

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 AN EXISTING BUSINESS TO
OPERATE PAST 11PM IN A MIXED USE DEVELOPMENT

SECTION I: PROJECT DESCRIPTION

Application No.: U-2016-04
Applicant: Ching-yi Fu (Easy Way Group)
Location: 19449 Stevens Creek Blvd. (Main Street Cupertino)

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 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 restaurant is located in the South Vallco Special Area of the Heart of the City Specific Plan Area which is envisioned to serve as a gathering place that supports the creation of a Main-Street/downtown like environment. The vision for the area and project site encourages commercial and retail use, with supportive residential development. In addition, the applicant is required to adhere to the City of Cupertino's Noise Ordinance, Chapter 10.48: Community Noise Control. Therefore, the proposed use will not be detrimental to the public health, safety, and welfare.

2. The proposed development and/or use will be located and conducted in a manner in accord with the Cupertino Comprehensive General Plan, underlying zoning regulations, and the purpose of this title and complies with the California Environmental Quality Act (CEQA).

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. The conditions of approval furthermore ensure that the use is conducted in a manner that is consistent with the Cupertino General Plan and Municipal Code requirements.

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-2016-04 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-2016-04 as set forth in the Minutes of Planning Commission Meeting of February 14, 2017 and are incorporated by reference as though fully set forth herein.

SECTION III: CONDITIONS ADMINISTERED BY THE COMMUNITY DEVELOPMENT DEPT.

1. 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.

2. 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.

3. OPERATIONS

- a) The businesses shall be operated within the area delineated on the floor plan exhibit.
- b) The businesses are approved to operate Sunday – Thursday until 12:00 a.m., Friday – Saturday until 1:00 a.m.
- c) Employees are allowed to remain on site for up to one hour after closing.

4. 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.

5. MODIFICATION OF BUSINESS OPERATIONS

Changes to the restaurant operations determined to be minor shall be reviewed and approved by the Director of Community Development. Further, the Director of Community Development is empowered to make adjustments to the operation of the restaurant to address any documented problem or nuisance situation that may occur.

6. 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 the municipal code.

7. 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.

8. 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.

9. 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 this 14th day of February, 2017, 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:

_____/s/_____
Benjamin Fu
Assist. Dir. of Community Development

_____/s/_____
_____, Chair
Planning Commission