

CITY OF CUPERTINO
10300 Torre Avenue
Cupertino, California 95014

DRAFT RESOLUTION

OF THE PLANNING COMMISSION OF THE CITY OF CUPERTINO APPROVING
A USE PERMIT TO ALLOW A SEPARATE BAR, EXTENDED HOURS, AND LIVE
ENTERTAINMENT AT A PROPOSED RESTAURANT LOCATED IN A MIXED
USE DEVELOPMENT AT 10088 N WOLFE ROAD

SECTION I: PROJECT DESCRIPTION

Application No.: U-2015-09
Applicant: Marc Dimalanta (Steins Beer Garden)
Location: 10088 N. Wolfe Road

SECTION II: FINDINGS FOR DEVELOPMENT PERMIT:

WHEREAS, the Planning Commission of the City of Cupertino received an application for a Development Permit as described in Section I. of this Resolution; and

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, the project is determined to be categorically exempt from the California Environmental Quality Act (CEQA); and

WHEREAS, the applicant has met the burden of proof required to support said application; and

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

1. The proposed use, 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;

The proposed location of the restaurant is located within the South Vallco Park sub-area within the Heart of the City Special Area which encourages daytime and nighttime entertainment activities. Additionally, the closest single-family residential property is located approximately

830 feet from the proposed restaurant. To further mitigate impacts the applicant shall incorporate adequate measures into the operations to ensure that there is adequate buffering from residences including installation of an odor abatement system. Adequate security measures are incorporated into the proposed project. Therefore, the proposed use will not be detrimental to the public health, safety, and welfare.

2. The proposed use will be located and conducted in a manner in accord with the Cupertino Comprehensive General Plan and the purpose of this title.

The conditions of approval of the project ensure that the proposed restaurant use will be conducted in a manner in accord with the City's General Plan and Municipal Code.

NOW, THEREFORE, BE IT RESOLVED:

That after careful consideration of the maps, facts, exhibits, testimony and other evidence submitted in this matter, subject to the conditions which are enumerated in this Resolution beginning on PAGE 2 thereof:

The application for a Use Permit, Application no. U-2015-09, is hereby recommended for approval and that the subconclusions upon which the findings and conditions specified in this resolution are based and contained in the Public Hearing record concerning Application no. U-2015-09 as set forth in the Minutes of Planning Commission Meeting of December 8, 2015, and are incorporated by reference as though fully set forth herein.

SECTION III: CONDITIONS ADMINISTERED BY THE DEPARTMENT OF COMMUNITY DEVELOPMENT

1. APPROVED EXHIBITS

Approval recommendation is based on the plan set received October 29, 2015 consisting of 10 sheets, labeled A0.0, A0.2, A0.3, A2.0, A2.1, A2.2, A3.0, A5.0, A6.0, and A6.1 entitled, "Steins Beer Garden, 10088 N. Wolfe Road, Suite 130, Cupertino, CA 95014," drawn by D-Scheme Studio; 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. 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.

4. EXPIRATION

If the use for which this conditional use permit is granted and utilized has ceased or has been suspended for two year or more, this permit shall be deemed expired and a new use permit application must be applied for and obtained.

5. OPERATIONS

- a. The restaurant shall be operated within the area delineated on the site plan exhibit.
- b. The allowed hours of operation are 10:00am to 11:00pm, Sunday – Thursday and 10:00am to 12:00am, Friday – Saturday.
- c. Employees may remain on-site until midnight, Sunday – Thursday and until 1:00 a.m., Friday - Saturday to accommodate time for cleanup.
- d. This permit allows for live entertainment indoors and within the outdoor patio area. Live entertainment within the outdoor patio area shall be limited to the hours and decibel limitations allowed in Chapter 10.48, Community Noise Control Ordinance, of the Cupertino Municipal Code.
- e. Changes to the bar/restaurant operations determined to be minor shall be reviewed and approved by the Director of Community Development.

6. OUTDOOR LIVE ENTERTAINMENT

- a. The outdoor live entertainment shall not produce noise levels above seventy dBA on any residential property for a period longer than three hours during the daytime. Daytime is defined to be between 8:00 a.m. and 8:00 p.m.
- b. The outdoor live entertainment shall not produce noise levels above sixty dBA on any residential property during the period from 8:00 p.m. to 11:00 p.m., and above fifty-five dBA after 11:00 p.m.
- c. Continuous or repeated peak noise levels above ninety-five dBA shall not be produced at any location.

7. HOUSING MITIGATION

The applicant is required to pay any outstanding housing mitigation fees associated with the approved use prior to building permit issuance.

8. MODIFICATION OF RESTURANT OPERATIONS

The Director of Community Development is empowered to make or allow adjustments to the operation of the restaurant to address any documented problem or nuisance situation that may occur or changes proposed by the restaurant operator that are determined to be minor.

9. REVOCATION OF USE PERMIT

The Director may initiate proceedings for revocation of the Use Permit in any case where, in the judgment of the Director:

- a. Substantial evidence indicates that the conditions of the conditional use permit have not been implemented, or
- b. Complaints are received related to the tenant under this use permit, and the complaints are not immediately addressed by the property management and/or the tenant, or
- c. Where the permit is being conducted in a manner detrimental to the public health, safety, and welfare, in accord with the requirements of the municipal code.

10. LAW ENFORCEMENT SUPPORT

The property owner shall address security concerns in the event that they arise to the satisfaction of the City. The property owner shall pay for any additional Sheriff enforcement time resulting from documented incidents in the development at the City's contracted hourly rate with the Sheriff Department at the time of the incident.

The City reserves the right to require additional security patrols and/or other measures as prescribed by the Sheriff's Office or Code Enforcement.

11. BUSINESS LICENSE

The business owner shall obtain a City of Cupertino business license prior to building permit issuance.

12. STOREFRONT WINDOW DETAILS

The storefront windows shall be kept open and transparent to the greatest extent possible. The final floor plan, storefront design and window display shall be reviewed and approved by the Director of Community Development prior to issuance of building permits.

13. SIGNAGE

Signage is not approved with this use permit application. Signage shall conform to the City Sign Code.

14. RESTAURANT ODOR ABATEMENT

Applicant shall install an odor abatement system to reduce odor impacts from the restaurant to the adjacent community. The odor abatement system shall be installed prior to final occupancy. Detailed plans shall be reviewed and approved by the Director of Community Development prior to issuance of building permits.

15. MECHANICAL AND OTHER EQUIPMENT SCREENING

To the extent possible, unless demonstrated otherwise, to the satisfaction of the Director of Community Development, all mechanical and other equipment shall be placed in areas not visible from the public street areas. In the event that it is not possible to locate such equipment away from the public street areas, all mechanical and other equipment on the building or on the site shall be screened so they are not visible from public street

areas or adjoining developments. Screening materials/colors shall match building features and materials. The height of the screening shall be taller than the height of the mechanical equipment that it is designed to screen. The location of equipment and necessary screening shall be reviewed and approved by the Director of Community Development prior to issuance of building permits.

16. 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.

17. INDEMNIFICATION

Except as otherwise prohibited by law, the applicant shall indemnify and hold harmless the City, its City Council, and its officers, employees and agents (collectively, the "indemnified parties") from and against any claim, action, 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 to attack, set aside, or void this Resolution 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 days following receipt of invoices from City. Such attorneys' fees and costs shall include amounts paid to counsel not otherwise employed as City staff 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.

18. 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: CEQA REVIEW

The project was determined to be categorically exempt in accordance with the California Environmental Quality Act (CEQA), Public Resources Code Section 21000 et seq per

Section 15301 (Existing Facilities) of the CEQA Guidelines because it relates to interior improvements to an existing facility in a development, urban environment.

PASSED AND ADOPTED this 8th day of December, 2015, Regular Meeting of the Planning Commission of the City of Cupertino, State of California, by the following roll call vote:

AYES: COMMISSIONERS:
NOES: COMMISSIONERS:
ABSTAIN: COMMISSIONERS:
ABSENT: COMMISSIONERS:

ATTEST:

APPROVED:

Piu Ghosh
Principal Planner

Winnie Lee, Chair
Planning Commission