

RESOLUTION NO. _____

A RESOLUTION OF THE CUPERTINO CITY COUNCIL
APPROVING A USE PERMIT MODIFICATION TO AN EXISTING USE
PERMIT (U-2004-01) TO AMEND THE CONDITIONS OF APPROVAL
TO ALLOW 100% NON-RETAIL COMMERCIAL USES WHERE ONLY
50% IS CURRENTLY ALLOWED LOCATED AT 20130 STEVENS CREEK
BOULEVARD (APN: 369-56-001)

SECTION I: PROJECT DESCRIPTION

Application No.: M-2020-002
Applicant: Catherine Chen
Property Owner: Cupertino Adobe, LLC
Location: 20130 Stevens Creek Blvd. (APN #369-56-001)

SECTION II: FINDINGS FOR A USE PERMIT:

WHEREAS, the City of Cupertino received an application for a Use Permit Modification 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 Council of the City of Cupertino is the decision-making body for this Resolution; and

WHEREAS, pursuant to the provisions of the California Environmental Quality Act of 1970 (Public Resources Code section 21000 et seq.) ("CEQA"), together with the State CEQA Guidelines (California Code of Regulations, Title 14, Section 15000 et seq.) (hereinafter, "CEQA Guidelines"), the City staff has independently studied the proposed Project and has determined that the Project is exempt from environmental review pursuant to the categorical exemption in CEQA Guidelines section 15301, for the reasons set forth in the Planning Commission staff report dated January 26, 2021 and incorporated herein by reference; and

WHEREAS, the applicant has met the burden of proof required to support the application for a Use Permit; 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 densities and land uses as allowed in the General Plan, Zoning Ordinance, and 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, Municipal Code, and Heart of the City Specific Plan Requirements since the Project is consistent with the existing land use designations (Commercial, Residential), Municipal Code requirements, including but not limited to, parking regulations, open space, density.

NOW, THEREFORE, BE IT RESOLVED that the City Council takes the following actions:

1. Exercises its independent judgment and determines that the Project is exempt from CEQA pursuant to CEQA Guidelines sections 15301 based on the following evaluations:

- The Class 1 exemption applies to existing facilities that involve negligible or no expansion of existing or former use. The proposed project allows a use within an existing building that is consistent with zoning and will not significantly expand the use beyond the current use that already exists and will not have a significant effect on the environment.

2. Approves the application for a Modification to Use Permit, Application no. M-2020-002 subject to the conditions which are enumerated in this Resolution beginning on PAGE 3 thereof. The conclusions and subconclusions upon which the findings and conditions specified in this resolution are based, including those contained in the Public Hearing record concerning Application no. M-2020-002 as set forth in the Minutes of City Council Meeting of February 16, 2021, are hereby incorporated by reference as though fully set forth herein.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the foregoing recitals are true and correct and are included herein by reference as findings.

SECTION III: CONDITIONS ADMINISTERED BY THE COMMUNITY DEVELOPMENT DEPT.

1. MODIFICATION TO USES ALLOWED

The City Council Action Letter dated March 3, 2005 pertaining to application no. U-2004-01 is hereby modified to allow throughout the approximately 2,400 square foot commercial building space, regardless of changes to property ownership, General

Commercial uses as defined and as limited by the Cupertino Municipal Code Section 19.60 (General Commercial (CG) zoning district) and the Heart of City Specific Plan.

2. INDEMNIFICATION AND LIMITATION OF LIABILITY

As part of the application, to the fullest extent permitted by law, the applicant shall agree to indemnify, defend with the attorneys of the City's choice, and hold harmless the City, its City Council, and its officers, employees, and agents (collectively, the "indemnified parties") from and against any liability, claim, action, cause of action, suit, damages, judgment, lien, levy, or proceeding (collectively referred to as "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 related to any Ordinance, Resolution, or action approving the project, the related entitlements, environmental review documents, finding or determinations, or any other permit or approval authorized for the project. The indemnification shall include but not be limited to damages, fees, and costs awarded against the City, if any, and cost of suit, attorneys' fees, and other costs, liabilities, and expenses incurred in connection with such proceeding whether incurred by the Applicant, the City, or the parties initiating or bringing such proceeding.

The applicant shall agree to (without limitation) reimburse the City its actual attorneys' fees and costs incurred in defense of the litigation. Such attorneys' fees and costs shall include amounts paid to the City's outside counsel 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. The applicant shall likewise agree to indemnify, defend, and hold harmless the indemnified parties from and against any damages, attorneys' fees, or costs awards, including attorneys' fees awarded under Code of Civil Procedure section 1021.5, assessed or awarded against the indemnified parties. The Applicant shall cooperate with the City to enter a Reimbursement Agreement to govern any such reimbursement.

The Applicant shall agree to (without limitation) reimburse the City for all costs incurred in additional investigation or study of, or for supplementing, redrafting, revising, or amending, any document (such as an Environmental Impact Report, negative declaration, specific plan, or general plan amendment) if made necessary by proceedings challenging the project approvals and related environmental review, if the applicant desires to continue to pursue the project.

The Applicant shall agree that the City shall have no liability to the Applicant for business interruption, punitive, speculative, or consequential damages.

3. 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.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Cupertino this 16th day of February, 2021, by the following vote:

Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

SIGNED: _____ Darcy Paul, Mayor City of Cupertino	 _____ Date
ATTEST: _____ Kirsten Squarcia, City Clerk	 _____ Date