

To: Honorable Mayor and Members of the City Council

From: Adam W. Politzer, City Manager

Date: April 27, 2024

Supplemental Memo regarding Agenda Item 7-A:

SUPPLEMENTAL INFORMATION

This memo is being provided to supplement the staff report already published for the May 5, 2026 City Council meeting.

Due to an error in version control, the resolution provided with the staff report did not include all of the recommended edits that should be considered in Council's deliberations. An amended resolution is provided with this memo. It includes additional findings related to the California Environmental Quality Act (CEQA), the reasons to uphold the appeal, findings related to consistency with sections of the Alameda Municipal Code (AMC) and General Plan, and neighborhood compatibility. The resolution also updates the conditions of approval related to standards for noise control and measurement, as set forth in Conditions 4 and 8, and the expectations for a four-month review of the permit as set forth in Condition 15, now renumbered Condition 14.

Respectfully submitted,  
Abby Thorne-Lyman, Interim Planning Building and Transportation Department Director

Exhibit:

1. Revised Resolution

Exhibit 1 Revised Resolution

CITY OF ALAMEDA RESOLUTION No. \_\_\_\_\_

UPHOLDING THE APPEAL OF PLANNING BOARD RESOLUTION NO. PB-26-01 IN PART AND APPROVING WITH MODIFICATION USE PERMIT AMENDMENT (APPLICATION NO. PLN25-0649) TO ALLOW CONTINUED USE OF A PREVIOUSLY APPROVED OUTDOOR SEATING AREA WITHOUT LIVE AMPLIFIED OUTDOOR MUSIC EVENTS ON A 0.29-ACRE SITE AT 1200 PARK STREET

WHEREAS, the subject property at 1200 Park Street (“Property”) is designated Community Mixed Use in the General Plan; and

WHEREAS, the subject property is located in the C-C-T, Community-Commercial – Theater Combining Zoning District; and

WHEREAS, on February 13, 2023, the Planning Board approved Planning Board Resolution No. PB-23-01 (Application No. PLN22-0412) for Design Review and a Use Permit for the Property for a tavern use, extended hours of operation until 11:00 PM on Fridays and Saturdays, outdoor seating, and outdoor live music events to allow the adaptive reuse of an existing commercial property as a tavern with an outdoor patio for seating and live music events, which is now known as Park Station. Said use permit approval permitted a maximum of three (3) outdoor music events per month on Fridays between 4:00PM – 8:00PM and on Saturdays 2:00PM – 8:00PM, limited to up to three (3) hours per event. The use permit also included a requirement that the applicant return to the Planning Board six months after the start date of the outdoor seating and live music event uses to review the conformity of those uses with the approved conditions; and

WHEREAS, Park Station (“Applicant”) timely filed Application No. PLN25-0649 on January 5, 2026 (“2026 Application”) to initiate the required six-month review of the original use permit and also to request modifications to the original use permit to allow up to ten (10) live music events per month on Fridays from 4:00 PM to 9:00 PM, Saturdays from 2:00 PM to 9:00 PM, and Sundays from 2:00 PM to 7:00 PM, located on a 0.29-acre site at the Property with a maximum noise level of 90 dB; and

WHEREAS, the 2026 Application was deemed complete on February 9, 2026; and

WHEREAS, on February 23, 2026, the Planning Board held a duly noticed public hearing on the 2026 Application, conducted the six-month review, and considered the proposed amendments to the original use permit for the expanded times and days for the outdoor live music event use, and examined pertinent maps, drawings, and documents, and heard and considered public testimony relating thereto; and

WHEREAS, the Planning Board approved Resolution No. PB-26-01 by a unanimous vote (6-0), approving the 2026 Application in part and amending the original use permit to allow for four (4) outdoor amplified live music events per month while

maintaining the original live music event hours of Fridays between 4:00PM – 8:00PM and Saturdays between 2:00PM – 8:00PM, maintaining the 85 dB limit with modification for its measurement, and requiring the use of drum dampeners and installation of a professional sound meter; and

WHEREAS, on March 2, 2026, on behalf of Kevin Durfee, Rebecca L. Davis of Lozeau Drury LLP timely filed an appeal of the Planning Board’s approval of Resolution No. PB-26-01, and thereafter submitted a detailed appeal brief on March 24, 2026 principally arguing that the amended use permit did not comply with the California Environmental Quality Act (CEQA) and did not comply with the City’s noise ordinance. The brief clarified that the appeal only pertained to the outdoor amplified noise and did not challenge the other aspects of the Use Permit; and

WHEREAS, after giving due notice to the applicant, appellant, all interested parties, and the public, the Appeal was heard and considered by the City Council at a regular public hearing on May 5, 2026; and

WHEREAS, the applicant, the appellant, supporters of the application, those opposed to the application, and interested neutral parties were given the opportunity to participate in the public hearing; and

WHEREAS, the City Council held a de novo public hearing on May 5, 2026 on the Appeal, at which time the City Council considered the entirety of the record, including all submitted written materials and public comments made at the Planning Board meeting, as well as the contents of the Appeal, the public testimony given at the City Council hearing on the Appeal, and all other pertinent records, reports, and evidence.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Alameda, that the City Council finds for the purposes of the California Environmental Quality Act (CEQA) that the amended use permit approved by Council with the additional conditions as set forth below is categorically exempt under CEQA Guidelines Section 15301 - Existing Facilities in that: (i) the modifications to the Use Permit, as approved by this Resolution, are expressly for the purpose of conformance with local law and ensuring consistency with the Alameda Municipal Code; (ii) that the approval of this Use Permit, as modified and approved by this Resolution, is effectively a denial of all matters requested by Applicant in the 2026 Application; and (iii) that the Use Permit, as modified and approved by this Resolution, is a less intense use of the Property compared to the prior conditionally permitted use authorized in the original 2023 Use Permit, and thus constitutes a “negligible or no expansion” of the existing use at the time of the 2026 Application. None of the exceptions to the categorical exemption apply; and

BE IT FURTHER RESOLVED, that the City Council, after due consideration of the Appeal, the public testimony received at the hearing thereon, and a review of the whole record as described above, UPHOLDS the Appeal on the grounds that outdoor amplified music with noise levels of 85 dB is inconsistent with the ambient noise levels for Park Street described in the City’s Health and Safety Element of the General Plan as well as

the more recent ambient noise readings taken on Park Street following the Planning Board's hearing. The Council further AFFIRMS in part and MODIFIES in part the approval of the Use Permit in Planning Board Resolution No. PB-26-01 to ensure consistency with the purposes of the City's noise ordinance codified in Article II (Noise Regulations) of the Alameda Municipal Code; and

BE IT FURTHER RESOLVED, that in upholding the Amended Use Permit with modifications, the City Council agrees and concurs in primary part with the Planning Board approval of Resolution No. PB-26-01, and finds that said approval, with the modifications set forth in this Resolution, is consistent with the AMC; and

BE IT FURTHER RESOLVED, that the City Council, for the purpose of clarity and administrative convenience, hereby declares Planning Board Resolution Nos. PB-23-01, except as to its findings, and PB-26-01 to be superseded by this Resolution and of no further effect with respect to the Use Permit, being fully substituted and replaced by this Resolution; and

BE IT FURTHER RESOLVED, that this Resolution may be referred to as "PB-26-01A (City Council)" in addition to its City Council resolution number, and the City Council urges that a copy of this Resolution should be filed and kept with the records of resolutions of the Planning Board, following sequentially after the record of PB-26-01, provided that it should be clearly indicated that this Resolution is an action by City Council; and

#### USE PERMIT

BE IT FURTHER RESOLVED, with respect to the tavern use, extended hours of operations, and the outdoor seating area for tavern use, the City Council concurs with and adopts all the use permit findings for and relating to those uses made in Planning Board Resolution PB-23-01, and fully incorporates said findings into this Resolution as though fully set forth herein; and

BE IT FURTHER RESOLVED, the City Council makes the following use permit findings relative to the outdoor live music event use pursuant to AMC Sections 30-21.3:

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.** The outdoor live music event use will be compatible with other land uses in the general neighborhood area because it will be required to comply with the generally applicable Section 4-10 of Article II of Chapter IV of the AMC (City's Noise Ordinance), which will ensure the use will operate under the same restrictions as all other land uses in the vicinity, that it will observe noise limits of general applicability that are intended to protect receptor residential and commercial uses, and that it will avoid creating a nuisance as defined by City ordinance. Further, while the tavern and intermittent entertainment use are of the type and intensity contemplated by the relevant C-C-T Zoning District, Community Mixed-Use General Plan Land Use

Designation, and General Plan Policy LU-10, the proposed use will be conditioned to limit outdoor live music events to four events per month on Fridays from 4:00 PM to 8:00 PM and/or Saturdays from 2:00 PM and 8:00 PM, for up to three hours per event, which will ensure harmonious operation with the community by focusing such events to times and days that are commonly expected for downtown activities particularly related to leisure, recreation, and entertainment, such as the use, as well as comporting with the general times for outdoor activity within the Park Street area.

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 within the Park Street Business District, which is fully developed, does not require additional service facilities, and has a City-operated parking lot, parking structure, and on-street parking within walking distance to the site, as well as bike parking facilities on the site and throughout the district. The site has access to public transit and is served directly by AC Transit lines 20, 21, 51A, O and W.
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 outdoor live music event use, as conditioned, will not adversely affect the surrounding properties or existing business district or the local economy. The outdoor live music event use (as modified), and the existing tavern and outdoor seating, are consistent with the pedestrian-oriented commercial uses facilitated by the C-C-T Zoning and Combining Districts. The outdoor seating area provides an outdoor gathering space for the community to dine and socialize and operates like other outdoor dining locations in the Park Street area, including the parklets of nearby restaurants. As discussed under Finding 1, the outdoor live music event use is required to comply with the City's Noise Ordinance and will be limited in frequency and to specific times of day and days of the week to ensure harmonious operation by focusing the use to times generally expected for this type of activity in downtown areas. By observing of general regulations and the specific conditions of approval, the use is compatible with the community and surrounding development.
4. **The proposed use relates favorably to the General Plan and the purpose of the C-C Zoning District and Theater Combining District.** The project is consistent with General Plan Policy LU-10, which calls to support, promote and enhance Park Street to provide a broad mix of retail stores, restaurants, entertainment, hospitality, personal and professional service, and transit oriented mixed-use housing opportunities. The tavern use with outdoor seating and music events would contribute to the goal of promoting Park Street as a Main Street, and relates favorably with other restaurant and commercial uses that together provide a cohesive family-friendly, pet-friendly atmosphere in the Park Street area. The proposal is also consistent with General Plan Policy HS-61 (Community Noise Ordinance), which will ensure compatibility with and avoid negative impacts to the surrounding properties and commercial businesses. The proposal is consistent with the C-C-T Zoning and Combining Districts, which are intended to provide for general retail, restaurants, entertainment, personal service

use, offices, public and quasi-public uses and similar and compatible uses. On balance, the outdoor live music event use (as modified), in conjunction with the other existing uses of the Property, favorably relates to the General Plan, zoning, and other applicable City policies and regulations; and

AND, BE IT FINALLY RESOLVED, that the City Council hereby APPROVES a Use Permit for a tavern use, extended hours of operation until 11:00 PM on Fridays and Saturdays, outdoor seating for the tavern use, and outdoor live music events at the Property, pursuant to AMC Sections 30-21.3 and 30-4.9A.c.(a), (b), and (hh), and 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. All employees shall be informed of these conditions of approval and limits of this Use Permit.
2. Expiration: The Use Permit shall expire two (2) years after the date of approval unless authorized construction or use of the property has commenced. A one-time extension for an additional two years may be granted by the Planning, Building and Transportation Director upon written request and payment of applicable fees.
3. Changes to Approved Plans: This approval does not approve or authorize any physical improvements or modifications, beyond those priorly approved by and conforming with Planning Board Resolution No. PB-23-01 and the building permits and certificate of occupancy issued thereunder prior to the date of this Resolution, nor does it represent a recognition and/or approval of any work completed without required City permits. Any future or additional physical changes shall be submitted to the Planning, Building, and Transportation Department for review and approval.
4. Approved Uses: This Use Permit approves and authorizes at the Property a tavern use, extended hours of operation (until 11:00 PM on Fridays and Saturdays), outdoor seating for the tavern use, and outdoor live music events subject to the conditions set forth below. The Property may be used for indoor or “hybrid” indoor-outdoor (where the performer is located within a building) live music events, subject to all applicable conditions of approval herein, specifically including, but not limited to, conditions 6 (Noise Ordinance) and 8 (Outdoor Music), as well as the playing (not by a DJ) of recorded music indoors and outdoors in a manner customary of restaurants without live performances uses and at a volume that does not interfere with patron and staff conversations at normal speech levels, and subject to all applicable conditions of approval herein, specifically including, but not limited to, condition 6 (Noise Ordinance).
5. Compliance with City Ordinances. The approved use is subject to, and shall comply with, all applicable City Ordinances and laws and regulations of other governmental agencies including the County of Alameda Department of Environmental Health, and the Department of Alcohol Beverage Control. The

applicant shall obtain a Type 41 ABC license prior to commencement of alcohol sales related activity.

6. Noise Ordinance. All use of the Property (including but not limited to outdoor live music events) shall strictly comply with Section 4-10 of Article II of Chapter IV of the AMC (City's Noise Ordinance).
7. Hours of Operation: Hours of operation for the tavern and outdoor tavern seating shall be from 7:00 AM to 11:00 PM on Friday and Saturday only, and from 7:00 AM to 10:00 PM Sunday through Thursday.
8. Outdoor Music. Outdoor live music events shall comply with all of the following conditions and limitations:
  - a. Be limited to no more than four (4) days per calendar month on Friday and/or Saturday.
  - b. Friday events shall be limited to the hours of 4:00 PM to 8:00 PM.
  - c. Saturday events shall be limited to the hours of 2:00 PM to 8:00 PM.
  - d. Events shall be limited to a total of three (3) hours per day, plus an additional one (1) hour maximum for pre-event sound checks only.
  - e. Set up and breakdown activities may occur no more than three (3) hours before each event and no more than two (2) hours after event.
  - f. Events shall comply with City's Noise Ordinance at all times. Upon three-verified violations of the maximum noise level, the Planning Board shall hold a hearing to review the Use Permit for possible revocation at the cost of the Applicant.
  - g. Applicant shall install and monitor a professional sound meter in the outdoor patio to provide decibel readings for onsite staff to review and shall make adjustments to comply with the maximum noise level identified in the City's Noise Ordinance (in AMC Section 4-10.4) at all times.
  - h. The Applicant shall conduct preliminary sound readings before sound checks and events (with no music playing) to determine ambient noise levels, as well as during sound check and during each outdoor music event to ensure compliance with the City's Noise Ordinance and AMC Section 4-10.4. No later than ninety (90) minutes after the start of an event, Applicant shall require or cause an intermission of no less than five (5) minutes, during which time no music shall play, and Applicant shall conduct sound readings to assess any reductions in ambient noise levels, and sounds levels shall be reduced to comply with AMC Section 4-10.4, if and as necessary, in light

of any changes in the ambient noise level since the start of the event. Applicant shall take, or cause to be taken, all sound readings, for purposes of this condition, from the sidewalk in front of the residential property directly adjacent to the Property on San Jose Avenue and facing away from Park Street (facing away from the Property and outdoor seating area).

- i. The Applicant shall monitor noise levels at every outdoor live music event and ensure ongoing compliance with the City's Noise Ordinance.
  - j. To the extent necessary to comply with this Condition 8, drums and other instruments shall be provided with dampeners or other noise reduction devices necessary to reduce their sound level.
  - k. Applicant shall post an up-to-date calendar of live events on its website.
9. Contact Information. Applicant shall provide on their website contact information for the on-duty manager or other responsible employee that residential and commercial neighbors can contact to report issues, concerns, or complaints regarding the use of the Property and these conditions of approval.
10. Dark Skies Ordinance: Building Permit plans shall demonstrate compliance with the Alameda Dark Skies Ordinance (AMC Section 30-5.16.c), as applicable.
11. Bird Safe Ordinance: Building Permit plans shall demonstrate compliance with the Alameda Bird-Safe Building Ordinance (AMC Section 30-5.16.b), as applicable.
12. Bicycle Parking: The project shall provide (and maintain) the required bicycle parking spaces consistent with AMC Section 30-7.6 (Off-Street Bicycle Parking Requirements). The locations for bicycle parking consistent with the AMC bicycle requirements shall be shown on the Building Permit plans. The bicycle facility shall be located in a secure and safe location and accessible from high pedestrian/bicycle traffic areas, such as at the street frontage, to the satisfaction of the Planning, Building & Transportation Director.
13. Urban Runoff / Stormwater Requirements / Site Maintenance:
- a. Applicant shall ensure that no pollutants, including food waste/grease, liquid wastes, garbage/debris, litter, and/or other materials, are discharged to the City's storm drain system (including roadways and storm drains), or the paved use areas or wind-dispersed off-site.
  - b. Applicant shall pick up, remove, and dispose of all garbage, refuse or litter consisting of foodstuffs, wrappers, and/or materials dispensed, and any residue deposited on the street and the paved use areas from the operation thereof, and otherwise maintain in a clean and debris-free condition the entire area within a 25-foot radius of the tavern location.

- c. Applicant will be required to pick up, remove and properly dispose of all wastes, debris, and trash from the use site daily.
- d. Applicant shall use best management practices and dry methods of cleaning to prevent accumulation or discharge of any materials to the City's storm drain system (including roadways and storm drains) and the paved use areas.
- e. Applicant shall ensure that any wash water from surface cleaning activities is collected and discharged to the sanitary sewer system and shall implement surface cleaning best management practices described in the Bay Area Stormwater Management Agencies Association (BASMAA) "Pollution From Surface Cleaning" guidance document.

14. Integrated Waste Management:

- a. Applicant shall provide customers sufficient garbage, recycling, and organic collection receptacles.
- b. All garbage facilities shall be secured within the building or within a fenced area protected from access by raccoons or other vermin. In no circumstances will uncovered garbage, grain, refuse or other edible materials be placed outside the building in an open bin or can.
- c. Applicant shall place graphically rich signs or labels on or adjacent to containers so customer discards are more thoughtfully sorted.
- d. All receptacles shall be covered or secured when operations are closed. Applicant will discourage the scavenging of bottles and cans from use area.
- e. Applicant understands that disposable food service ware that uses polystyrene foam (aka Styrofoam™) is prohibited within jurisdictional limits.
- f. Use of City waste receptacles is prohibited.

15. Four-Month Review of Outdoor Live Music Event Use: No later than one hundred and twenty (120) days from the effective date of this Use Permit (as approved by this Resolution), applicant shall submit a use permit application for a Planning Board review of this Use Permit (and any amendments that Applicant may request at such time, if desired) and pay all required application fees. As part of this review, applicant shall submit a summary of its outdoor music activities and noise measurements, as well as any complaints it has received and actions taken to remedy them. If Applicant timely complies with the foregoing, this Use Permit shall continue in full effect until the Planning Board takes final action on the application. If Applicant fails to comply with this condition, Applicant shall cease the outdoor

live music event use unless and until such use is approved by a final action of the Planning Board on a subsequent use permit application for such use. If Applicant fails to cease the outdoor live music event use, it shall be a violation of this condition and grounds for revocation or modification of this Use Permit by the Planning Board, after notice and hearing, pursuant to AMC Section 30-21.3.d.

Except upon review, modification, or revocation of the Use Permit by the Planning Board at a duly-noticed public hearing, this condition shall only apply to the outdoor live music event use, and Applicant shall not be required to cease the other uses herein authorized for a failure to request review under this condition.

16. Revocation: This Use Permit may be modified or revoked by the Planning Board, or City Council on appeal, pursuant to Alameda Municipal Code Section 30-21.3.d should the reviewing body 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.
  
17. HOLD HARMLESS. To the maximum extent permitted by law, the applicant (or its successor in interest) shall defend (with counsel acceptable to the City), indemnify, and hold harmless the City of Alameda, its City Council, City Planning Board, officials, employees, agents and volunteers (collectively, "Indemnitees") from and against any and all claims, actions, or proceedings against Indemnitees to attack, set aside, void or annul an approval by Indemnitees relating to this project. This indemnification shall include, but is not limited to, all damages, losses, and expenses (including, without limitation, legal costs and attorney's fees) that may be awarded to the prevailing party arising out of or in connection with an approval by the Indemnitees relating to this project. The City shall promptly notify the applicant of any claim, action or proceeding and the City shall cooperate in the defense. The City may elect, in its sole discretion, to participate in the defense of said claim, action, or proceeding and the applicant (or its successor in interest) shall reimburse the City for its reasonable legal costs and attorneys' fees.

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.

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I, the undersigned, hereby certify that the foregoing Resolution was duly and regularly adopted and passed by the Council of the City of Alameda in a regular meeting assembled on the 5<sup>th</sup> day of May 2026, by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

IN WITNESS, WHEREOF, I have hereunto set my hand and affixed the seal of said City this 6<sup>th</sup> day of May 2026.

\_\_\_\_\_  
Lara Weisiger, City Clerk  
City of Alameda

APPROVED AS TO FORM:

\_\_\_\_\_  
Yibin Shen, City Attorney  
City of Alameda