

CITY OF CUPERTINO
10300 Torre Avenue
Cupertino, California 95014

DRAFT RESOLUTION NO. 16-_____

OF THE CITY COUNCIL OF THE CITY OF CUPERTINO APPROVING A USE PERMIT TO ALLOW A
24-HOUR HOTEL, INCLUDING A RESTAURANT WITH A SEPARATE BAR LOCATED AT 10122
BANDLEY DRIVE AND 10145 NORTH DE ANZA BOULEVARD

SECTION I: PROJECT DESCRIPTION

Application No.: U-2015-06
Applicant: Amy Chan, De Anza Venture, LLC
Property Owner: Marina Plaza, LLC (APN 326-34-066), and Cupertino 10145, LLC (APN 326-32-043)
Location: 10122 Bandley Drive (APN 326-34-066) and 10145 North De Anza Boulevard (APN 326-32-043)

SECTION II: FINDINGS FOR A USE PERMIT:

WHEREAS, the City of Cupertino received an application for a Conditional 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 City Council has held at least one public hearing in regard to the application; and

WHEREAS, the Environmental Review Committee reviewed the Mitigated Negative Declaration; and

WHEREAS, the Planning Commission held a public hearing on July 26, 2016 and recommended that the City Council approve the application, subject to conditions, and adopt the Mitigated Negative Declaration; and

WHEREAS, the City Council 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, Zoning Ordinance, and the Heart of the City Specific Plan, 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, Office, 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 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-2015-06 is hereby approved 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-2015-06 as set forth in the Minutes of the City Council Meeting of September 6, 2016, and are incorporated by reference as though fully set forth herein.

SECTION III: CONDITIONS ADMINISTERED BY THE COMMUNITY DEVELOPMENT DEPT.

Planning Division:

1. APPROVED EXHIBITS

Approval recommendation is based on the plan set received on June 2, 2016 consisting 134 sheets labeled as "Marina Plaza the urban village" consisting of 134 sheets labeled as T.1 to T.9, C1.0 to C5.2, R-1 to R-2, JT-1 to JT-3, A.0 to A.65, PM-1 to PM-3, SL-1 to SL-3, E-1 to E-2, and L0.02 to L5.02, drawn by Dahlin Group, VER Consultants, RGA, Bruce Jett Associates, Coffman Engineers. Inc, Emerald City Engineer, Inc. Beyond Efficiency Inc, and RGD Acoustic, 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. DP-2015-05, ASA-2015-22, DA-2016-01, TR-2016-14, EXC-2016-03, and EXC-2016-05 shall 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. The Planning Commission shall review amendments to the project considered major by the Director of Community Development.

6. HOURS OF OPERATION FOR SEPARATE BAR

The separate bar shall operate within the hours of 7:00am and 11:00pm. In the event the Applicants seeks to have the separate bar operate in late evening activities, activities from the period of 11:00pm to 7:00am, then the Applicant shall be required to obtain permits consistent with the Cupertino Municipal Code.

7. MAXIMUM LENGTH OF HOTEL STAYS

Hotel stays shall be limited to a maximum of 29 days per reservation.

8. SHUTTLE SERVICES

The hotel shall provide airport and local shuttle services for hotel guests in order to minimize traffic and parking impacts.

9. 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.

10. 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.

11. 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.

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

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.

PASSED AND ADOPTED at a Regular Meeting of the City Council of the City of Cupertino the 6th day of September 2016, by following roll call vote:

Vote: Members of the City Council:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:

APPROVED:

Grace Schmidt
City Clerk

Barry Chang
Mayor, City of Cupertino

