

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE DENYING A CONDITIONAL USE PERMIT TO ALLOW A NIGHTCLUB/BAR USE WITH LATE-NIGHT HOURS UNTIL 2:00 AM IN AN EXISTING APPROXIMATELY 15,600-SQUARE-FOOT TENANT SPACE LOCATED ON AN APPROXIMATELY 0.25-GROSS-ACRE SITE, ON THE NORTH SIDE OF WEST SANTA CLARA STREET, APPROXIMATELY 140 FEET FROM THE INTERSECTION OF ALMADEN AVENUE AND WEST SANTA CLARA STREET (163 WEST SANTA CLARA STREET, APN 259-35-062)

FILE NO. CP25-025

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on April 3, 2026, Sandra Escobar filed an application (File No. CP25-025) on behalf of the property owner, SP SOCIAL LLC (“Permittee”), with the City of San José (“City”) for a Conditional Use Permit to allow a nightclub/bar use with late-night hours (until 2:00 a.m.) for an existing public eating establishment within an existing approximately 15,600-square-foot tenant space on an approximately 0.25-gross-acre site, on that certain real property situated in the DC Downtown Primary Commercial Zoning District and located on the north side of West Santa Clara Street, approximately 140 feet from the intersection of North Almaden Avenue and West Santa Clara Street (163 West Santa Clara Street, APN 259-35-062) (the “subject property”); and

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

WHEREAS, at a duly noticed public hearing on August 25, 2026, this City Council heard and considered the reports and recommendations of the City’s Director of Planning, Building and Code Enforcement and gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter; and

WHEREAS, at said hearing, this City Council received in evidence a plan for the subject property entitled, "SAN PEDRO SOCIAL" dated April 22, 2025, revised March 25, 2026, said plan is on file in the Department of Planning, Building and Code Enforcement, is available for inspection, and is 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 as if fully set forth herein, and after considering evidence presented at the public hearing the City Council finds that the following are the relevant facts and findings regarding this project:

1. **Site Description and Surrounding Uses.** The subject property is located on the north side of West Santa Clara Street, approximately 140 feet east of the intersection of North Almaden Avenue and West Santa Clara Street (163 West Santa Clara Street, APN 259-35-062). The Mason Building, located at 161 West Santa Clara Street was designated a City Landmark which meets landmark significance criteria 3, 6, and 7, under Resolution No. 70737 and amended under Resolution No. 70852 circa 2002. These criteria are, broadly, an identification with Paul Masson and Charles Lefranc, who made significant contributions to regional winemaking industries, the building embodies distinguishing characteristics of Art Deco architecture and was identified as being designed by William H. Weeks, an architect or master builder whose work has significantly influenced the development of San José. The Mason Building is a multitenant building within which the proposed project resides. North San Pedro Street/San Pedro Square is approximately 160 feet east of the subject property. Surrounding development consists of a mix of residential, commercial, office, entertainment, and public serving uses which are characteristic of the Downtown area. The subject property's most recently permitted use was a Drinking Establishment with late-night hours under CP10-057. As a condition of CP10-057, if the use ceases for a period of 12 months or longer the permit would expire, and the subject site would have to obtain a new permit to continue the use. The building was vacant, for lease, without use of the subject site beginning approximately 2017-18, and expiring sometime in 2019. The subject property has existing pedestrian sidewalks along West Santa Clara

Street with crosswalks at the intersections of West Santa Clara and both North Almaden Avenue and North San Pedro Street. The subject property is accessed by one primary pedestrian entrance fronting onto West Santa Clara Street with a secondary entrance/exit along the pedestrian paseo-walkway to the rear of the business that spans the block running east and west between North Almaden Avenue and North San Pedro Street. The subject property is accessible by public transportation with existing Valley Transit Authority (VTA) bus stops, approximately 300 feet both east and west along West Santa Clara Street, serving the 17, 22, 64(A/B), and 68 lines. The subject property has metered street parking along West Santa Clara Street and is surrounded by publicly accessible parking garages.

2. **Project Description.** The project consists of a Conditional Use Permit to allow a nightclub/bar use with late-night hours until 2:00 a.m. in an existing approximately 15,600-square-foot tenant space on an approximately 0.25-gross-acre site. The project includes an exterior addition to the existing commercial building.

The public eating establishment would operate between 6:00 a.m. and 2:00 a.m. Monday through Wednesday, and between 6:00 a.m. and 8:00 p.m., Thursday through Sunday. The nightclub would operate between 9:00 p.m. and 2:00 a.m. Thursday through Sunday. The project would support up to 55 staff. No information is provided regarding whether those 55 staff are all part-time, full-time, or a mix of the two. The staffing hours are proposed during lunch and dinner hours under the public eating establishment use and late-night under the nightclub use.

An entertainment permit through the San José Police Department would be required for live entertainment and music during hours of operation.

Food would be served during all operational hours. There would be no hours where only alcohol is sold except as allowed by the California Department of Alcoholic Beverage Control ("ABC") license. The public eating establishment has an active Type 47 license with ABC, authorizing the sale of beer, wine, and distilled spirits for on-site consumption. Security personnel would be on site, as described in the Security Plan, during all hours of the nightclub operation. The subject site is required to adhere to an Operations Plan. Staffing, management, nuisance complaint contacts, recordation of incidents, among other items, shall be conducted in accord with the Security and Operations Plans. All entertainment would be conducted indoors. The project includes outdoor seating on the rear patio and in the public right-of-way under a Café Seating permit. No outdoor entertainment is permitted during nightclub operations.

The San José Police Department issued a memorandum, dated March 31, 2026. The San José Police Department is opposed to the applicant's request for a Conditional Use Permit to allow a nightclub/bar use with late night hours until 2:00 a.m. due to violating the conditions of their Alcoholic Beverage Control license by not serving food while serving alcohol, providing entertainment uses without an entertainment permit, and both a well-documented history of non-compliance with state and local laws and significant documented health and safety risks.

3. **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, which are as follows:
- 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

General Plan Consistency. The subject 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.

The project is consistent with the following General Plan policies:

Cultural Attractions Policy IE-5.3: Support private efforts to achieve a stronger mix of evening and late-night uses in Downtown that promote a vibrant, 24-hour City center to generate jobs, increase revenues and attract visitors and workers to San José.

General Land Use Policy LU-1.1: Foster development patterns that will achieve a complete community in San José, particularly with respect to increasing jobs and economic development and increasing the City's jobs-to-employed resident ratio while recognizing the importance of housing and a resident workforce.

The project is inconsistent with the following General Plan policies:

Law Enforcement and Fire Protection Policy ES-3.2: Strive to ensure that equipment and facilities are provided and maintained to meet reasonable standards of safety, dependability, and compatibility with law enforcement and fire service operations.

Code Enforcement Policy ES-5.4: Bring illegally constructed projects into compliance with Building Codes or require their removal to ensure the safety of inhabitants and reduce neighborhood blight.

Code Enforcement Policy ES-5.6: Enforce code requirements by inspecting buildings requiring a fire code operational use permit and mandated for inspection by the California Health and Safety Code.

Site Development Policy IP-10.3: In addition to a Site Development permit, require an Historic Preservation permit for modifications to a designated Historic Landmark structure. This permit process fosters the implementation of Historic Preservation goals and policies of the Envision General Plan.

Landmarks and Districts Policy LU-13.2: Preserve candidate or designated landmark buildings, structures and historic objects, with first priority given to preserving and rehabilitating them for their historic use, second to preserving and rehabilitating them for a new use, or third to rehabilitation and relocation on-site. If the City concurs that no other option is feasible, candidate or designated landmark

structures should be rehabilitated and relocated to a new site in an appropriate setting.

Landmarks and Districts Policy LU-13.4: Require public and private development projects to conform to the adopted City Council Policy on the Preservation of Historic Landmarks.

Landmarks and Districts Policy LU-13.6: Ensure modifications to candidate or designated landmark buildings or structures conform to the Secretary of the Interior's Standards for Treatment of Historic Properties and/or appropriate State of California requirements regarding historic buildings and/or structures, including the California Historical Building Code.

Analysis: The project would permit an existing restaurant to operate as a nightclub with late-night hours on weekends. The subject site is located within the Downtown land use designation, which supports a mix of commercial, residential, and entertainment uses. The project would contribute to Downtown's vibrant evening and late-night activity, support local businesses, and generate employment opportunities (IE-5.3; LU-1.1). The project is consistent with General Plan policies that encourage a vibrant, around-the-clock Downtown and economic development. However, the project site, which was operating as a late-night drinking establishment without benefit of permit, has a history of operational concerns and violations. These include documented health and safety violations that involved obstruction of a shared means of egress and multiple late-night police calls for service, including incidents involving violence and serious life-threatening injuries. While the egress violation was subsequently corrected, the nature of the documented incidents raises concerns regarding the project's ability to operate in a manner consistent with reasonable standards of public safety and compatibility (ES-3.2).

The project also remains subject to review for compliance with applicable historic preservation requirements as a designated a City Landmark under Resolution No. 70737 and amended under Resolution No. 70852 circa 2002. The City has not received sufficient information to determine whether existing exterior modifications comply with the Secretary of the Interior's Standards and applicable City historic preservation policies (IP-10.3; ES-5.4; ES-5.6; LU-13.4; LU-13.6). Although the project advances General Plan goals related to a vibrant around-the-clock Downtown and economic development, the unresolved public safety concerns and incomplete historic preservation review prevent the City from finding the project consistent with the Envision San José 2040 General Plan—therefore, based on the preponderance of the facts, the project is inconsistent with the General Plan.

- 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

Zoning Conformance. The subject property is located within the DC Downtown Primary Commercial Zoning District. Pursuant to Section 20.70.100, Table 20-140

of the Zoning Code, a public eating establishment is a permitted use. However, pursuant to Section 20.70.100 of the Zoning Code, any establishment that operates as a Drinking establishment with an approved maximum occupancy load of over 250 persons and that operates between 12:00 midnight and 6:00 a.m. requires a Conditional Use Permit to be heard at City Council. The subject site has one unpermitted exterior addition. Per Zoning Code Section 20.100.500, additions made to a Historic Landmark structure or in a Landmark District require issuance of a Historic Preservation Permit, Amendment, or Adjustment pursuant to Title 13, Chapter 13.48. Concurrent filing under Title 20, Chapter 20.100, Part 2 "Common Procedures", does allow the Historic review to be completed under the Conditional Use Permit so long as all of the required findings of Title 13 are made and the project was referred to the Historic Landmarks Commission for early consideration.

Analysis: The subject property would have an occupancy load that exceeds 250 persons and would operate after 12:00 midnight; therefore, pursuant to Section 20.70.100 of the San José Zoning Code, the project is required to be heard at City Council. The property contains an unpermitted building addition that is currently the subject of an active Code Enforcement case. Pursuant to Municipal Code Section 20.100.500, a designated Historic Landmark requires review under the Historic Preservation provisions of Title 13. During project review, the applicant was informed that the unpermitted addition must either be removed from application or that sufficient information be provided to evaluate its consistency with the Historic Design Guidelines and the Secretary of the Interior's Standards. The applicant's current plans retain the addition, but the information necessary to complete the required historic preservation review has not been provided. As a result, the unpermitted addition cannot be determined to be in compliance with the applicable requirements of the Municipal Code or State standards. Therefore, the unpermitted addition is inconsistent with the Zoning Code.

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

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

This policy provides guidelines for the appropriate development of establishments that operate on a 24-hour basis in the City of San José while avoiding the problems associated, of which, on a case-by-case review, specific alternative measures may be suitable when demonstrating a project meets or exceeds the guidelines in the policy.

- i. 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. 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 establishment will operate on the outdoor patio until 8:30 PM and then exclusively indoors during nightclub operations. The Project does not include any outdoor seating or outdoor entertainment. The Operations Plan specifies that windows and doors will be closed after 10:00 p.m. The establishment will have a minimum of two to six security staff on-site during all hours of operation and will have an established Event Coordinator who is on call as the identified contact for the San José Police Department. However, the existing business has been cited for various violations including noise and public nuisance violations by the San José Police Department that occurred outside the establishment after 10:00 p.m. Therefore, the Project is inconsistent with this requirement.

- ii. 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:

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

Analysis: The project site is already built, the use is entirely within the existing building, and it is therefore exempted from this requirement. The project is consistent with this requirement.

- iii. 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 a.m., 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 project is located in the Downtown Core Area and is exempted from his requirement. The project is consistent with this requirement.

- iv. Police Issues. Crime statistics and police safety issues which are directly related to uses operating between 12:00 midnight and 6:00 a.m. 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: The San José Police Department ("SJPd") reviewed the previous Special Use Permit and this Conditional Use Permit, resulting in two separate memoranda sent to the applicant on May 8, 2025, and June 11, 2026, respectively. Per the SJPd Memorandum dated March 31, 2026, 163 West Santa Clara is in San José Police Beat E2, and the reported crime statistics as defined by Business & Professions Code ("B&P") Section 23958.4(c) are over the 20% crime index, thus the location is considered unduly concentrated per B&P Section 23958.4(a)(1) for on-sale establishments. A crime analysis indicated a total of 2,525 calls for service and self-initiated events occurred within a 1000 ft. radius of 163 West Santa Clara Street in a 12-month period (January 1, 2025 – January 31, 2025.) Of the 2,525 calls and events, 602 occurred during the hours between midnight and 6:00 a.m. Department of Alcoholic Beverage Control (ABC) records indicate that 163 West Santa Clara is in census tract 5008.00. Pursuant to B&P Section 23958.4 (a)(3), the ratio of on-sale retail licenses to population in census tract 5008.00 would exceed the ratio of on-sale retail licenses to population in the county in which the applicant premises are located, if approved. SJPd acknowledges the role that entertainment venues play in supporting Downtown vitality and recognizes the demand for businesses that contribute to the City's nighttime economy. Nightclub and entertainment uses may be appropriate when operated in compliance with applicable permits, regulations, and City policies. However, based on the totality of circumstances observed during 2024, 2025, and 2026—

*concerns which include multiple violent calls for service, many of which occurred during late-night or after-hours periods; surveillance footage depicting physical altercations on and around the premises; operation of the business in a manner consistent with a nightclub, including cover charges, bottle service, and VIP ticket sales, prior to obtaining the required permits; operation without a valid entertainment permit; and operation of late-night activities prior to obtaining the appropriate land use approvals—SJPD has investigated and found that this business has continued to maintain or use the property or allow the property to be maintained or used, in a manner that creates or fosters the creation of a public nuisance in violation of San José Municipal Code Section 1.13.040, California Civil Code Section 3479, and California Penal Code Sections 372 and 415, and does not support issuance of a Conditional Use Permit for the proposed nightclub and late-night operation, as described in the SJPD Memorandum dated March 31, 2026. Memoranda have been provided, and a **recommendation of denial** has been reached and is therefore consistent with this requirement.*

- v. 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: Restroom facilities are available to patrons of the San Pedro Social side of the proposed project during both nightclub and restaurant operations. However, the adjoining pizzeria, now Square Pie Guys, which is seeking to be considered part-and-parcel of the late-night use component of this Conditional Use Permit, does not have a separate restroom facility for patrons. The only way for a patron of the pizzeria to get to the restroom facilities would be by entering into the San Pedro Social side of the nightclub/restaurant use. Since the pizzeria is a restaurant and would allow minors inside the establishment, and minors are expressly prohibited from being inside a nightclub, the pizzeria does not have restroom facilities for patrons. The Project is therefore **inconsistent** with this requirement.*

- vi. 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: Noise attenuation would not be required at property lines because entertainment uses proposed with the nightclub operation are entirely indoors and outdoor patio activity is prohibited during nightclub operations. The project applicant included sound measurement information with the Operations Plan, with general guidelines to be implemented to address noise concerns, such as management override controls installed in all sound systems; however, the information was provided by a sound technician with no proof of certification or other qualifications, and the base-level noise measurements lack information regarding whether they were taken during the unpermitted nightclub operations or during restaurant operations. Complaints regarding noise, specifically vibration, associated with nightclub operations were received from residents living above San Pedro Social. No vibration abatement strategies were provided. There are no Municipal Code requirements regarding noise standards Downtown but to avoid nuisance related issues to the residences both living on the second floor of the subject property and within the immediate area, noise is considered under this policy and proposed as a condition of approval. Between the hours of 8:30 p.m. and 2:00 a.m., music or other sound emanating from the establishment shall not be audible inside any residential unit with its windows and doors closed such that it creates a disturbance to residents of the unit. The use of outdoor noise-generating equipment is prohibited between the hours of 8:30 p.m. and 7:00 a.m., daily. All windows and doors of the subject site are to remain closed after 10:00 p.m. and a contact for any complaints should be posted visibly on the subject site. With these conditions, the project is consistent with this requirement.

- vii. 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: Conditions of approval include all mechanical equipment used for outside maintenance, including blowers and street sweepers, may not be used between 10:00 p.m. and 7:00 a.m. daily. Cleaning shall include keeping all publicly used areas free of litter, trash, cigarette butts, and garbage. As necessary, cleaning shall include daily damp washing of all exterior walls and sidewalks along the project's frontage. The permittee shall clean the public right-of-way immediately adjacent to the subject establishment before 8:00 a.m. each day. Debris must be swept up and discarded in an appropriate trash receptacle and shall not be swept onto streets, neighboring properties, or storm drains. With these conditions, the project is consistent with this requirement.

- viii. 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.

*Analysis: The Security plan and Operations plan together address the items required in a Mitigation Management Plan, such that these documents seek to address, mitigate, or respond to neighborhood concerns and complaints. The Operations plan includes controls for noise, litter and panhandling, and indicates that police will be notified for loitering and panhandling. The Security plan indicates that incidents which may arise in regard to various problems on-site are to be logged and reported to a supervisor. However, specific details of how these two plans would ensure compliance for all mitigated 24-hour uses are lacking in both plans. The Security plan makes no mention in regard to coordination with police. The Operations plan does but only in regard to loitering or panhandling. Neither outline a specific actionable or enforceable conditions under which reporting to police is conducted. Furthermore, the Security plan specifically lacks details regarding queue monitoring, such as the number of monitored right-of-way entrances/exits; enforcement procedures regarding how windows and doors are to be kept closed during patron queue pat-down and admittance; the number of staff and rotation schedule for the right-of-way queue areas; litter, refuse, and debris abatement. The Project is therefore **inconsistent** with this requirement.*

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

This policy establishes operational, and design guidelines intended to ensure nightclub and bar uses are compatible with surrounding properties and do not adversely affect the public right-of-way.

i. Land Use Compatibility

- 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 proposed project is located in the Downtown Core and is consistent with this requirement.

- 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 proposed project is a property fronting Santa Clara Street and is not adjacent to a hotel use. The project is consistent with this requirement.

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

Analysis: The proposed project occupies approximately 27 percent of the frontage and is consistent with this requirement.

- New bars outside the Downtown Core should be dispersed and, at a minimum, not be located within 500 feet of an existing bar or any existing school. Bars should be located and oriented in such a manner that would not adversely affect any nearby residential or school uses.

Analysis: The proposed project is within the Downtown Core and is exempt from this requirement.

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

*Analysis: The public right-of-way is required for queuing purposes. The Operations plan and Security plan both seek to mitigate impacts to the neighboring businesses. However, the Security Plan does outline queue management in the right-of-way, there are outstanding deficiencies which include the number of monitored right-of-way entrances/exits, enforcement procedures regarding how windows and doors are to be kept closed during patron queue pat-down and admittance, the number of staff and rotation schedule for the right-of-way queue areas, and litter, refuse, and debris abatement. The Operations plan proposes to use retractable belt stanchions with a gap at both neighboring doorways to allow for tenant access and a security guard to monitor queue activity. However, it also states that patron queuing would occur in an area purportedly approved by the Department of Public Works. Staff confirmed that the applicant's Sidewalk Seating Permit authorizes outdoor seating only and does not authorize patron queuing within the public right-of-way. No other enforceable actions are provided in either document if patrons or staff do not adhere to the queue monitoring. Therefore, the project is **inconsistent** with this requirement.*

- 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 citizens.

Conditions may be imposed to monitor bars and nightclubs and to discourage nuisance activities. These conditions may include such requirements as interior or exterior security guards, additional lighting, limited occupancy, and modifications of controls or procedures to increase effective law enforcement.

*Analysis: SJPd has investigated and found that this business has continued to maintain or use the property or allow the property to be maintained or used, in a manner that creates or fosters the creation of a public nuisance in violation of San José Municipal Code Section 1.13.040, California Civil Code Section 3479, and California Penal Code Sections 372 and 415, and does not support issuance of a Conditional Use Permit for the proposed nightclub and late-night operation, as described in the SJPd Memorandum dated March 31, 2026. Memoranda have been provided, and a **recommendation of denial** has been reached and is therefore consistent with this requirement.*

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

Analysis: The proposed project is in an area with above average police calls for service but is within the Downtown Core. Therefore, the project is consistent with this requirement.

- Nightclubs are permitted with the approval of a Conditional Use Permit only in the C-3 Commercial, M-1 Manufacturing and M-4 Manufacturing Zoning Districts.

Analysis: The Downtown Core is a special Zoning District that specifically allows nightclubs with late-night use under a Conditional Use Permit. The project is seeking a Conditional Use Permit. Therefore, the project is consistent with this requirement.

- Bars as a primary use are permitted with the approval of a Conditional Use Permit only in the C-2 and C-3 Commercial Zoning Districts.

Analysis: The Downtown Core is a special Zoning District that specifically allows nightclubs—which are drinking establishment uses—with late-night use under a Conditional Use Permit. The project is seeking a Conditional Use Permit. Therefore, the project is consistent with this requirement.

- The most appropriate General Plan Land Use Designation for nightclubs and bars is Commercial, except for Office and Neighborhood/Community Commercial.

Analysis: The Downtown Core is a special Zoning District that specifically allows nightclubs. Therefore, the project is consistent with this requirement.

ii. Noise

- 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.

Analysis: There are no specific noise standards within the Downtown Core. Therefore, the project is consistent with this requirement.

- 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.

Analysis: A condition of approval requires windows and doors to be remained closed during nightclub operations. Therefore, the project is consistent with this requirement.

- 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 only outdoor component of the proposed project in regard to the use operation is an outdoor patio. The outdoor patio is allowed to be operated while restaurant use commenced. However, a condition of approval requires all outdoor patio use to cease during nightclub operation. Therefore, the project is consistent with this requirement.

- Interior noise levels or adjacent uses and exterior noise levels should be monitored by a qualified noise consultant contracted by the applicant or operator commencing at the opening of the nightclub or bar facility. Measurements should be taken at least once monthly at two different times and a report submitted to the Planning Commission after one year of operation.

*Analysis: A noise report was provided to supplement the Operations plan. However, no record of where or under what operation the recorded noise measurements were taken had been provided nor was the person who made these measurements identified as a qualified noise consultant. Therefore, the project is **inconsistent** with this requirement.*

iii. Parking

- For new nightclubs or bars, an analysis of both day and nighttime parking availability within 1200 feet of the proposed facility should be provided by the project proponent. Parking demand should be calculated at one space for each 40 square feet of usable patron area. Where there are insufficient

spaces to meet the demand generated by the proposed bar or nightclub, parking should be provided by the operator at a location convenient and readily accessible to the patrons of the facility. Parking may be supplied by contracting with nearby property owners, offering validation services and/or valet services, or such other means that would not reduce the spaces available for existing uses. This may require the approval of an Off-Site or Alternating Use Parking Arrangement as specified in the San José Municipal Code.

Analysis: Under Ordinance No. 31095, effectuated 7/19/2024, parking minimums related to uses such as drinking establishments/nightclubs were removed in favor of parking maximums and Transportation Demand Management ("TDM") plans. The proposed project does not qualify for a TDM plan and no other parking requirements are required. Therefore, the project is consistent with this requirement

- When new nightclubs or bars are required to provide additional parking to meet the demand generated by the proposed site, the parking facilities should be well lighted, consistent with applicable City and Redevelopment Agency standards.

Analysis: Under Ordinance No. 31095, effectuated 7/19/2024, parking minimums related to uses such as drinking establishments/nightclubs were removed in favor of parking maximums and Transportation Demand Management ("TDM") plans. The proposed project does not qualify for a TDM plan and no other parking requirements are required. Therefore, the project is consistent with this requirement

- All nightclubs and bars are encouraged to identify the need for loading and unloading zones as means to enhance traffic circulation around the facility.

Analysis: Under Ordinance No. 31095, effectuated 7/19/2024, parking minimums related to uses such as drinking establishments/nightclubs were removed in favor of parking maximums and Transportation Demand Management ("TDM") plans. The proposed project does not qualify for a TDM plan and no other parking requirements are required. Therefore, the project is consistent with this requirement

- All nightclubs and bars should be required to identify and publicize the location and availability of parking for its patrons.

Analysis: Under Ordinance No. 31095, effectuated 7/19/2024, parking minimums related to uses such as drinking establishments/nightclubs were removed in favor of parking maximums and Transportation Demand Management ("TDM") plans. The proposed project does not qualify for a TDM plan and no other parking requirements are required. Therefore, the project is consistent with this requirement.

iv. Garbage and Litter

- 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 a.m. each day.

Analysis: A condition of approval requires cleaning to include keeping all publicly used areas free of litter, trash, cigarette butts, and garbage. As necessary, cleaning shall include daily damp washing of all exterior walls and sidewalks along the project's frontage. In addition, the permittee shall clean the public right-of-way immediately adjacent to the subject establishment before 8:00 a.m. each day. Debris must be swept up and discarded in an appropriate trash receptacle and shall not be swept onto streets, neighboring properties, or storm drains. Therefore, the project is consistent with this requirement.

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

Analysis: A condition of approval requires mechanical equipment used for outside maintenance, including blowers and street sweepers may not be used between 10:00 p.m. and 7:00 a.m. daily. Therefore, the project is consistent with this requirement.

v. Typical Use Restrictions

- Admittance to bars and nightclubs will be restricted to patrons 21 years of age and older. Nightclubs which include an ancillary, non-separated restaurant are not permitted.

Analysis: The Operations plan leaves ambiguity in regard to restricting patrons to 21 years of age. Partly, this is due to the fact that the business seeks to operate as a restaurant for the daytime hours and a nightclub beginning at 9:00 p.m. at night. The first paragraph of the Minors section in the Operations plan, for example, makes it seem that as long as parents are present, minors are allowed to remain during nightclub operation. Request for revision was made but not provided.

Within the project area is an ancillary public eating establishment (restaurant) now occupied by Square Pie Guys ("SPG"). SPG is integrated into the project area through a shared hallway. SPG has no cooking or restroom facilities of its own. Through the shared hallway, SPG can use San Pedro Social's kitchen and restroom facilities, without which their public eating establishment would not be functional. The project documents clearly establish SPG as a restaurant that relies on, but operates separately from, San Pedro Social. The present SPG operation is proposed to continue while the nightclub is open.

*Therefore, the project is **inconsistent** with this requirement.*

- Nightclubs may be permitted in such facilities provided that the restaurant use does not operate when the nightclub is in operation.

*Analysis: The proposed project seeks to allow the ancillary restaurant to operate while the nightclub is operating. Therefore, the project is **inconsistent** with this requirement.*

- Nightclubs and bars should not operate after 2:00 a.m., daily.

Analysis: The nightclub use is required to cease at 2:00 a.m. daily. Therefore, the project is consistent with this requirement.

- Entertainment uses that serve no alcohol may be open to patrons 18 to 20 years and older.

*Analysis: Entertainment uses must conform to an Entertainment Permit from the San José Police Department. No plans for entertainment without alcohol are proposed. Given the ambiguity between restaurant use and nightclub use in regard to persons under 21 years of age in the Operations plan, the project is **inconsistent** with this requirement.*

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

Analysis: As a condition of approval, the permittee shall meet all requirements of the Fire Department, either through separate permit or at the Building Permit stage. Therefore, the proposed project is consistent with this requirement.

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

Analysis: As a condition of approval, all amplified sound on the patio is prohibited during nightclub operations. All doors and windows are to be kept closed during nightclub operations. These conditions are to mitigate incompatibility issues with adjacent uses. Therefore, the proposed project is consistent with this requirement.

- Time limits for Conditional Use Permits for nightclubs and bars should generally be five years, unless there is sufficient evidence to support an alternate limit. Compliance Reviews may be required and should include an evaluation of the operation as well as any subsequent reports required as part of the permit approval.

Analysis: Department policy has shifted since the implementation and amendment to City Council Policy 6-23: Guidelines for Evaluation of

Nightclubs and Bars. Conditional Use Permits run with the land and are therefore no longer time conditioned. Therefore, the proposed project is consistent with this requirement.

vi. Other Requirements

- The Planning Commission, or the City Council on appeal, may impose other appropriate conditions on a project-by-project basis as required to ensure land use compatibility. The guidelines in this policy represent minimum criteria for nightclubs and bars.

Analysis: This Conditional Use Permit requires it to be heard directly by City Council. Council may impose other conditions on the project. Therefore, the proposed project is consistent with this requirement.

- The Planning Commission may annually review this policy to determine its adequacy in meeting the changing needs of the City.
- The Conditional Use Permit should include standard conditions, such as undergrounding utilities, providing public improvements, screening roof equipment, identifying building colors and materials, etc., necessary for the permit to fulfill the requirements for a Site Development Permit.

*Analysis: The site has one unpermitted exterior addition. While documentation has been provided it is inadequate to evaluate for Site Development Permit findings. All other work is interior and exempt from Site Development Permit findings. Therefore, the project is **inconsistent** with this requirement.*

City Council Policy 6-30: Public Outreach Policy

Council Policy 6-30: Public Outreach Policy was implemented to inform the public of the project. A community meeting was held on August 11, 2025, at 6:30 P.M. via Zoom to describe the applicant's project, the City's review process, and to obtain community input on the proposed project located at 163 West Santa Clara Street. The application at that time was to seek a Special Use Permit for the late-night operation of a public eating establishment until 2:00 A.M. The community meeting reflected both support for and opposition to the continued operation and extended late-night activities at the subject site. Supporters, including patrons, employees, DJs, and business affiliates, emphasized the venue's contribution to Downtown vibrancy, economic activity, and nightlife, while highlighting its security measures, professional management, and perceived safety compared to other nearby establishments. In contrast, opponents, including nearby residents and stakeholders, raised concerns regarding recurring fights, police activity, intoxicated patrons, noise extending beyond the premises, and crowd-related impacts affecting surrounding residential uses and the public right-of-way. Additional concerns were raised regarding the scale of the security presence and whether the operation remains compatible with neighboring residential uses and consistent

with its approved entitlements. Overall, public testimony demonstrated a clear division between those who view the venue as an important downtown destination and those who view its operations as contributing to adverse neighborhood impacts. Ultimately, the applicants indicated they planned to operate a nightclub which the permit at that time would not support and the project was converted to a Conditional Use Permit. On-site signs have been posted at the site frontage since September 16, 2025. A notice of the public hearing was distributed to the owners and tenants of all properties located within 500 feet of the project site, which was later increased to 1,000 feet, and posted on the City website. The staff report is also 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.

Analysis: The existing business demonstrated repeated violations of their ABC license by not serving food in conjunction with alcohol sales, which is a requirement for a Type 47 license for public eating establishments. They have not obtained an Entertainment Permit as required by the Police Department for their karaoke and nightclub use and have operated past midnight despite several warning letters to cease the unpermitted operation. After more than a year, the subject property was found to be no longer operating a nightclub during late-night hours, in compliance with their Code Enforcement case related to late-night operation. However, they were found to be still operating as a nightclub, despite not having a Special Use Permit to do so and having been notified that a Special Use Permit is required, leading to a new compliance order issued by Code Enforcement. The business was also found to have blocked a fire escape with unpermitted storage of propane tanks and beer kegs, and has not provided the necessary information to permit an addition to a Historic Landmark. The business has received noise complaints and public nuisance complaints from the public, much of which was echoed at the community meeting. Despite warnings, instructions, and an opportunity to achieve compliance granted by the Police Department and Code Enforcement, the project Applicant has continued to operate out of compliance with public eating establishment requirements. Based upon the Police Department's opposition to late-night use for the subject establishment and the applicant's documented history of non-compliance with state and local laws detailed in both the San José Police Department Memo, dated March 31, 2026, and

the accompanying staff report, the project would have an adverse impact on public health, safety, and general welfare. Therefore, the project is inconsistent with these requirements.

- 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 approximately 15,600-square-foot tenant space is adequate in size to accommodate indoor use as a nightclub/drinking establishment. The project includes an unpermitted addition on an approximately 0.25-gross-acre site, which is adequate in size to be accommodated. The project is consistent with this requirement.

- f. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as 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
 - b. By other public or private service facilities as are required.

Analysis: The project site is adequately served by streets and public transit. The site has existing pedestrian sidewalks along West Santa Clara Street with crosswalks at the intersections of West Santa Clara and both North Almaden Avenue and North San Pedro Street. The site is accessed by one primary pedestrian entrance fronting onto West Santa Clara Street with a secondary entrance/exit along the pedestrian paseo-walkway to the rear of the business that spans the block running east and west between North Almaden Avenue and North San Pedro Street. The site is accessible to public transit with existing Valley Transit Authority (VTA) bus stops located approximately 300 feet both east and west from the subject property along West Santa Clara Street, serving the 17, 22, 64(A/B), and 68 lines. The site has metered street parking along West Santa Clara Street and is surrounded by publicly accessible parking garages. The project is consistent with this requirement.

- 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.

Environmental Review. Under the provisions of Section 15270 for Projects Which are Disapproved, 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.

Analysis: Pursuant to Public Resources Code Section 21080, CEQA applies to discretionary projects proposed to be carried out or approved by a public agency. The action is statutorily exempt under CEQA Guidelines Section 15270 for Projects Which are Disapproved. The denial would not approve any change in use, physical improvement, expansion, or operational entitlement and therefore would not authorize any activity that may result in a direct or reasonably foreseeable indirect physical change in the environment. Accordingly, no further CEQA review is required for denial of the Conditional Use Permit.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above is hereby **denied**.

ADOPTED this _____ day of _____, 2026, 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 TO DEED OF TRUST, SECURITY AGREEMENT AND FIXTURE FILING

This Exhibit A to Deed of Trust, Security Agreement and Fixture Filing (this "Exhibit") is attached to, and by this reference shall be a part of and is hereby incorporated by this reference into that certain Deed of Trust, Security Agreement and Fixture Filing dated June 27, 2018 (the "Deed of Trust") executed by Masson Partners, LLC, a California limited liability company ("Trustor") in favor of Comerica Bank ("Bank"). Except as otherwise noted, the terms not defined herein shall have the meaning set forth in the Deed of Trust.

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

Beginning at a point on the Northerly line of Santa Clara 81 feet and 3 inches Westerly from the Northwestern corner of San Pedro and Santa Clara Street; and running thence at right angles Northerly and parallel with San Pedro Street 120 feet; thence at right angles Westerly and parallel with said Santa Clara Street 74 feet 4 inches, thence at right angles Southerly and parallel with San Pedro Street, 120 feet to said Northerly line of Santa Clara Street, 74 feet, 4 inches to the place of beginning.

Property Address: 157-167 West Santa Clara Street, San Jose, CA 95113
Assessor's Parcel No.: 259-35-035