

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 RESTAURANT WITH LATE HOURS AND SEPARATE  
BAR LOCATED IN A MIXED USE DEVELOPMENT  
AT 19379 STEVENS CREEK BOULEVARD

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SECTION I: PROJECT DESCRIPTION

Application No.: U-2015-08  
Applicant: Jonathan Siu, Alexander's Steakhouse  
Location: 19379 Stevens Creek Blvd.

SECTION II: FINDINGS FOR DEVELOPMENT PERMIT:

WHEREAS, the Planning Commission of the City of Cupertino received an application for a Use 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 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 new restaurant with bar will be located within the Main Street Cupertino project, which encourages commercial and retail use, with supportive residential development. Main Street is envisioned to serve as a gathering place that supports the creation of a Main Street like environment which is consistent with the request for late night hours of operation for the restaurant. To further mitigate impacts, the applicant shall incorporate adequate measures into the operations to ensure there is adequate buffering from residences including installation of an odor abatement system and as conditioned, and*

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*the applicant will prepare a security plan which will be reviewed and approved by the Sheriff's Department. 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 accordance with the Cupertino Comprehensive General Plan and the purpose of this title.

*The proposed use complies with the Cupertino General Plan and Municipal Code requirements, including but not limited to, parking regulations, hours of operation, and security measures.*

NOW, THEREFORE, BE IT RESOLVED:

That after careful consideration of the initial study, 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-2015-08 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-2015-08 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 COMMUNITY DEVELOPMENT DEPT.

1. APPROVED EXHIBITS

Approval recommendation is based on the plan set received October 8, 2015 with revisions received on November 18, 2015 consisting of 7 sheets, A0.0, A2, A0.1, A0.2, A1.1, A2.1, A2.2, A6.0 and A6.1 entitled, "Tenant Improvement Alexander's Steak House" drawn by D-Scheme Studio; except as may be amended by conditions in this resolution.

2. ACCURACY OF PROJECT PLANS

The application/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. PREVIOUS CONDITIONS OF APPROVAL

All previous conditions of approval from Resolution No. 12-098 and Resolution No. 14-122 shall remain in effect unless superseded by or in conflict with subsequent conditions of approval, including the conditions contained herein in this resolution.

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. COVENANT DISCLOSURE

The property is under a Cupertino planned development zoning and property purchasers should check with the City to determine the specific restrictions under the Planned Development Zone and related permits.

6. OPERATIONS

- a. The outdoor patio shall be operated within the area delineated on the site plan exhibit. Changes deemed minor may be reviewed and approved by the Director of Community Development.
- b. The restaurant is approved to remain open to customers between 7:00 a.m. and 1:00 a.m. daily.
- c. Employees may enter the establishment at 6:00 a.m. for prep, and may remain until 2:00 a.m. to accommodate time for clean up.
- d. Changes to the restaurant operations determined to be minor shall be reviewed and approved by the Director of Community Development.

7. KITCHEN ODOR ABATEMENT

All new facilities with a kitchen to prepare food shall install odor abatement systems to reduce odor impacts from the kitchen to the adjacent community. The odor abatement systems shall be installed prior to final occupancy of the associated business. Detailed plans shall be reviewed and approved by the Director of Community Development prior to issuance of building permits.

8. BUSINESS LICENSE

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

9. ALCOHOLIC BEVERAGE CONTROL LICENSE

The applicant shall obtain and adhere to the appropriate California Department of Alcoholic Beverage Control License(s) (ABC) in conjunction with the proposed service.

10. SECURITY PLAN

The applicant shall develop a security plan for the restaurant and bar that should reference the comprehensive security plan for the Main Street Cupertino project as required by Resolution 12-098. The plan shall be prepared by the applicant and approved by the Sheriff's Department prior to final occupancy.

11. SHERIFF DEPARTMENT REVIEW

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.

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. MODIFICATION OF DRINKING ESTABLISHMENT OPERATIONS

The Director of Community Development is empowered to make adjustments to the operation of the restaurant and bar to address any documented problem or nuisance situation that may occur.

14. 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, substantial evidence indicates that the conditions of the conditional use permit have not been implemented, or where the permit is being conducted in a manner detrimental to the public health, safety, and welfare, in accord with the requirements of Chapter 19.12, Administration, of the municipal code.

15. EXPIRATION

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

16. INDEMNIFICATION

To the extent permitted by law, the Applicant shall indemnify and hold harmless the City, its City Council, its officers, employees and agents (the "indemnified parties") from and against any claim, action, or proceeding brought by a third party against the indemnified parties and the applicant to attack, set aside, or void this ordinance or any permit or approval authorized hereby for the project, including (without limitation) reimbursing the City its actual attorneys' fees and costs incurred in

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defense of the litigation. The City may, in its sole discretion, elect to defend any such action with attorneys of its choice.

17. 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.

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PASSED AND ADOPTED this 8th day of December, 2015, at the 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:

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Piu Ghosh  
Principal Planner

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Winnie Lee, Chair  
Planning Commission