

RESOLUTION NO. _____

**A RESOLUTION OF THE CUPERTINO CITY COUNCIL
UPHOLDING THE APPEAL IN PART, APPROVING AN EXCEPTION FOR
ONE OF THE TWO-REQUESTED WALL SIGNS ALONG THE EAST
FAÇADE LOCATED AT 19900 STEVENS CREEK BLVD.**

WHEREAS, the Planning Commission of the City of Cupertino received an application for a Sign Exception (EXC-2022-004) to allow two additional wall signs for a single tenant (Shane Co) at an existing retail building;

WHEREAS, the necessary public notices have been given as required by the Procedural Ordinance of the City of Cupertino, and the Planning Commission has held at least one public hearing in regard to the application; and

WHEREAS, on December 12, 2023, the Planning Commission approved the Sign Exception (EXC-2022-004) with modifications, limiting it to one unlighted wall sign as a sign exception on the east facade at location 2, for a total of two wall signs, by a 4-0 vote the in substantially similar form to the Resolution presented (Resolution No. 2023-24); and

WHEREAS, on December 20, 2023, the applicants, on behalf of Shane Co., appealed the Planning Commission's decision to modify the sign exception; and

WHEREAS, all necessary public notices having been given as required by the City of Cupertino Municipal Code and the Government Code, and the Planning Commission held at least one public hearing in regard to this application, and

WHEREAS, on March 5, 2024, the City Council held a public hearing to consider the Project; and

WHEREAS, the City Council of the City of Cupertino is the decision-making body for the appeal of the Planning Commission decision.

WHEREAS, the applicant has met the burden of proof required to support said application with the modification of the scope to only allow for an additional wall sign along the east façade, as detailed in the Staff report; and

1. That the literal enforcement of the provisions of the Sign Ordinance will result in restrictions inconsistent with the spirit and intent of the ordinance.

CMC 19.104 Signs has allowances for multiple wall signs on the different facades. Allowing an exception for a single wall sign along the east façade is consistent with the spirit and intent of the Ordinance. However, allowing a third wall sign, combined with a ground sign, is far above the maximum number of signage facing a busy thoroughfare such as Stevens Creek Boulevard and would allocate multiple signage to a single business. This is contrary to the intent and purpose of this Chapter to provide architectural and aesthetic harmony of signs as they relate to building design and surrounding landscaping as well as quantity which will allow for good visibility for the public and the needs of the business.

2. That the granting of an exception will not result in a condition which is materially detrimental to the public health, safety, or welfare.

The sizes and location of the signs will not result in situation that is materially detrimental to the public health, safety, or welfare to the community as the sizes of the signs and the proposed halo illumination of their internal lighting illuminated signage are is well below the maximums standards ordained in the Municipal Code.

3. That the exception to be granted is one that will require the least modification of the prescribed design regulations and the minimum variance that will accomplish the purpose.

Allowing the two wall signs along the east façade is above the allowed number of wall signs. The exception would require a greater modification and variance to Municipal Code section 19.104 Signs than would typically be supported by staff. However, allowing a single wall sign along the east façade is within the limitations of the Municipal Code and is recommended to be approved by City Council.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the City Council does hereby uphold the appeal in part, approve the sign exception with the modification of the scope to only allow for an additional wall sign along the east façade, and that the foregoing recitals are true and correct and are included herein by reference as findings.

CONDITIONS ADMINISTERED BY THE COMMUNITY DEVELOPMENT DEPT.

1. APPROVED EXHIBITS

Approval is based on the plan set dated May 10, 2023 entitled, "Shane Co. Exterior Improvements", drawn by Stacy Hall, consisting of two (2) sheets labeled "A-1 and A-3"; except as may be amended by conditions in this resolution.

2. ACCURACY OF PROJECT PLANS

The applicant/property owner is responsible to verify all pertinent property data including but not limited to property boundary locations, building setbacks, property size, building square footage, any relevant easements and/or construction records. Any misrepresentation of any property data may invalidate this approval and may require additional review.

3. EXCEPTION APPROVAL

A Sign Exception is hereby granted to allow for an additional wall sign along the east façade, as identified in the Staff Report as Location 1.

4. ILLUMINATION INTENSITY AND HOURS OF ILLUMINATION

The intensity of all signs shall not exceed 250 foot-lamberts. All illuminated signs shall be turned off by 11:00 p.m. A letter from the business operator shall be provided prior to final building permit approval acknowledging this condition of approval and incorporated in the building permit plans.

5. LIGHTING INTENSITY ADJUSTMENT

The City reserves the right to require the applicant to utilize dimming technology to adjust the lighting intensity of the sign when deemed necessary.

6. SIGN PERMITS REQUIRED

The applicant shall consult with the City's Building Division to obtain the necessary sign permits for this project.

7. CONSULTATION WITH OTHER DEPARTMENTS

The applicant is responsible to consult with other departments and/or agencies with regard to the proposed project for additional conditions and requirements. Any misrepresentation of any submitted data may invalidate an approval by the Community Development Department.

8. GRADING AND CONSTRUCTION HOURS AND NOISE LIMITS

- a. All grading activities shall be limited to the dry season (April 15 to October 1), unless permitted otherwise by the Director of Public works.
- b. Construction hours and noise limits shall be compliant with all requirements of Chapter 10.48 of the Cupertino Municipal Code.
- c. Grading, street construction, underground utility and demolition hours for work done more than 750 feet away from residential areas shall be limited to Monday through Friday, 7 a.m. to 8 p.m. and Saturday and Sunday, 9 a.m. to 6 p.m. Grading, street construction, demolition or underground utility work within 750 feet of residential areas shall not occur on Saturdays, Sundays, holidays, and during the nighttime period as defined in Section 10.48.053(b) of the Municipal Code.
- d. Construction activities shall be limited to Monday through Friday, 7 a.m. to 8 p.m. and Saturday and Sunday, 9 a.m. to 6 p.m. Construction activities are not allowed on holidays as defined in Chapter 10.48 of the Municipal Code. Night time construction is allowed if compliant with nighttime standards of Section 10.48 of the Cupertino Municipal Code.
- e. Rules and regulations pertaining to all construction activities and limitations identified in this permit, along with the name and telephone number of an applicant appointed disturbance coordinator, shall be posted in a prominent location at the entrance to the job site.
- f. The applicant shall be responsible for educating all contractors and subcontractors of said construction restrictions.

The applicant shall comply with the above grading and construction hours and noise limit requirements unless otherwise indicated.

9. NOISE AND VIBRATION NOTICE

At least 10 days prior to the start of any demolition, ground disturbing, or construction activities, the project applicant/contractor shall send notices of the planned activity by first class mail to off-site businesses and residents within 500 feet of the project site. The City will provide a template notice and mailing addresses for the Applicant's use. The notice must be approved by City staff prior to sending. The project applicant shall provide the City with evidence of mailing of the notice, upon request.

Please note that, if pile driving, the requirements for noticing and monitoring outlined in City Code Section 17.04.050 G (3) shall apply.

10. NOISE AND VIBRATION SIGNAGE

At least 10 days prior to the start of any demolition, ground disturbing, or construction activities, the project applicant/contractor shall ensure that a sign measuring at least four feet by six feet shall be posted on construction fencing at the entrance(s) to the job site, clearly visible to the public, and include the following:

- a. Permitted construction days and hours;
- b. A description of proposed construction activities;
- c. Telephone numbers of the City's and contractor's authorized representatives that are assigned to respond in the event of a noise or vibration complaint; and
- d. Contact information for City's and contractor's authorized representatives that are assigned to respond in the event of a complaint related to fugitive dust, pursuant to the requirements for compliance with [BAAQMD's CEQA Air Quality Guidelines](#).

If the authorized contractor's representative receives a complaint, they shall investigate, take appropriate corrective action, and report the complaint and the action taken to the City within three business days of receiving the complaint.

11. NOISE DURING CONSTRUCTION

Prior to issuance of any demolition, grading or building permit, include on plans a note that, during project construction, the project applicant shall incorporate the following measures to reduce noise during construction and demolition activity:

- a. The project applicant and contractors shall prepare and submit a Construction Noise Control Plan to the City's Planning Department for review and approval prior to issuance of the first permit. The Construction Noise Plan shall demonstrate compliance with daytime and nighttime decibel limits pursuant to Chapter 10.48 (Community Noise Control) of Cupertino Municipal Code. The details of the Construction Noise Control Plan shall be included in the applicable construction documents and implemented by the on-site Construction Manager. Noise reduction measures selected and implemented shall be based on the type of construction equipment used on the site, distance of construction activities from sensitive receptor(s), site terrain, and other features on and surrounding the site (e.g., trees, built environment) and may include, but not be limited to, temporary

construction noise attenuation walls, high quality mufflers. During the entire active construction period, the Construction Noise Control Plan shall demonstrate that compliance with the specified noise control requirements for construction equipment and tools will reduce construction noise in compliance with the City's daytime and nighttime decibel limits.

- b. Select haul routes that avoid the greatest amount of sensitive use areas and submit to the City of Cupertino Public Works Department for approval prior to the start of the construction phase.
- c. Signs will be posted at the job site entrance(s), within the on-site construction zones, and along queueing lanes (if any) to reinforce the prohibition of unnecessary engine idling. All other equipment will be turned off if not in use for more than 5 minutes.
- d. During the entire active construction period and to the extent feasible, the use of noise producing signals, including horns, whistles, alarms, and bells will be for safety warning purposes only. The construction manager will use smart back-up alarms, which automatically adjust the alarm level based on the background noise level or switch off back-up alarms and replace with human spotters in compliance with all safety requirements and law.

12. DARK SKY COMPLIANCE

Prior to issuance of Building Permits, the applicant/property owner shall submit final plans in compliance with the approved lighting plans to comply with development standards of Cupertino Municipal Code Section 19.102.040 Outdoor Lighting Requirements. In the event changes are proposed from the approved plans, said changes must be reviewed and approved by the Director of Community Development or their designee. The applicant shall provide all documentation required to determine compliance with the Municipal Code.

13. FUGITIVE DUST CONTROL

Prior to issuance of the any demolition, grading, or building permit, include on all permit plans, the full text of each of the Bay Area Air Quality Management District's Basic Control Measures from the latest version of [BAAQMD's CEQA Air Quality Guidelines](#), as subsequently revised, supplemented, or replaced, to control fugitive dust (i.e., particulate matter PM2.5 and PM10) during demolition, ground disturbing activities and/or construction.

14. INDEMNIFICATION

As part of the application, to the fullest extent permitted by law, the applicant shall agree to indemnify, defend with the attorneys of the City's choice, and hold harmless the City, its City Council, and its officers, employees, and agents (collectively, the "indemnified parties") from and against any liability, claim, action, cause of action, suit, damages, judgment, lien, levy, or proceeding (collectively referred to as "proceeding") brought by a third party against one or more of the indemnified parties or one or more of the indemnified parties and the applicant related to any Ordinance, Resolution, or action approving the project, the related entitlements, environmental review documents, finding or determinations, or any other permit or approval authorized for the project. The indemnification shall include but not be limited to damages, fees, and costs awarded against the City, if any, and cost of suit, attorneys' fees, and other costs, liabilities, and expenses incurred in connection with such proceeding whether incurred by the Applicant, the City, or the parties initiating or bringing such proceeding.

The applicant shall agree to (without limitation) reimburse the City its actual attorneys' fees and costs incurred in defense of the litigation. Such attorneys' fees and costs shall include amounts paid to the City's outside counsel and shall include City Attorney time and overhead costs and other City staff overhead costs and any costs directly related to the litigation reasonably incurred by City. The applicant shall likewise agree to indemnify, defend, and hold harmless the indemnified parties from and against any damages, attorneys' fees, or costs awards, including attorneys' fees awarded under Code of Civil Procedure section 1021.5, assessed or awarded against the indemnified parties. The Applicant shall cooperate with the City to enter a Reimbursement Agreement to govern any such reimbursement.

The Applicant shall agree to (without limitation) reimburse the City for all costs incurred in additional investigation or study of, or for supplementing, redrafting, revising, or amending, any document (such as an Environmental Impact Report, negative declaration, specific plan, or general plan amendment) if made necessary by proceedings challenging the project approvals and related environmental review, if the applicant desires to continue to pursue the project.

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The Applicant shall agree that the City shall have no liability to the Applicant for business interruption, punitive, speculative, or consequential damages.

15. NOTICE OF FEES, DEDICATIONS, RESERVATIONS, OR OTHER EXACTIONS

The Conditions of Project Approval set forth herein may include certain fees, dedication requirements, reservation requirements, and other exactions.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Cupertino this 5th day of March, 2024, by the following vote:

Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

<div>SIGNED:</div> <div><div></div></div> <div>Sheila Mohan, Mayor City of Cupertino</div>	<div><div></div></div> <div>Date</div>
<div>ATTEST:</div> <div><div></div></div> <div>Kirsten Squarcia, City Clerk</div>	<div><div></div></div> <div>Date</div>

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