle circulation, and increase transit ridership.

Analysis: The project will occupy a vacant Downtown tenant space and provide an entertainment business with a drinking establishment. Therefore, it is consistent with the Downtown General Plan Land Use Designation. The project will support pedestrian and bicycle circulation as it is within walking distance of other commercial businesses such as restaurants, theatres, and museums. In addition, the site is well-served by public transit and can be accessed by sidewalks along both South Market Street and South 1st Street.

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

- a. Downtown Goal LU-3: Strengthen Downtown as a regional job, entertainment, and cultural destination and as the symbolic heart of San José; and
- b. Downtown Policy LU-3.1: Provide maximum flexibility in mixing uses throughout the Downtown Area. Support intensive employment, entertainment, cultural, public/quasi-public, and residential uses in compact, intensive forms to maximize social interaction; to serve as a focal point for residents, businesses, and visitors; and to further the vision of the Envision General Plan; and
- c. Downtown 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; and
- d. 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; and
- e. Downtown Policy LU-3.8: Leverage Downtown's urban nature and promote projects that will help achieve economic, fiscal, environmental, cultural, social and other objectives of this plan.

Analysis (LU-3, 3.1, 3.3, 3.4 & 3.8): The proposed project will occupy a vacant commercial building in the SoFA (South of First Street Area) District and will bring business and activity to this area of Downtown. The project will provide private entertainment events, music, and performances for residents and visitors to the Downtown, as well as promote increased economic activity.

- f. Diverse and Innovative Economy 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.
- g. 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 (IE-5.3 & LU-3.7): The venue will be open until 2:00 AM, drawing patrons to the Downtown area that will promote a vibrant, 24-hour city center. All windows and doors will be closed during entertainment with amplified music. The project will implement an Operations Plan that includes provisions for site security, employee training, maintenance, and customer queueing, and be consistent with the City Council Policy 6-23: Guidelines for Evaluation of Nightclubs and Bars and City Council Policy 6-27: Evaluation of 24-Hour Uses as discussed further in this document. By complying with the project conditions included in the Conditional Use Permit Resolution, the project will not result in significant adverse impacts.

4. Zoning Ordinance Compliance.

Use

The project site is located within the DC Downtown Primary Commercial Zoning District. The music venue is considered to be an auditorium. The project also includes a drinking establishment and late-night operation until 2:00 AM. Pursuant to Table 20-140 in Section 20.70.100 and Section 20.70.510.B, auditoriums require a Conditional Use Permit (CUP), and the drinking establishments with late-night operations also require a CUP. A CUP is also required for entertainment business per Section 6.60.220.

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 CUP to be heard at a City Council hearing rather than a Planning Commission hearing. The project plan set (Exhibit G) indicates the maximum occupancy load of 1,142 persons. Therefore, the City Council will be the final decision-making body for this CUP.

Development Standards

The project does not include any physical changes to the building exterior. The project does not alter the height and setback of the existing building.

Parking

- Vehicle Parking: The proposed use is a Visit End Use and the building area is less than 100,000 square feet. Therefore, the project is exempt from the Transportation Demand Management Plan requirements per Section 20.90.900.B.2.d.
- Bicycle Parking: 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.” The existing building was constructed long before 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 & 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. The project includes a drinking establishment until 2:00 AM; therefore, it is subject to this policy.

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 subject site is located within the SoFA district and is in Downtown Core. The site is surrounded by commercial use. The nearest residential building (The Taft Apartments) is located at the south corner of South Market Street and Balbach Street, approximately 135 feet to the south of the site across from South Market Street. A mixed commercial and residential highrise project was approved at the north corner of West William Street and South Market Street, approximately 100 feet south of the site but separated by three commercial buildings.

The venue will operate entirely indoors and is physically separated from residential uses by non-residential buildings and South Market Street, as described above. As conditioned in this CUP Resolution, all windows and doors will remain closed during entertainment with amplified music. The venue operation is also required to comply with the Operations Plan. Per the Operations Plan, litter emanating from the site will be controlled daily for a distance of 300 feet along the public streets from the venue. No mechanical equipment, such as blowers and street sweepers, will be used for maintenance so that no excessive noise will be generated for such purposes. Queueing will be managed by security to minimize impacts to the sidewalks. Therefore, the project will not adversely impact the existing residential uses nearby.

- 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 motel (Pacific Motor Inn at 455 South 2nd Street) is located approximately 135 feet southeast of the project site, across from South 1st Street. As discussed above, by implementing the project conditions and the Operations Plan, the project is not expected to impact the surrounding uses including hotels/motels.

- 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: Although the venue anticipates only being open for scheduled events, the general operation hours will be from 9:00 AM to 2:00 AM. Since it will open during the daytime, the 30% requirement does not apply.

- 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: Per the Operations Plan, security will manage queuing and direct patrons to line up against the building on the south side of South 1st Street, leaving adequate space for the general public right-of-way.

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

Analysis (v and vi): The Police Department evaluated the proposed project and issued a memorandum on October 17, 2024. The subject site is located in San José Police Beat E4. 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. The Police Department is neutral to the proposed project with certain conditions. These conditions include regulating entertainment hours to 1:30 AM and on-site alcohol sale and consumption until 2:00 AM, requiring all windows and doors to be closed during entertainment with amplified music, requiring to follow Municipal Code Section 10.28.100 for minors admittance, and requiring the venue operation to comply with the Department of Alcoholic Beverage Control Music Venue License Acknowledgment ABC-203 form. These conditions are included in this CUP Resolution (Conditions 5.a to 5.f) and are reflected in the Operations Plan.

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 entertainment and drinking establishment will operate within an existing building with no change to the structure's exterior. No outdoor activities are included. This CUP Resolution includes approval conditions requiring windows and doors to be closed during entertainment with amplified music so that no noise is audible outside the venue. 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: City Council Policy 6-27: Evaluation of 24-Hour Uses includes more restrictive conditions on this subject. The project will comply with Policy 6-27 as analyzed in the next section below. No noise-generating equipment will be used for exterior cleaning. The litter emanating from the site will be controlled on a daily basis for a distance of 300 feet along public streets from the site and the exterior cleaning will not occur between 10:00 PM to 7:00 AM.

d. Typical Use Restrictions

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

Analysis: The venue will operate with a Type 90 ABC license. Type 90 allows minors to enter the venue, but alcoholic beverages are served to adult patrons only. Policy 6-23 was updated in 1993, while Type 90 was

created in 2023 with different restrictions on the California Department of Alcoholic Beverage Control (ABC) license. Security personnel will check patron IDs at entrance. Wristbands will be placed on everyone over the age of 21 years old.

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

Analysis: The venue will only open for scheduled events. When the venue is open, the venue will operate until 2:00 AM, and all entertainment activities will cease at 1:30 AM.

- 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 CUP Resolution.

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

Analysis: The entertainment activities will only occur indoors. Windows and doors will be closed during entertainment with amplified music.

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

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:

- a. 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 Planning Commission.

Analysis: The venue will operate without detriment to nearby residential uses and the general welfare of the surrounding area, as the venue does not include outdoor entertainment uses. As previously stated, windows and doors will remain closed during entertainment with amplified music, pursuant to City Council Policy 6-23

noise provisions. As explained in the Zoning Ordinance Compliance section above, City Council is the decision body for this project because the maximum occupancy load is over 250 persons. The written complaints, if any, should be referred to the City Council instead.

- b. 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: As analyzed previously, the subject site is located within the SoFA district and is in Downtown Core. The site is surrounded by commercial use. The nearest residential building (The Taft Apartments) is located at the south corner of South Market Street and Balbach Street, approximately 135 feet to the south of the site across from South Market Street. A mixed commercial and residential highrise project was approved at the north corner of West William Street and South Market Street, approximately 100 feet south of the site but separated by three commercial buildings. The venue will operate entirely indoors and is physically separated from residential uses by non-residential buildings and South Market Street. Therefore, the project complies with this requirement.

- c. 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 venue will operate without detriment to nearby residential uses and the general welfare of the surrounding area, as the project does not include outdoor entertainment uses. All operations will take place within the building.

- d. 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: Per the Police Memorandum dated October 17, 2024, 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. The Police Department is neutral to the proposed project, with certain conditions that have been addressed in the Operations Plan and included in this CUP Resolution as discussed previously.

- e. 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 venue includes restrooms, and the restrooms will be open and available during entire operation hours per the Operations Plan.

- f. 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 project does not include any outdoor use or outdoor entertainment uses that will produce amplified sound. As conditioned in this CUP Resolution, all windows and doors shall be kept closed during entertainment with amplified music.

- 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: No noise-generating equipment will be used for exterior cleaning per the Operations Plan. Because the site is within 300 feet of residential use, the exterior cleaning hours shall follow the more restrictive condition under h below.

- h. Mitigation Management Plan. A mitigation management plan should be required for all mitigated 24-hour uses to ensure compliance with conditions of approval. The plan should be realistic, practical and enforceable. The plan should include detailed provisions for response to neighborhood complaints; control of noise, litter, graffiti, etc., and provide a protocol for interface with police to resolve potential problems with gangs, drugs, loitering, and other criminal activities.

- Conditions of Approval. The applicant shall provide a management plan and revised plans as necessary for the following items.
 - Litter Control. The applicant shall control the litter emanating from the site on a daily basis for a distance of 300 feet along public streets from the site.
 - Police Issues. The applicant shall maintain a liaison with the Police Department to effectively control crime, gang, drug and other police problems which may arise from the operation between 12:00 midnight and 6:00 AM.
 - Lighting. The applicant shall provide enhanced lighting of the designated parking and use areas and related areas of the site to the satisfaction of the Director of Planning, Building and Code Enforcement.
 - Exterior Clean Up. Exterior clean-up and maintenance activities, including garbage pick-up shall not occur later than 10:00 PM or prior to 7:00 AM when the business is located within 300 feet of residential uses.

Analysis: The above Litter Control, Police Issue, and Exterior Clean Up conditions are all included as conditions of approval in this CUP Resolution. There are some existing wall-mounted lights on the building façades facing South 1st Street and South Market Street. The project will maintain those lighting fixtures.

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. On-site signs have been posted on the project's street frontages since November 22, 2024. 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. 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 exterior modifications or expansion to the footprint of the existing commercial building.

The project will allow entertainment activities with a drinking establishment within an existing vacant building and will include interior modifications to allow for its operation. The proposed use will wholly occur 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, 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 occupy a currently vacant commercial building, generate City revenue, and create 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 Section 4, Zoning Conformance, above, the project will not change the building exterior, therefore, compliance with the DC Downtown Primary Commercial Zoning District development standards related to building height and setbacks have not changed. The project is also exempt from the TDM plan requirement and bicycle parking space requirement. The entertainment use as a music venue and drinking establishment with late-night operation is authorized with a Conditional Use Permit in the DC Downtown Primary Commercial Zoning District pursuant to Table 20-140 in Section 20.70.100, Section 20.70.510.B, Section 6.60.220, and Section 20.100.220 of the San José Municipal Code. Therefore, the project would be in conformance with the requirements of the DC Downtown Primary Commercial Zoning District with the issuance of the permit.

- 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 Sections 6 and 7 above.

Council Policy 6-30: Public Outreach Policy was implemented to inform the public of the project. Two on-site signs have been posted on the project frontages since November 22, 2024. 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 indicated in the October 17, 2024 Police Department memorandum for this project, the proposed use is not located within an area of high crime, and the Police Department is neutral to the project with conditions that are included in the Operations Plans and this CUP Resolution. As discussed in the City Council Policy Sections 6 and 7 above, the project will not include outdoor entertainment uses that will produce amplified sound. Operations of the venue will occur entirely indoors. The Operations Plan includes security provisions—

one security guard will be present for every 50 patrons. If any outdoor queueing occurs, it will be organized to prevent impacts on pedestrian circulation along South 1st Street by security. Therefore, the project 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 an existing 10,220-square-foot vacant commercial building. The building is adequate in size to accommodate indoor use as a music venue with 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 within Downtown Core and is directly accessible from South Market Street and South 1st Street. The project site is close to bus stops for VTA bus lines 66 and 68. In addition, the site is within 1,330 feet of the San Antonio Light Rail Station and is within 1,500 feet of the Convention Center Light Rail Station.

- 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 will not result in any environmental impacts related to noise, vibration, dust, drainage, erosion, stormwater runoff, and odor, as all construction will occur entirely indoors. A Construction Disturbance Coordinator shall be appointed to address any construction-related complaints. All construction activity will adhere to standard construction conditions, best management practices, and any regulatory agency requirements. 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 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), 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 two (2) 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 entertainment and a drinking establishment (for more than 250 people) until 2:00 AM within the subject building. The operation of this venue shall adhere to the following:
- a. All entertainment activities shall cease at 1:30 AM and the venue shall close at 2:00 AM.
 - b. The sale, service and consumption of alcoholic beverages is only authorized during the time period from two hours before a live performance until one hour after the live performance. Alcoholic beverages cannot be sold, served, or consumed between the hours of 2:00 AM and 6:00 AM.
 - c. The sale of alcoholic beverages for consumption off the premises is prohibited.
 - d. Hours of Operation for Minors:
 - i. Per San José Municipal Code Section 10.28.100, it is unlawful for any minor under the age of sixteen years of age to be in any public place within the City during curfew hours (10:00 PM to 5:00 AM) except as provided under 10.28.110.
 - ii. Per San José Municipal Code Section 10.28.100, it is unlawful for any minor under the age of eighteen years of age to be in any public place within the City during curfew hours (11:30 PM to 5:00 AM) except as provided under 10.28.110.
 - e. All windows and doors for the facility shall remain closed during periods when amplified music is played or live entertainment is occurring except in cases of emergency and to permit deliveries.
 - f. At all times, the establishment's Operations Plan shall reflect and be in compliance with the Department of Alcoholic Beverage Control Music Venue License Acknowledgment ABC-203 form.
 - g. The venue operation shall also conform with the Operations Plan for File No. CP24-030 dated January 2, 2025:
 - i. Litter Control: The Permittee shall control the litter emanating from the site on a daily basis for a distance of 300 feet along public streets from the site.

- ii. Exterior Clean Up: Exterior clean up and maintenance activities including garbage pick up shall not occur later than 10:00 PM or prior to 7AM.
 - iii. Police Issue: The Permittee shall maintain a liaison with the Police Department to effectively control crime, gang, drug and other police problems which may arise from the operation between 12:00 midnight and 6:00 a.m.
 - iv. Lighting: The Permittee shall promptly address any lighting issues such as inadequate or burned-out lights.
 - v. Queuing: The Permittee shall control and manage queuing to avoid impact on pedestrian circulation in the public right-of-way.
 - vi. Security:
 - a) On-site security is required for all events. A minimum of one security personnel for every 50 patrons is required.
 - b) Security personnel shall check patron ID's at entrance. Wristbands or similar identification will be visibly placed on everyone over the age of 21 years old.
 - c) The interior and exterior of the venue shall be monitored at all times by a surveillance system.
6. **Entertainment Permit.** Permittee shall obtain and maintain compliance with a Public Entertainment Permit as required by the San José Police Department.
7. **Conformance to Plans.** The development of the site and all associated development and improvements shall conform to the approved Conditional Use Permit plans entitled, "Pete Be Center" dated January 2, 2025, 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."
8. **Conformance with ABC Requirements.** The project is required to conform with all applicable requirements for the obtainment and operation of a valid Type 90 license from the California Department of Alcoholic Beverage Control (ABC).
9. **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.
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.
19. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
20. **No Extended Construction Hours.** This Permit does not allow any construction activity on a site located within 500 feet of a residential unit before 7:00 a.m. or after 7:00 p.m., Monday through Friday, or at any time on weekends.
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. CP24-030 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. *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 _____, 2025, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

MATT MAHAN
Mayor

ATTEST:

TONI J. TABER, MMC
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 of the Property

The land referred to in this description is situated in the County of Santa Clara, State of California and is described as follows:

Commencing at a point in the Westerly line of First Street, distant thereon three hundred (300) feet Northerly from the corner formed by the intersection of the Westerly line of First Street with the Northerly line of William Street, thence Northerly along the Westerly line of First Street seventy (70) feet, thence at right angles Westerly to First Street one hundred fifty four and $26/100$ (154.26) feet to the Westerly line of Market Street, Southerly along the Easterly line of Market Street, seventy one and $9/10$ (71.9) feet to the corner of a brick well, thence Easterly along a line that is at right angles to First Street one hundred thirty seven and $75/100$ (137.75) feet to the West line of First Street and the place of beginning, being a portion of Lot 3, in Block 4, Range 1 South, of the base line of the City of San Jose.

APN: 264-30-86