

CITY OF CUPERTINO  
10300 Torre Avenue  
Cupertino, California 95014

DRAFT RESOLUTION

OF THE PLANNING COMMISSION OF THE CITY OF CUPERTINO TO ALLOW A SEPARATE BAR FACILITY WITHIN A NEWLY PROPOSED RESTAURANT (STOUT BURGERS AND BEERS) WITHIN THE NINETEEN800 MIXED-USE DEVELOPMENT.

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SECTION I: PROJECT DESCRIPTION

Application No.: U-2017-02  
Applicant: Philip Camino  
Location: 10088 N. Wolfe Road Ste. 100 (A.P.N. 316-20-108)

SECTION II: FINDINGS

WHEREAS, the Planning Commission of the City of Cupertino received an application to allow for a separate bar facility within a newly proposed restaurant; and

WHEREAS, the project is categorically exempt from the California Environmental Quality Act (CEQA) per Section 15301 (Existing Facilities) of CEQA as it pertains to interior improvements to an existing facility; and

WHEREAS, the necessary public hearing 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:

1. The proposed development and/or 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 with bar is within the South Vallco Park Gateway of the Heart of the City Special Area which promotes activities that contribute to more active uses in public spaces. The proposed conditional use is within the purview*

*of typical modern restaurant operations and will be conducted within the interior of an existing tenant space of a mixed-use development. Therefore, the proposed use will pose no detriment to the property and adjacent developments.*

2. The proposed development and/or use will be located and conducted in a manner in accordance 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 project is consistent with and will be conducted in a manner in accordance with the General Plan, Zoning Ordinance and is consistent with previous approvals. Furthermore, the use is categorically exempt under CEQA in that the proposed project involves negligible changes to an existing use and is within an existing urban environment within the city limits.*

NOW, THEREFORE, BE IT RESOLVED:

That after careful consideration of maps, facts, exhibits, testimony and other evidence submitted in this matter, subject to the conditions which are enumerated in Section III of this Resolution beginning on Page 2 thereof, the application for a use permit, Application No. U-2017-02 is hereby approved; and

That the sub-conclusions upon which the findings and conditions specified in this Resolution are based and contained in the public hearing record concerning Application U-2017-02 as set forth in the Minutes of the Planning Commission Meeting of June 13, 2017, and are incorporated by reference as though fully set forth herein.

### SECTION III: CONDITIONS ADMINISTERED BY THE COMMUNITY DEVELOPMENT DEPARTMENT

#### 1. APPROVED EXHIBITS

Approval is based on the plan set entitled "Stout Burgers and Beers 10088 Wolfe Road, Suite 100" consisting of four (4) sheets labeled as K0.0, K0.1, K3.0, and K3.1, drawn by Restaurant Design Concepts, Inc. dated June 2, 2017, 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. OPERATIONS

- a. The restaurant shall operate within the area delineated on the site plan exhibit.
- b. The allowed hours of operation are 11:00am to 11:00pm daily.
- c. Changes to the bar/restaurant operations determined to be minor shall be reviewed and approved by the Director of Community Development.

5. MODIFICATION OF RESTAURANT 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.

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:

- 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.

7. 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's 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.

8. 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.

9. 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.

10. 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.

11. BUSINESS LICENSE

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

12. SIGNAGE

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

13. OUTDOOR SEATING & PATIO AREA

No outdoor patio area improvements are approved as part of this application. Additional review and approval will be required by the Director of Community Development prior to installation of outdoor patio areas or seating arrangements. All patio areas and seating shall be consistent with the General Commercial (CG) Ordinance and the Nineteen800 Retail Design Guidelines.

14. 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.

15. 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.

16. 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 13<sup>th</sup> day of June, 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:

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Benjamin Fu  
Asst. Director of Community Development

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Don Sun  
Chair, Planning Commission