

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 CHANGE HOURS OF OPERATION
FROM 7 AM - 11 PM TO 5 AM - 9 PM FOR A PROPOSED BUSINESS
(STARBUCKS) LOCATED AT 21725 STEVENS CREEK BOULEVARD

SECTION I: PROJECT DESCRIPTION

Application No.: U-2017-06
Applicant: Tamara Shroll (Starbucks)
Location: 21725 Stevens Creek Boulevard

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 business will be located in the Monta Vista Special Plan Area, in which commercial uses are intended to provide convenient shopping and amenities for surrounding residential neighborhoods and members of the public. The Starbucks franchise has locations in similar communities that contribute to the diversity of uses and provide an early morning locale for nearby residents and surrounding businesses. The Santa Clara County Sheriff's Department has reviewed the proposal and found that the proposed project would not create a public nuisance. Additionally, the applicant is required to comply with the Cupertino Municipal Code Chapter 10.48: Community Noise Control, including requirements related to commercial deliveries. Therefore, the proposal 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, Monta Vista Special Plan Area, and Municipal Code requirements, including, but not limited to, parking regulations. The parking demand triggered by the client count is within what is supplied on location and the use is permitted as mandated in Chapter 19.60: General Commercial Zones. The conditions of approval will ensure that the use is conducted in a manner that is consistent with the Cupertino General Plan and Municipal Code requirements as mandated in Chapter 10.48 Community Noise Control. The project is considered Categorical Exempt per CEQA.

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 3 thereof:

The application for a Use Permit, Application no. U-2017-06 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-2017-06 as set forth in the Minutes of Planning Commission Meeting of September 26, 2017 and are incorporated by reference as though fully set forth herein.

SECTION III: CONDITIONS ADMINISTERED BY THE COMMUNITY DEVELOPMENT DEPT.

1. APPROVED EXHIBITS

Approval is based on the Business Description letter consisting of three (3) pages, dated April 17, 2017, submitted as an attachment to the Staff Report, except as may be amended by conditions in this resolution.

2. PREVIOUS CONDITIONS OF APPROVAL

All previous conditions of approval from Administrative Hearing Resolution No. 58 and Administrative Hearing Resolution No. 59 shall remain in effect unless superseded by or in conflict with subsequent conditions of approval, including the conditions contained herein in this resolution.

3. 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.

4. OPERATIONS

- a) The business shall operate within the area delineated on the floor plan exhibit.
- b) The business is allowed to serve customers beginning at 5:00 a.m., seven days a week.
- c) Employees are allowed to arrive and set up on site for up to one hour prior to opening.

5. SHERIFF DEPARTMENT REVIEW

The property owner shall address security concerns in the event that they arise to the satisfaction of the City. The City reserves the right to require additional security patrols and/or other measures as prescribed by the Sheriff's Office or Code Enforcement.

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.

6. MODIFICATION OF BUSINESS OPERATIONS

Changes to the 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.

7. REVOCACTION 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.

8. 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.

9. 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.

10. 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 26th day of September, 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:

Benjamin Fu
Assist. Dir. of Community Development

Don Sun
Chair, Planning Commission