

CITY OF CUPERTINO  
10300 Torre Avenue  
Cupertino, California 95014

DRAFT RESOLUTION

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF CUPERTINO  
RECOMMENDING APPROVAL OF A USE PERMIT TO ALLOW A 24-HOUR HOTEL,  
INCLUDING A RESTAURANT WITH A SEPARATE BAR AND A ROOFTOP  
LOUNGE WITH A SEPARATE BAR LOCATED AT  
10801 AND 10805 NORTH WOLFE ROAD (APN: 316-45-017 AND 316-05-56)

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The Planning Commission recommends that the City Council approve the Use Permit, in substantially similar form to the Draft Resolution attached hereto as Exhibit U.

PASSED AND ADOPTED at a Regular Meeting of the Planning Commission of the City of Cupertino the 11<sup>th</sup> day of June 2019, by the following roll call vote:

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AYES: COMMISSIONERS:  
NOES: COMMISSIONERS:  
ABSTAIN: COMMISSIONERS:  
ABSENT: COMMISSIONERS:

ATTEST:

APPROVED:

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Benjamin Fu  
Acting Dir. of Community Development

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R "Ray" Wang  
Chair, Planning Commission

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CUPERTINO CITY COUNCIL  
 APPROVING A USE PERMIT TO ALLOW A 24-HOUR HOTEL, INCLUDING A  
 RESTAURANT WITH A SEPARATE BAR AND A ROOFTOP LOUNGE WITH A  
 SEPARATE BAR LOCATED AT 10801 AND 10805 NORTH WOLFE ROAD  
 (APN: 316-45-017 AND 316-05-56)

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SECTION I: PROJECT DESCRIPTION

Application No.: U-2018-03  
 Applicant: Kimco Realty (Michael Strahs)  
 Property Owner: Cupertino Village, LP  
 Location: 10801 and 10805 North Wolfe Road (APN: 316-45-017 and 316-05-56)

SECTION II: FINDINGS FOR A USE PERMIT:

WHEREAS, 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 City of Cupertino's Environmental Review Committee at its December 13, 2018 meeting reviewed the Draft Mitigated Negative Declaration, received public comments, and recommended adoption of a Mitigated Negative Declaration on a 5-0 vote with minor modifications, and provided measures that ensure the least impactful development of the proposed hotel; and

WHEREAS, on June 11, 2019, the Planning Commission, after considering the administrative record and the public hearing, exercised its independent judgment and recommended approval of the Final Draft IS/MND (EA-2017-06) for the Project on a X-X vote, which incorporated all the identified mitigation measures as conditions of approval for the project prior to taking final action on the Project; and

WHEREAS, on June 11, 2019 the Planning Commission recommended on a X-X vote that the City Council approve the General Plan Amendment (GPA-2017-05), in substantially similar form to the Resolution presented (Resolution no. \_\_\_\_\_), approve the Development Permit (DP-2018-04) in substantially similar form to the Resolution presented (Resolution No. \_\_\_\_\_), approve the Architectural and Site Approval Permit

(ASA-2017-09) in substantially similar form to the Resolution presented, approve a Use Permit (U-2018-03) in substantially similar form to the Resolution presented, approve the Tree Removal Permit (TR-2017-46) in substantially similar form to the Resolution presented (Resolution no. \_\_\_\_\_) and approve a Development Agreement (DA-2017-01) in substantially similar form to the Ordinance presented; and

WHEREAS, the City Council of the City of Cupertino is the decision-making body for this Resolution;

WHEREAS, on July 16, 2019, upon due notice, the City Council held a public hearing to consider the Development Permit; and

WHEREAS, after consideration of evidence contained in the entire administrative record, at the public hearing on July 16, 2019, the City Council adopted Resolution No. [####] adopting the Final IS/MND, Resolution No. [####] adopting the General Plan Amendment, Resolution No. [####] approving the Development Permit and Resolution no. [####] approving the Architectural and Site Approval; 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:

- 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 and Zoning Ordinance, 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 maps, facts, exhibits, testimony and other evidence submitted in this matter and the Mitigated Negative Declaration and the Mitigation

Monitoring and Reporting Program for the Project (EA-2017-01), subject to the conditions which are enumerated in this Resolution beginning on PAGE 2 thereof, and those contained in all other Resolutions approved for this Project,

The application for a Use Permit, Application No. U-2018-03, is hereby approved, and that the subconclusions upon which the findings and conditions specified in this Resolution are based are contained in the Public Hearing record concerning Application no. U-2018-03 as set forth in the Minutes of the City Council Meeting of July 16, 2019 Meeting, 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 plan set received November 8, 2018 consisting of 48 sheets labeled as Planning Submittal, Table of Contents, 3-43, C1.1, C2.1, C2.2, C3.1, and C.24 drawn by Hornberger + Worstell and Keir & Wright Civil Engineers & Surveyors, 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. GPA-2017-05, DP-2018-04, DA-2017-01, ASA-2017-09, TR-2017-46, and EA-2017-06 shall be 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 and a rooftop lounge 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. 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.

9. 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.

10. 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.

11. 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.

12. 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.

**13. 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 16<sup>th</sup> day of July 2019, at the Regular Meeting of the City Council of the City of Cupertino, State of California, by the following roll call vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

<p>SIGNED:</p>  <p>_____  Steven Scharf, Mayor  City of Cupertino</p>	<p>_____  Date</p>
<p>ATTEST:</p>  <p>_____  Grace Schmidt, City Clerk</p>	<p>_____  Date</p>