

CITY OF ALAMEDA PLANNING BOARD
DRAFT RESOLUTION

A RESOLUTION OF THE PLANNING BOARD OF THE CITY OF ALAMEDA APPROVING USE PERMIT APPLICATION NO. PLN19-0330 TO ALLOW AN OUTDOOR SEATING AREA IN THE REAR PATIO AT 1205 PARK STREET.

WHEREAS, on July 18, 2019, an application was made by Mike Yakura on behalf of Spinning Bones Restaurant ("Applicant") requesting approval for a Use Permit to use an existing 480-square-foot rear patio for outdoor customer seating ("Project"); and

WHEREAS, the City deemed the application complete on August 12, 2019; and

WHEREAS, the subject property is designated as Community Commercial in the General Plan; and

WHEREAS, the subject property is located in a C-C-T, Community-Commercial-Theatre Combining District; and

WHEREAS, the Planning Board held a duly noticed public hearing on September 9, 2019 for the Project and examined pertinent maps, drawings, and documents.

NOW THEREFORE, BE IT RESOLVED, that the Planning Board finds this project categorically exempt from environmental review pursuant to CEQA Guidelines Section 15301 - Existing Facilities, and finds that none of the exceptions to the categorical exemptions apply. As a separate and independent basis, the project is also exempt from CEQA pursuant to CEQA Guidelines Section 15183 (projects consistent with General Plan and Zoning).

BE IT FURTHER RESOLVED that the Planning Board makes the following findings relative to the Use Permit application (PLN19-0330):

1. **The location of the proposed use is compatible with other land uses in the general neighborhood area, and the project design and size is architecturally, aesthetically, and operationally harmonious with the community and surrounding development.** As conditioned the proposed outdoor patio is compatible with other commercial and residential land uses in the surrounding neighborhood area. The proposed use of the rear patio for customer dining is a low-intensity use due to its small size of approximately 480 square feet, which limits the seating capacity to only 15 customers. The project is conditioned to prohibit live or amplified music in the patio that would be incompatible with neighboring residential uses. Additionally the project is conditioned to limit the hours of patio use to between 11:00 A.M. and 9:00 P.M. to eliminate any possibility of night time and early morning disturbances.
2. **The proposed use will be served by adequate transportation and service facilities including pedestrian, bicycle, and transit facilities.** The location of the project is fully developed and does not require additional service facilities. The proposed outdoor patio is an option for customers and the patio seating alone will not increase the vehicle traffic or parking demand of the restaurant use. The Park Street Business District has several City operated parking lots and street parking within walking distance to the restaurant, as well as

bike parking facilities throughout the district. The site is located on Park Street which is served by AC Transit bus routes 20, 51A, and O.

3. **The proposed use, if it complies with all conditions upon which approval is made contingent, will not adversely affect other property in the vicinity and will not have substantial deleterious effects on existing business districts or the local economy.**

The proposed outdoor seating, as conditioned, will not affect the surrounding properties, hurt existing business districts or the local economy. The proposed use is a low-intensity use that is consistent with the pedestrian-oriented commercial uses facilitated by the Community Commercial zoning regulations. The proposed outdoor dining use will benefit the district by bringing foot traffic to the site and by occupying a vacant retail space. The proposal does not involve design changes to the exterior of the building. Compliance with the conditions of approval will further minimize the possibility of adverse effects on adjacent property.

4. **The proposed use relates favorably to the General Plan.**

The proposed outdoor seating for a restaurant will provide a low-intensity use compatible with the Community Commercial General Plan designation. The proposal is consistent with the General Plan because the proposed use would not have any negative impacts upon the surrounding properties and commercial businesses. General Plan Policy 2.5.a also calls for providing enough retail business and services to provide Alameda residents with a full range of services. Allowing a restaurant to provide 15 outdoor dining spaces in an otherwise underutilized rear patio supports this General Plan policy.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the Planning Board approves file no. PLN19-0330 for a Use Permit to allow an outdoor seating area in the rear patio at 1205 Park Street, subject to the following conditions:

1. **Posting of Use Permit and Conditions:** A copy of this Use Permit and conditions of approval shall be posted on the premises at all times. Restaurant employees shall be informed of these conditions of approval and limits of this Use Permit.
2. **Maximum Occupancy:** The maximum allowed occupancy of the outdoor seating area shall be 15 customers.
3. **Outdoor Patio Area Hours of Operation:** The hours for customers to use the outdoor patio shall limited to between the hours of 11:00 AM and 9:00 PM, seven days a week. The applicant shall restrict customer use of the patio outside of these hours. Additionally, a sign shall be placed in the entrance of the outdoor patio stating "No Customer Access to Patio After 9:00 P.M."
4. **Limitations On Outdoor Patio Area Use:** No live music or amplified speakers are allowed in the outdoor patio. No smoking is allowed in the outdoor patio area. A "No Smoking" sign shall be posted in the outdoor patio area at all times.
5. **Good Neighbor Condition:** The applicant shall have posted at all times at the entrance to the outdoor patio and in the patio to be aware and courteous of residential neighbors.
6. **Noise Ordinance:** The applicant shall ensure that all operations are conducted in conformance with the Noise Ordinance, AMC Section 4-10.

7. **Exterior Lighting:** New exterior lighting fixtures shall be low intensity, directed downward and shielded to minimize offsite glare consistent with the City's Dark Skies Ordinance, AMC Section 30-16.c. Exterior lighting shall be limited to light fixtures required by applicable health and safety codes.
8. **Revocation:** Upon receipt of three valid noise complaints due to business operations in the outdoor patio the Planning Board shall conduct a revocation hearing. A valid noise complaint shall be determined by the responding City official based on the guidelines set forth by Alameda Municipal Code (AMC) Section 4-10.8 or through California Penal Code 415 (Crimes Against the Public Peace) and confirmed by the Planning Director. This Use Permit may be modified or revoked by the Zoning Administrator, Planning Board, or City Council, pursuant to Alameda Municipal Code Section 30-21.3d should the Zoning Administrator, Planning Board, and/or City Council determine that: 1) the use or conditions under which it is being operated or maintained is detrimental to the public health, welfare, or materially injurious to property or improvements in the vicinity; 2) the property is operated or maintained so as to constitute a public nuisance; or 3) the use is operated in violation of the conditions of the Use Permit.

HOLD HARMLESS. The Applicant shall defend (with counsel acceptable to the City), indemnify, and hold harmless the City of Alameda, the Alameda City Planning Board and their respective agents, officers, and employees from any claim, action, or proceeding (including legal costs and attorney's fees) against the City of Alameda, Alameda City Planning Board, and their respective agents, officers, or employees to attack, set aside, void or annul, an approval by the City of Alameda, the Planning, Building & Transportation Department, Alameda City Planning Board, or City Council related to this project. The City shall promptly notify the Applicant of any claim, action, or proceeding and the City shall cooperate in such defense. The City may elect, in its sole discretion, to participate in the defense of said claim, action, or proceeding.

NOTICE. No judicial proceedings subject to review pursuant to California Code of Civil Procedure Section 1094.5 may be prosecuted more than ninety (90) days following the date of this decision plus extensions authorized by California Code of Civil Procedure Section 1094.6.

NOTICE. The conditions of project approval set forth herein include certain fees and other exactions. Pursuant to Government Code section 66020(d)(1), these Conditions constitute written notice of a statement of the amount of such fees, and a description of the dedications, reservations and exactions. The Applicant is hereby further notified that the 90-day appeal period, in which the Applicant may protest these fees and other exactions, pursuant to Government Code section 66020(a) has begun. If the Applicant fails to file a protest within this 90-day period complying with all requirements of section 66020, the Applicant will be legally barred from later challenging such fees or exactions.

The decision of the Planning Board shall be final unless appealed to the City Council, in writing and within ten (10) days of the decision, by filing with the Planning, Building, and Transportation Department a written notice of appeal stating the basis of appeal and paying the required fees.

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