

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING AN AMENDMENT TO THE CONDITIONAL USE PERMIT FILE NO. CP16-005 TO ALLOW THE LATE NIGHT USE UNTIL 2:00 A.M. FOR A PUBLIC EATING AND DRINKING ESTABLISHMENT AND A BANQUET FACILITY WITH ASSOCIATED OUTDOOR DINING AND MUSIC WITH A MAXIMUM OCCUPANCY OF 370 PEOPLE ON THE FIRST FLOOR AND 299 PEOPLE ON THE SECOND FLOOR OF AN EXISTING 8,684-SQUARE FOOT TENANT SPACE ON AN APPROXIMATELY 0.15-GROSS ACRE SITE, LOCATED ON THE EAST SIDE OF SOUTH 1ST STREET, APPROXIMATELY 400 FEET SOUTH OF EAST SANTA CLARA STREET (58 SOUTH 1ST STREET)

FILE NO. CPA16-005-01

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on June 26, 2025, Jenny Wolfes, on behalf of 1st Street SJ Enterprise, (“Permittee”) filed an application (File No. CPA16-005-01) with the City of San José for a Conditional Use Permit Amendment to amend the conditions of the Conditional Use Permit File No. CP16-005 to allow the late-night use until 2:00 a.m. for a public eating and drinking establishment and a banquet facility with associated outdoor dining and music with a maximum occupancy of 370 people on the first floor and 299 people on the second floor of an existing 8,684-square foot tenant space on an approximately 0.15-gross acre site, on that certain real property situated in the DC Downtown Zoning District and located on the east side of South 1st Street, approximately 400 feet south of East Santa Clara Street (58 South 1st Street, APN 467-22-008, San José, which real property is sometimes referred to herein as the “subject property”) (“Project”); and

WHEREAS, the subject property is all that real property more particularly described in Exhibit "A," entitled “Legal Description,” which is attached and incorporated by reference; and

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, the City Council conducted a duly noticed hearing on said application, gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter, received in evidence a plan for the subject property entitled, “1st Street Plans” dated August 13, 2025; said plan is on file in the Department of Planning, Building, and Code Enforcement and is incorporated by reference;

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

1. **Site Description and Surrounding Uses.** The subject site is located on the east side of South 1st Street, approximately 400 feet south of East Santa Clara Street (58 S. 1st Street; APN 467-22-008).

The site is currently occupied by the existing two-story 8,684-square-foot Pomeroy-Skerritt Building, which is listed as a City Landmark on the City’s Historic Resources Inventory (HRI). The building has separate entrances for the first and second floors, which are connected by internal and external staircases and an elevator. The site also features a 557-square-foot outdoor patio and a 400-square-foot second-story balcony, both located at the rear of the building, facing a parking lot. An exterior stairway connects the patio and balcony.

The surrounding land uses include:

- Public drinking establishments to the north.
- Public drinking establishments, professional offices, and commercial uses to the south.
- A parking lot to the east; and a public drinking establishment; and
- Retail use, and a parking garage (across South 1st Street) to the west.

There is an office space on the upper levels of the adjacent building to the south, located above two existing drinking establishments. The nearest residential use is an apartment building approximately 250 feet to the east, on South 2nd Street, on the opposite side of a surface parking lot at the rear of the subject building.

A restaurant currently operates on the first floor, from 11:00 a.m. to 12:00 a.m., with a maximum occupancy capacity of 250 people. A banquet facility currently operates on the second floor until 12:00 a.m., with a separate maximum occupancy capacity of 250 people. A banquet facility and public eating establishment (restaurant) uses are permitted by right within the DC Downtown Primary Commercial Zoning District, but require a Special Use Permit (SUP) application and approval to be open between the hours of 12:00 a.m. and 6:00 a.m.

Permit History

The two previous CUP requests, which occurred in 2016, for the late-night operation of the drinking establishment, were denied by the City Council after an appeal of the Planning Commission's decision.

On February 14, 2017, after an appeal of the Planning Commission's decision, the City Council approved a Conditional Use Permit (CUP), File No. CP16-005, to allow a late-night use until 2:00 a.m., seven days a week, for a public drinking establishment on the first floor of the subject building, with a maximum occupancy of 250 persons.

The Council also added the following conditions to the CUP Resolution No. 78090:

- The Project must operate a ground-floor daytime use seven days a week, to comply with Council Policy No. 6-23, Land Use Compatibility Guideline 1.c., which limits new nightclubs and bars in areas where more than 30 percent of the street frontage on any one side of the street is occupied by the same uses. This condition required the restaurant to be open during the daytime lunch hours of 11:30 a.m. to 2:30 p.m.
- The Permittee shall obtain and maintain the required license from the Department of Alcoholic Beverage Control ("ABC"). Alcohol service shall comply with the issued ABC license.
- The Permittee shall obtain and maintain compliance with a Public Entertainment Permit issued by the San José Police Department as applicable.

2. Project Description.

On June 26, 2025, the Permittee submitted a CUP Amendment application with the following requests:

1. Remove the condition that mandates the business to be open during lunch hours.
2. Remove the condition that requires the banquet facility to close at midnight and extend hours to 2:00 a.m. for the restaurant, banquet facility, and associated outdoor patio and deck.
3. Remove the condition that limits occupancy to 250 people on each floor and increase the capacity to 370 people on the first floor and 299 people on the 2nd floor to match the maximum occupancy load determined by the Fire Department.

4. Remove the condition that restricts playing music on the outdoor patio and deck after 10:00 p.m. and allow music to be played until 2:00 a.m. to match the extended hours.

Section 20.70.100 and Table 20-140 of the Zoning Code states that a public drinking establishment with an approved maximum occupancy load of over 250 persons, operating between 12:00 a.m. and 6:00 a.m., requires a Conditional Use Permit hearing before the City Council. The subject request is to include an occupancy load of 370 people on the first floor, which triggers the City Council Hearing process. The maximum occupancy for a business is set by the San José Fire Department for safety purposes.

Additionally, pursuant to Section 20.70.510 of the Zoning Ordinance, late-night operation of the restaurant, banquet facility, and associated outdoor spaces requires the issuance of a Special Use Permit (SUP). As the applicant has requested concurrent review of all four items listed above, the application may be heard by the City Council under one unified hearing process under the current CUP Amendment application.

The business operates with a Type 47 Alcoholic Beverage Control (ABC) license. The applicant also has a valid Entertainment Permit from the Police Department for the operation of the nightclub on the first floor of the premises, which will need to be amended to accommodate the proposed expansion of the operations if approved by the City Council. The project also requires consistency with Council Policy 6-27: Evaluation of 24-Hour Uses and Council Policy 6-23: Guidelines for Evaluation of Nightclubs and Bars.

No exterior modifications to the building facades or building expansions are proposed with this application.

Proposed uses

Drinking Establishment

The drinking establishment would be limited to the first floor of the building, with a maximum occupancy of 370 people (previously limited to 250 people). The drinking establishment contains one bar with alcoholic beverage service, open floor/lounge areas, and other seating areas internal to the building. A limited food menu would be available during drinking establishment hours.

Live music and entertainment would be provided, which requires the issuance of a public entertainment permit by the Police Department. Live entertainment would be provided in the form of a DJ or band playing amplified music. A setup stage for the live entertainment and all amplified music equipment would be primarily indoors. The sound level for amplified music on the patio and deck would be monitored and turned down after midnight. However, patrons would be allowed on the outdoor patio or balcony until close. No minors would be allowed on the first floor during operation of the drinking establishment and public entertainment establishment (nightclub/lounge). Trained

security staff (one personnel per 50 people) would be provided during the same hours to monitor the interior and exterior of the building.

Restaurant

The proposed restaurant on the first floor of the building is permitted by right in the DC Downtown Primary Commercial Zoning District. A SUP is required for the restaurant as it is proposed to be open after midnight, with table service ending at 1:30 a.m. Previously, the restaurant was required to be open during lunch hours to comply with Council Policy 6-23; however, due to a lack of foot traffic during daytime hours, the applicant has requested to remove this condition.

Banquet Facility

The banquet facility is permitted by right in the DC Downtown Primary Commercial Zoning District. The use is proposed to occupy the second floor, with a maximum occupancy of 299 people, and would be available by reservation only, from 6:00 a.m. to 2:00 a.m. daily. The operational hours are until 2:00 a.m., which requires a SUP. As defined by the Zoning Ordinance, a banquet facility provides food service with tables and seating, primarily for the purpose of serving a meal at a hosted party, banquet, or reception. Typical banquet facility activities include weddings, corporate events, receptions, and private parties. The use as a banquet hall may include live entertainment and alcohol service.

All uses in the building may operate simultaneously per the Operations Plan.

3. Historic Resource

The subject building was built in 1868 and is commonly referred to as the Rea Block or the Pomeroy-Skerritt Building. The site is listed on the National Register of Historic Places and the City of San José Historic Resources Inventory as a City Landmark Structure and Contributing Structure. The applicant is not proposing any changes to the exterior façade of the building.

4. General Plan Conformance.

The subject site has an Envision San José 2040 General Plan land use designation of Downtown.

This designation includes office, retail, service, residential, and entertainment uses in the Downtown. All development within this designation should enhance the “complete community” in Downtown, support pedestrian and bicycle circulation, and increase transit ridership.

Analysis: Late-night uses are consistent with the mix of commercial uses allowed within the General Plan land use designation of Downtown. Downtown is exempt from the General Plan noise policies.

The Project is consistent with the following General Plan Policies:

- Downtown Land Use Policy LU-3.7: Recognize the urban nature of Downtown and support 24-hour uses and outdoor uses, so long as significant adverse impacts do not occur.
- Downtown Land Use Policy LU-3.8: Leverage Downtown's urban nature and promote projects that will help achieve economic, fiscal, environmental, cultural, transportation, social, or other objectives of this plan.

Analysis: The proposed late-night use would complement the existing 24-hour activities in Downtown, enhancing vibrancy and offering additional entertainment options alongside the area's diverse range of uses.

- Land Use and Employment 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.

Analysis: The Project would be consistent with this Policy in that it would add to the existing mix of evening and late-night uses in Downtown. There are diversified entertainment options in the evenings and weekends that attract a wider range of visitors, which brings in revenue and sustains businesses and workers in Downtown.

5. **Zoning Code Compliance.** The subject site is located in the DC Downtown Primary Commercial Zoning District.

Land Use

Under Section 20.70.100 and Table 20-140, a restaurant with outdoor dining and a banquet hall, are permitted uses in the Downtown zoning district; 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 (CUP) that requires a public hearing before the City Council.

Pursuant to Section 20.70.510 for late-night uses and activity, the following is applicable:

A. No retail commercial establishment (including but not limited to a public eating establishment and/or retail sales) or entertainment establishment (without alcohol) shall be open between the hours of 12:00 midnight and 6:00 a.m. in the DC and DC-NT1 districts except with a Special Use Permit as provided in Chapter 20.100.800 of this title.

B. No drinking establishment shall be open between the hours of 12:00 midnight and 6:00 a.m. in the DC or DC-NT1 districts except with a conditional use permit as provided in Chapter 20.100 of this title.

Analysis: As stated above, this CUP Amendment seeks to revise the conditions of the previously approved CUP (File No. CP16-005) for Fuze Bar and Grill. As the applicant

has requested concurrent review of all four items listed under the Project Description above, the application will be heard by the City Council under one unified hearing process under the current CUP Amendment application.

Setbacks and Height

The properties located in the DC districts shall not be subject to any minimum setback requirements, and the height of properties located in the Downtown zoning districts shall only be subject to the height limitations necessary for the safe operation of San José International Airport. The Project is not proposing any change to the existing setbacks and height of the two-story building.

Noise: The Downtown zoning districts do not have performance standards with regard to noise.

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

City Council Policy 6-27, adopted by City Council on April 26, 1994, is intended to assure compatibility of uses operating between 12:00 midnight and 6:00 a.m. with the surrounding land uses. The Project is reviewed against City Council Policy 6-27 for the late-night operation of all uses in the building until 2:00 a.m.

- **Area Use Compatibility.** Pursuant to this guideline, 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 proposed use is not in close proximity to residential areas, and the business proposes to operate without being detrimental to the surrounding area, as stated in the submitted Operations Management Plan, on file with the Planning Division. A Compliance Review condition is included in this CUP Resolution (Condition No. 18).

- **Use Separation.** Pursuant to this guideline, physical separation of incompatible uses is the best means to avoid potential problems. Generally, 24-hour uses should not be located within 300 feet of any property residentially zoned, planned, or used.

Analysis: The nearest residential use is an apartment building approximately 250 feet to the east, on South 2nd Street, on the opposite side of a surface parking lot and separated by South Second Street at the rear of the subject building. However, the bar with a late-night use has operated for almost a decade without being a nuisance to the adjacent neighbors. Upon staff inquiry, in a memo dated August 7, 2025, the Police Department stated that there have been no complaints received for the site and has provided a Police Memo that is neutral to the proposed late-

night uses to operate in the existing building. Per the Operations Management Plan, sufficient on-site security personnel, at one personnel per fifty people, during the evening entertainment events, will be provided to prevent calls for service to the City of San José Police Department.

- **Outdoor Activities.** Pursuant to this guideline, outdoor activities may be limited for 24-hour operations. Services and sales should be conducted entirely within interior spaces between the hours of 12:00 a.m. and 6:00 a.m.

Analysis: The existing restaurant and banquet hall feature an associated outdoor patio and deck that will be used for dining and entertainment. The operating hours for these outdoor areas will align with the late-night hours of the restaurant and banquet hall. The amplified sound at the outdoor patio and balcony will be monitored by the Permittee after midnight, and the sound level will be turned down.

- **Police Issues.** Pursuant to this guideline, crime statistics and police safety issues that are directly related to uses operating between 12:00 a.m. and 6:00 a.m. will be analyzed and considered in determining the appropriateness of 24-hour uses.

Analysis: As documented in their memorandum dated August 7, 2025, the Police Department is neutral to the proposed late-night use for the subject site.

A crime analysis indicated a total of 4,363 calls for service and self-initiated events occurred within a 1,000-foot radius of 58 South 1st Street in 12 months (8/1/24 – 8/1/25). Of the 3,718 calls and events, 872 occurred during the hours between midnight and 6:00 a.m. The reported crime statistics, as defined by B&P Section 23958.4(c), are not over the 20% crime index, and hence the Police are neutral to the proposed late-night use for the business.

- **Restroom Facilities.** Restroom facilities required by other codes or policies shall remain open and be available during late-night business hours.

Analysis: Restroom facilities are provided and shall remain open and available for customers during the hours of operation of the business. This is a condition of approval that is included in the CUP Resolution.

- **Noise.** Special attention should be paid to the possibility of noise at late-night hours.

Analysis: Unlike other zoning district designations, the DC Downtown Primary Commercial Zoning District does not have performance standards concerning Noise. Similarly, Downtown is exempt from adhering to any noise policies in the General Plan. However, the business will not be detrimental to the surrounding uses as stated in their Operations Management Plan, as the building consists of a sound system that has been designed with noise limiters to control the sound levels on both floors and the patio. The applicant shall monitor the amplified sound and music on the patios and balcony after midnight, and speakers with bass volume will be turned down to ensure compatibility with adjacent uses.

- **Mitigation Management Plan.** An Operations Management Plan is required and submitted, addressing all of the following items:
 - Litter Control. The applicant shall control the litter emanating from the site daily for a distance of 300 feet along public streets from the site.
 - 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.
 - Exterior Clean Up. Exterior clean-up and maintenance activities, including garbage pick-up, shall not occur later than 10:00 p.m. or before 7:00 a.m. when the business is located within 300 feet of residential uses.

Analysis: An Operations Management Plan was prepared for the business, which includes provisions for regular site maintenance, exterior clean-up, trash pick-up, and graffiti removal. The trash receptacles will be kept indoors, and the Permittee will maintain the business exterior to be litter-free with regular inspections. The Project is in a well-lit area that contains ample street lighting. No additional lighting is provided.

The business provides a security alarm system and cameras, which will be closely monitored. The site provides one on-site security personnel per fifty people. Per the Operations Management Plan, sufficient security will be provided to prevent calls for service to the City of San José Police Department. The security personnel will check IDs and conduct personal inspections at the front door. The queue to enter the building will be on 1st Street. The security personnel will also be positioned throughout the venue and in the outdoor spaces.

The noise, lighting, security, anti-graffiti, anti-litter, and cleaning/maintenance requirements have been added as conditions of approval of this CUP resolution.

Based on the above analysis, the Project is consistent with the Council Policy 6-27 and meets the general guidelines for the late-night use in that the Project will not be detrimental to the surrounding area and is located in an area intended for a mix of uses.

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

City Council Policy 6-23 was adopted June 25, 1991, and last updated February 23, 1993. The intent of the policy is to avoid a concentration of nighttime uses in any one area. The policy includes guidelines intended to facilitate the evaluation process for individual permit applications by identifying the project characteristics that are necessary for approval. The land use guidelines in Council Policy 6-23 are applicable to the evaluation of the proposed drinking establishment (bar) use only.

30-Percent Frontage Limit for Non-Daytime uses

Land Use Compatibility Guideline 1.c. of Council Policy 6-23 states that 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. The purpose of this prohibition is to limit the number of dark storefronts in the Downtown during daytime hours, lending to an appearance of vacancy and lack of vibrancy in this central commercial area.

Analysis: Staff conducted a site visit on July 2, 2025, to take an inventory of all the drinking establishments that were open in the late-night hours. There are three late-night drinking establishments on the block (approximately 698 square feet) on the east side of South First Street between East Santa Clara Street and East San Fernando Street. The proposed late-night use would bring the total to four. Therefore, Nineteen percent (approximately 130 feet of street frontage) of the block is currently occupied with drinking establishments without daytime uses. The three businesses are as follows: Paper Plane (72 S. 1st Street), Still O.G. (66 S. 1st Street), and Temple (52 S. 1st Street).

With the inclusion of the subject site (approximately 20 feet of street frontage), there will be four late-night drinking establishments, resulting in 23 percent of the street frontage on this side of the street.

Therefore, the business does not need to be mandated to be open for lunch hours.

Areas with Above Average Police Calls for Service

Land Use Compatibility Guideline 1.g states that new nightclubs and bars are discouraged from locating in areas where there have been above-average police calls for service.

*Analysis: The San José Police Department is **neutral** to the existing Conditional Use Permit Amendment to extend the hours for all uses until 2:00 AM. The Police Department memorandum for this request, dated August 7, 2025, states that the crime analysis indicated a total of 4,363 calls for service and self-initiated events occurred within a 1,000-foot radius of 58 South 1st Street in 12 months (8/1/24 – 8/1/25). Of the 3,718 calls and events, 872 occurred during the hours between midnight and 6:00 a.m. The reported crime statistics, as defined by B&P Section 23958.4(c), are not over the 20% crime index, and hence, the Police are neutral to the proposed late-night use for the business.*

Other Guidelines

Some of the attributes of the proposed Project conform with the guidelines of Policy 6-23, such as being located in Downtown and not being adjacent to any residential uses. The use is therefore consistent with the overarching intent of Policy 6-23, as outlined above.

8. **City Council Policy 6-30: Public Outreach Policy for Pending Land Use Decisions.** Staff followed Council Policy 6-30: Public Outreach Policy in order to inform the public of the proposed Project. On-site signs have been posted on the Project frontages since June 29, 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 and posted on the City's website. The staff report is also posted on the City's website. Staff has also been available to respond to questions from the public. No comments were received as of the date of preparation of this report.
9. **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 modifications or expansion to the footprint of the existing shopping center.

Analysis: The Project is a Conditional Use Permit Amendment to allow a restaurant, a banquet facility, and a drinking establishment with a late-night use, as well as associated outdoor seating/dining. Amplified sound shall be carefully regulated, especially at the outdoor patio and balcony, and the bass volume will be turned down after midnight by the Permittee to ensure compatibility with adjacent uses. Additionally, the speakers shall be oriented away from South Second Street. No exterior changes to the building would occur. 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 consistent with the Class 1 exemption criteria under CEQA Section 15301(a) for Existing Facilities.

10. Conditional Use Permit Amendment Findings:

The following findings must be made for the issuance of a Conditional Use Permit Amendment pursuant to San José Municipal Code Section 20.100.720.

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

Analysis: As discussed in Section 4, General Plan Conformance, above, the Project is consistent with the General Plan land use designation of Downtown, which allows for restaurant and banquet facility uses, including a drinking establishment that will operate with a Type 47 license for on-sale of alcohol. The

late-night use is consistent with General Plan land use policies LU-3.7 and LU-3.8, as it would promote a mix of uses and would complement the existing 24-hour activities in Downtown, enhancing vibrancy and offering additional entertainment options alongside the area's diverse range of uses.

2. The Conditional Use Permit Amendment, 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 5, Zoning Code Compliance, above, the Project is consistent with the applicable uses of the DC Downtown Commercial Zoning District. The late-night use of the drinking establishment with floor occupancy greater than 250 persons requires a CUP amendment. There are no changes to the exterior of the building. As stated before, this CUP Amendment application is being heard by the City Council as one unified hearing process for extending the time limit to 2:00 a.m. for all uses operating in the building.

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

Analysis: As discussed above, the Project is consistent with Council Policy 6-23: Land Use Policy for Drinking Establishment in that the Project will be required to adhere to the business hours as stated in the Operations Management Plan. Standard conditions of approval are included in this CUP Resolution for safety, security, litter, and garbage.

The Project meets the City Council Policy 6-27 for 24-Hour Uses, as discussed in Section 6 above.

Staff followed Council Policy 6-30: Public Outreach Policy for Pending Land Use and Development Proposals to inform the public of the proposed Project. On-site signs have been posted on the Project frontages since June 29, 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 and posted on the City website. The staff report is also posted on the City website. Staff has been available to respond to questions from the public.

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

Analysis: Based on the Police Memo, dated August 7, 2025, the San Jose Police Department is neutral to the proposed CUP Amendment and the request to extend the hours of the restaurant and the banquet hall until 2:00 AM. As per the operations plan, private security will be contracted on-site for the safety of the patrons.

The addition of this drinking establishment would result in a total of four late-night drinking establishments on the same side of the street. This would result in approximately 23 percent of such establishments fronting the street, which is below the 30 percent threshold that would have required lunchtime hours. The late-night use, therefore, would not be detrimental to the general welfare of the neighborhood.

The business will operate from 11:00 a.m. to 2:00 a.m., seven days a week. The business will be required to maintain the upkeep of the business and the outdoor seating area and adhere to the business hours, safety, and security of the patrons, as stated in its Operations Management Plan.

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

Analysis: No physical changes will be made to the subject building or site. The subject site complies with the applicable development standards of the San José Municipal Code in that this Project is in the DC Downtown Primary Commercial Zoning District and does not require the provision of parking facilities or require performance standards. The subject site is also adequate in size and shape to accommodate the late-night use for the drinking establishment, restaurant, and the banquet facility with associated outdoor areas.

6. 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 required.

Analysis: The subject site is adequately served and accessible from public streets as it is located on the east side of South 1st Street, approximately 400 feet south of East Santa Clara Street, in a developed area of the Downtown. In addition, a Santa Clara Valley Transportation Authority (VTA) light rail line operates along South 1st Street, and the nearest VTA station is less than 100 feet away from the site.

7. The environmental impacts of the project, including but not limited to noise, vibration, dust, drainage, erosion, stormwater runoff, and odor, which, even if

insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative effect on adjacent property or properties.

Analysis: The project would occur within an existing building in an urbanized area in the Downtown, with no changes or construction to the exterior of the building. The General Plan recognizes Downtown as an area suitable for late-night and entertainment uses, and does not have noise or other performance standards for this area. Furthermore, a drinking establishment and late-night uses are compatible with other such establishments existing on this street. Based on the discussion and findings in the sections above, the activity is not anticipated to have a significant effect on the environment in terms of noise, vibration, dust, drainage, erosion, stormwater runoff, or odor.

In accordance with the findings set forth above, a Conditional Use Permit Amendment 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 Amendment ("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 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 provisions 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. **Conformance to Plans.** The development of the site and all associated development and improvements shall conform to the approved Conditional Use Permit Amendment plans entitled, "1st Street Plans" dated received August 13, 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). The plans are referred to herein as the "approved plans" or the "Approved Plan Set."
6. **Nuisance.** This use shall be operated in a manner that does not create a public or private nuisance under State law, the City's Municipal Code, or other law and requirements. Any such nuisance must be abated immediately upon notice by the City.
7. **Use Authorization.** This Conditional Use Permit Amendment authorizes a late-night use for all uses in the existing building to operate daily from 11:00 a.m. to 2:00 a.m., and modifies the previously approved Conditional Use Permit (File No. CP16-005) as follows:
 - a. Remove the condition that mandates the business to be open during lunch hours.

- b. Remove the condition that requires the banquet facility to close at midnight and extend hours to 2:00 a.m. for the restaurant with an outdoor patio, and the banquet facility with an outdoor deck.
 - c. Remove the condition that limits occupancy to 250 people on each floor and increase the capacity to 370 people on the first floor and 299 people on the 2nd floor to match the maximum occupancy load determined by the Fire Department.
 - d. Remove the condition that restricts playing music on the outdoor patio and deck after 10:00 p.m. and extend it to 2:00 a.m. to match the extended hours.
8. **Conformance to Other Permits.** Unless specifically modified with this Permit, this Project shall conform to all of the requirements of existing permit(s) including: File No. CP16-005 as may be amended.
9. **Compliance with Local, State, and Federal Laws.** The subject use shall be conducted in full compliance with all local, state, and federal laws.
10. **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.
11. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the Approved Plan Set.
12. **Utilities.** All new on-site telephone, electrical, and other service facilities shall be placed underground.
13. **Anti-Graffiti.** All graffiti shall be removed from buildings, signs, and wall surfaces, including job sites for Projects under construction, within 48 hours of defacement.
14. **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.
- a. Cleaning shall include keeping all publicly used areas free of litter, trash, cigarette butts and garbage and shall include daily damp washing of all exterior walls and sidewalks along the Project's frontage.
 - b. The operator of the Project shall clean the public right-of-way immediately adjacent to the subject site before 8:00 a.m. each day.
 - c. Mechanical equipment used for outside maintenance, including blowers and street sweepers may not be used between 10:00 p.m. and 7:00 a.m. daily.
 - d. No loitering, littering or panhandling shall be allowed on the Project site.
15. **Trash.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. Trash areas shall be maintained in a manner to discourage illegal dumping.

16. **Public Restrooms.** Public restrooms on site shall be available for public use during the business hours, seven days a week, while the business is open to the public and operating.
17. **Loitering.** Loitering shall not be allowed in the public right-of-way adjacent to the subject site.
18. **Operations Management Plan.** The Project shall fully comply with each of the provisions set forth in the Operations Management Plan on file with the Planning Division. Any change to the Operations Management Plan shall require approval of the City of San José through the appropriate decision-making body in the form of a Permit Adjustment or Amendment. The approved Operations Management Plan includes, but is not limited to, the following requirements:
 - a. **Hours of Operation.** This permit allows operation of the Project between 12:00 a.m. (midnight) and 2:00 a.m. seven days a week.
 - b. **Bar Layout.** The bar layout must correspond to the location of the bar on the Approved Plan Set.
 - c. **Security.** Per the Operations Management Plan, the required Public Entertainment Permit and security shall be provided on-site during the operation of the business.
 - d. **Cameras.** The Permittee's Operations Management Plan includes the provision of security cameras to monitor both the interior and exterior of the building.
 - e. **Amplified Sound**
 - i. Amplified sound shall be carefully regulated, and bass volume turned down after 12:00 a.m. by the Permittee to ensure compatibility with adjacent uses.
 - ii. The speakers at the outdoor patio and balcony shall not be oriented towards South Second Street.
19. **Alcohol Service.** The Permittee already has an ABC Type 47 license from the Department of Alcoholic Beverage Control (ABC) and shall continue to be in compliance with the issued ABC license.
20. **Disturbance Coordinator.** The Permittee shall implement the following:
 - a. Provide an on-site disturbance coordinator during all hours of operation.
 - b. Post contact information for the disturbance coordinator in a prominent location within the establishment near the primary entrance.
 - c. Maintain a complaint log including the time and content of all complaints and a summary of the time and nature of the establishment's response to each complaint.

- d. Ensure that the log is kept current and is available on the Project site for inspection by City staff.
21. **Entertainment.** The Permittee shall obtain and maintain compliance with a Public Entertainment Permit issued by the San José Police Department as applicable.
22. **Age of Patrons.** No patrons under the age of 21 years old shall be allowed within the establishment when it is operating as a Public Drinking Establishment as defined in Title 20 of the San José Municipal Code and/or as a Public Entertainment Business as defined in Title 6 of the San José Municipal Code.
23. **Vendor Delivery Parking.** The Permittee shall discourage vendors from parking delivery vehicles illegally on City streets and shall identify to vendors the available legal loading and unloading zones.
24. **No Sign Approval.** Any signage shown on the Approved Plan Set are conceptual only. No signs are approved at this time. Any signs shall be subject to review and approval by the Director of Planning, Building, and Code Enforcement through a subsequent Permit Adjustment.
25. **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.
26. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
27. **Mechanical Equipment.** The location and type of mechanical equipment shall be as shown on the Approved Plans and shall be screened from view. Changes to the mechanical equipment require the issuance of a Permit Adjustment or Amendment to the satisfaction of the Director of Planning, Building, and Code Enforcement.
28. **No Generators Approved.** This Permit does not include the approval of any stand-by/backup electrical power generation facility. Any future stand-by/backup generators will require a separate administrative Backup/Standby Generator Facility Permit and shall conform to the regulations of Title 20 of the Municipal Code.
29. **Building Division Clearance for Issuing Permits:** Prior to the issuance of a Building Permit, the requirements must be met to the satisfaction of the Chief Building Official, as applicable.
30. **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 by the City.
31. **Public Works Clearance for Building Permit(s) or Map Approval:** Prior to the approval of the Tract or Parcel Map (if applicable) by the Director of Public Works, or the issuance of Building permits, whichever occurs first, the Permittee will be required to have satisfied all of the Public Works' conditions, as applicable. The Permittee is

strongly advised to apply for any necessary Public Works permits prior to applying for Building permits. Standard review timelines and submittal instructions for Public Works permits may be found at the following:
<http://www.sanjoseca.gov/devresources>.

32. Revocation, Suspension, Modification. This Conditional Use Permit Amendment 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 Amendment 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"

All that certain real property situate in the City of San Jose, County of Santa Clara, State of California, described as follows:

Commencing at a point on the Easterly line of First Street distant 266.93 feet Northerly from the intersection of said Easterly line of First Street with the Northerly line of San Fernando Street; thence running Northerly along said line of First Street 47 feet; thence Easterly and parallel with said line of San Fernando Street 137 feet 6 inches; thence Southerly and parallel with said line of First Street 47 feet; and thence Westerly 137 feet 6 inches to the point of beginning, and being portions of Lots 6 and 7 in Block 1 and Range 2 North of the base line as per map of City of San Jose made by Thomas White, surveyor, in 1850 and being the same lot of land and premises acquired by Adams Riehl from Thomas Rea by deed dated the 3rd day of April A.D., 1880 and now of record in Book 54 of Deeds, page 533, et seq., records of Santa Clara County, California.

APN: 467-22-008