

RESOLUTION NO. _____

A RESOLUTION OF THE CUPERTINO CITY COUNCIL
APPROVING A USE PERMIT TO ALLOW A 24-HOUR HOTEL,
INCLUDING A RESTAURANT WITH A SEPARATE BAR AND A
ROOFTOP LOUNGE WITH A SEPARATE BAR LOCATED AT 10931
NORTH DE ANZA BLVD. (APN: 326-10-061)

SECTION I: PROJECT DESCRIPTION

Application No.: U-2018-02
Applicant: Sherly Kwok (De Anza Properties)
Property Owner: Northwest Properties, LP
Location: 10931 N De Anza Blvd. (APN #326-10-061)

SECTION II: FINDINGS FOR A USE PERMIT:

WHEREAS, the City of Cupertino received an application for a Use Permit as described in Section I. of this resolution; and

WHEREAS, all 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, the City of Cupertino's Environmental Review Committee at its August 1, 2019 meeting reviewed the Public Draft Initial Study ("Draft IS/MND") for The De Anza Hotel Project ("Project"), received public comments, and voted 5-0 vote to recommend adoption of a Mitigated Negative Declaration ("MND") with minor modifications, and provided measures that ensure the least impactful development of the proposed hotel; and

WHEREAS, based on substantial evidence in the record, on December 10, 2019, the Planning Commission recommended on a 4-0-1 vote (Saxena Absent), that the City Council adopt of the MND (EA-2018-03) for the Project, adopt and incorporated into the Project and implement as conditions of approval all of the mitigation measures for the Project within the responsibility and jurisdiction of the City that are identified in the Final IS/MND, and adopt the Mitigation Monitoring and Reporting Program for the Project prior to taking final action on the Project; and

WHEREAS, on December 10, 2019 the Planning Commission recommended on a 4-0-1 (Saxena absent) vote that the City Council approve the General Plan Amendment (GPA-2018-01), in substantially similar form to the Resolution presented (Resolution No.

6890), approve the Development Permit (DP-2018-01) in substantially similar form to the Resolution presented (Resolution No. 6892), approve the Architectural and Site Approval Permit (ASA-2018-02) in substantially similar form to the Resolution presented (Resolution No. 6893), approve the Use Permit (U-2018-02) in substantially similar form to the Resolution presented (Resolution No. 6894), approve and adopt an ordinance to approve a Development Agreement (DA-2018-01) in substantially similar form to the Ordinance presented (Resolution No. 6895); and

WHEREAS, all necessary public notices having been given as required by the procedural ordinances of the City of Cupertino and the Government Code, on January 21, 2020 upon due notice, the City Council held a public hearing to consider the Use Permit; and

WHEREAS, the City Council of the City of Cupertino is the decision-making body for this Resolution; and

WHEREAS, on January 21, 2020, after consideration of substantial evidence contained in the entire administrative record and prior to consideration of the Use Permit, the City Council adopted Resolution No. [####] adopting the MND, Resolution No. [####] adopting the General Plan Amendment, Resolution No. [####] approving the Development Permit, and Resolution No. [####] approving the Architectural and Site Approval Permit; and

WHEREAS, the applicant has met the burden of proof required to support the application for a Use Permit; and

WHEREAS, the Planning Commission finds as follows with regard to this application:

- a) The proposed development, at the proposed location, will not be detrimental or injurious to property or improvements in the vicinity, and will not be detrimental to the public health, safety, general welfare, or convenience;

Given that the project is consistent with the General Plan and Zoning Ordinance, the project will not be detrimental or injurious to property or improvements in the vicinity, and will not be detrimental to the public health, safety, general welfare, or convenience.

- b) The proposed development will be located and conducted in a manner in accord with the Cupertino General Plan and the purpose of the City's zoning ordinances.

The proposed development is in conformance with the Cupertino General Plan and Municipal Code Requirements since the Project is consistent with the existing land use designations (Commercial, Residential), Municipal Code requirements, including but not limited to, parking regulations and hours of operations. A condition has been added that requires the separate bar to operate within 7:00am to 11:00pm and consistent with the City regulations.

NOW, THEREFORE, BE IT RESOLVED:

That after careful consideration of maps, facts, exhibits, testimony and other evidence submitted in this matter and the Mitigated Negative Declaration and the Mitigation Monitoring and Reporting Program for the Project (EA-2018-03), subject to the conditions which are enumerated in this Resolution beginning on PAGE 2 thereof, and those contained in all other Resolutions approved for this Project,

The application for a Use Permit, Application No. U-2018-02, is hereby approved, and that the subconclusions upon which the findings and conditions specified in this Resolution are based are contained in the Public Hearing record concerning Application no. U-2018-02 as set forth in the Minutes of the City Council Meeting of January 21, 2020 Meeting, and are incorporated by reference as though fully set forth herein.

SECTION III: CONDITIONS ADMINISTERED BY THE COMMUNITY DEVELOPMENT DEPT.

1. APPROVED EXHIBITS

Approval is based on the plan set dated April 19, 2019 consisting of 44 sheets labeled as The De Anza, Table of Contents, A0.00 – A5.15, A11.00-A11.08, C1.0-C3.2, and L1-L4, drawn by Winkleman Designs, JMH Weiss, and The Guzzardo Partnership, Inc. 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. CONCURRENT APPROVAL CONDITIONS

The conditions of approval contained in file nos. GPA-2018-01, DP-2018-01, DA-2018-01, ASA-2018-02, and EA-2018-03 shall be applicable to this approval.

4. ANNOTATION OF THE CONDITIONS OF APPROVAL

The conditions of approval set forth shall be incorporated into and annotated on the first page of the building plans.

5. USE APPROVAL AND PROJECT AMENDMENTS

Approval is hereby granted to allow a 24-hour hotel operation including a restaurant with separate bar and a rooftop lounge with separate bar. The Planning Commission shall review amendments to the project considered major by the Director of Community Development.

6. HOURS OF OPERATION FOR SEPARATE BARS

The separate bars are authorized to operate within the hours allowed by state law.

7. MAXIMUM LENGTH OF HOTEL STAYS

Hotel stays shall be limited to a maximum of 29 days per reservation. The hotel operator is responsible for implementation of this condition of approval.

8. SECURITY PLAN

The applicant shall develop a comprehensive security plan for the entire hotel development, and the plan shall be reviewed and approved by the City and the County Sheriff's Office prior to final occupancy.

9. LAW ENFORCEMENT SUPPORT

The property owner shall pay for any additional sheriff enforcement time resulting from documented incidents resulting at the project site at the City's contracted hourly rate with the Sheriff Department at the time of the incident.

10. USE PERMIT REVIEW/ADDITIONAL RESTRICTIONS

If complaints have been received related to the tenant(s) under this use permit, and the complaints were not addressed immediately by the property management to the satisfaction of the City, then the Planning Commission shall conduct a public hearing on the use permit at which time, the use permit approval may be modified or revoked.

The City reserves the right to require additional security patrols and/or parking restrictions as prescribed by the Sheriff's Office.

11. RESTAURANT ODOR ABATEMENT

All new restaurants shall install odor abatement systems to reduce odor impacts from the restaurants to the adjacent community. The odor abatement systems shall be installed prior to final occupancy of the associated restaurant(s). Detailed plans shall be reviewed and approved by the Director of Community Development prior to issuance of building permits.

12. 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.

13. INDEMNIFICATION

To the fullest extent permitted by law, the applicant shall 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 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 this Resolution/Action Letter, the related entitlements, or any permit or approval authorized hereby for the project, including (without limitation) reimbursing the City its actual attorneys' fees and costs incurred in defense of the litigation. The applicant shall pay such attorneys' fees and costs within 30 (thirty) days following receipt of invoices from City. 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 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.

14. 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. 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 other exactions. You are hereby further notified that the 90-day approval period in which you may protest these fees, dedications, reservations, and other exactions, pursuant to Government Code Section 66020(a), has begun. If you fail to file a protest within this 90-day period complying with all of the requirements of Section 66020, you will be legally barred from later challenging such exactions.

SECTION IV: This Resolution shall not take effect unless and until General Plan Amendment GPA-2018-01 becomes effective. This Resolution shall take effect on the day that the Ordinance approving the development agreement for the Project takes effect.

PASSED AND ADOPTED this 21st day of January 2020, at the Regular Meeting of the City Council of the City of Cupertino, State of California, by the following roll call vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

SIGNED: _____ Steven Scharf, Mayor City of Cupertino	 _____ Date
ATTEST: _____ Kirsten Squarcia, Acting City Clerk	 _____ Date