



MILPITAS PLANNING COMMISSION AGENDA REPORT

PUBLIC HEARING

Meeting Date: October 22, 2008

APPLICATION:

**CONDITIONAL USE PERMIT AMENDMENT NO. UA08-0004,
KTV MUSICLAND**

APPLICATION
SUMMARY:

A request to amend Special Condition of Approval No. 11 to allow the use of blinds for storefront windows for a previously approved karaoke establishment.

LOCATION:
APPLICANT:
OWNER:

788 Barber Lane (APN 86-01-035)
Joe Zhang, 788 Barber Lane, Milpitas, CA 95035
Ulferts Center (USA) Inc., 668 Barber Lane, Milpitas, CA 95035, Attn:
Karen Kam

RECOMMENDATION:

Staff recommends that the Planning Commission:
1. Close the public hearing following public testimony; and
2. Adopt Resolution No. 08-056 approving the project subject to conditions of approval.

PROJECT DATA:

General Plan/
Zoning Designation:
Overlay District:
Specific Plan:

General Commercial (GNC)/General Commercial (C2)
Site and Architectural Overlay (-S)
N/A

Building Square Footage:
Tenant Square Footage:

39,393 square feet
2,400 square feet

CEQA Determination:

Categorically exempt from further environmental review pursuant to Class 1, Section 15301 of the California Environmental Quality Act (CEQA) Guidelines.

PLANNER:

Cindy Hom, Assistant Planner

PJ:

2465

ATTACHMENTS:

- A. Resolution 08-056 and Conditions of Approval
- B. Plans

LOCATION MAP



No scale

BACKGROUND

On November 14, 2007, the Planning Commission held a nine-month permit review hearing to verify compliance with special conditions of approval for Conditional Use Permit No. UP2007-18, a CUP that allowed for a 2,400 square foot karaoke establishment located at 788 Barber Lane.

The nine-month review indicated that drapes were found to be installed at the storefront windows, which was inconsistent with Special Condition No. 11, a requirement that the front windows remain clear and unobstructed. According to the applicant, these were installed to alleviate sun damage to the equipment and video screens and to also further attenuate sound levels and vibrations. At that meeting staff had recommended a subsequent three-month review and was directed to work with the applicant on the drape issue.

At the time of the three-month review, Joe Zhang, the applicant for KTV Musicland, wanted to proceed with a CUP amendment to allow for the use of blinds for the storefront windows. The application was submitted on February 25, 2008 in pursuant to Special Condition No. 2, which requires Planning Commission review and approval for any modifications to the business operations or approved plan.

PROJECT DESCRIPTION

The project site is located on a 3.04-acre site and is bounded by Barber Lane to the west, the Hetch-Hetchy Right-of-Way to the south, I-880 on-ramp to the east and the vacant auto dealership site to the north. The site is zoned General Commercial with a Site and Architectural overlay (C2-S) and is surrounded by Cisco Systems corporate campus to the west, commercial and potential residential uses to the north, and a large day care facility to the south. A vicinity map of the subject site location is included on the previous page.

The applicant is requesting to remove Special Condition No. 11 to allow the use of blinds for storefront windows, which are located in the front lobby area and VIP room as shown on the Floor Plan (Sheet A-1). As approved, there are eight other rooms within the business that only have glass doors with no exterior windows. In comparison with the other karaoke rooms, the installation of blinds in the VIP room does not create a different condition. The existing operations and all other conditions of approval will remain in full force and effect.

Public Safety

The following measures are currently in place that help ensure the karaoke rooms are being used as intended:

- Glass doors that allows employees to view each room,
- Video surveillance that are recorded and made available upon request
- Posting of signs prohibiting on-site consumption of alcohol and loitering

Additionally, *Staff recommends* as a condition that a new observation window that is adequate sized to allow for visual inspection of the VIP Room from the hallway. The required window shall be installed within 30-days of Planning Commission approval of this amendment. Staff would also recommend another six-month review to address any potential issues.

ADOPTED PLANS AND ORDINANCES CONSISTENCY

General Plan

The table below outlines the project’s consistency with applicable General Plan Guiding Principles and Implementing Policies:

Table 1
General Plan Consistency

Policy	Consistency Finding
<p><i>Implementing Policy 2.a-I-4</i></p> <p>Promote Milpitas as a place to carry on regional commercial activities with an emphasis toward the advantages of the City’s location to both commercial and regional roadways,</p>	<p>Consistent. The use of the blinds will not alter the operation of the establishment to negatively impact surrounding businesses. The establishment will continue to add to the diverse types of businesses throughout the city.</p>

Zoning Ordinance

The project site is located within the General Commercial Zoning District and within the Site and Architectural Overlay District. The karaoke entertainment use is a conditionally permitted use and approved with CUP No. UP2006-18.

The project proposes an amendment to allow the use of the storefront window blinds within the karaoke establishment. The proposed storefront blinds are consistent with the Zoning Ordinance in that the use of the blinds will not change the operation of the business to be detrimental or injurious to improvements, property, public health, safety, and general welfare because there are existing conditions of approval upon the operation of the business will ensure public safety. The applicant will also need to satisfy additional requirements that include an installation an observation window to allow for visual inspection of the VIP room and a six-month review to ensure project compliance with conditions or address any issues.

ENVIRONMENTAL REVIEW

Staff conducted an environmental assessment of the project in accordance with CEQA and determined that the proposed project is categorically exempt from further environmental review pursuant to Class 1, Section 15301 (“Existing Facilities”, ...minor alteration of existing public or private structures...involving negligible or no expansion of use beyond that existing at the time of the lead agency’s determination). The addition of blinds will not expand the existing karaoke entertainment use.

PUBLIC COMMENT/OUTREACH

Staff publicly noticed the application in accordance with City and State law. As of the time of writing this report, there have been no inquiries from the public.

CONCLUSION

The project is consistent with the General Plan and conforms to the Zoning Ordinance in that the blinds are additional furnishing to an existing karaoke establishment that will not detract or diminish the land

use compatibility with the surrounding restaurant and retail uses. Staff is not aware of any issues resulting from the drapes over the front windows and is supportive of the applicant's request. As conditioned, the project will not be detrimental or injurious to improvements, property, or to public health, safety and general welfare.

RECOMMENDATION

STAFF RECOMMENDS THAT the Planning Commission adopt Resolution No. 08-056 approving Conditional Use Permit Amendment NO. UA08-0004, subject to the attached Conditions of Approval.

Attachments:

- A. Resolution/Conditions of Approval
Plans

RESOLUTION NO. 08-056

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS,
CALIFORNIA, APPROVING CONDITIONAL USE PERMIT AMENDMENT NO.
UA08-0004. KTV MUSICLAND, TO ALLOW INSTALLATION OF STOREFRONT
WINDOW BLINDS LOCATED AT 788 BARBER LANE.**

WHEREAS, on February 23, 2008, an application was submitted by Joe Zhang, 788 Barber Lane, Milpitas, CA 95035 to amend an existing Conditional Use Permit No (UP2006-18) to allow for the installation of storefront window blinds for the karaoke establishment located at 788 Barber Lane (APN 86-01-035), zoned General Commercial with a Site and Architectural Overlay District; and

WHEREAS, the Planning Division completed an environmental assessment for the project in accordance with the California Environmental Quality Act (CEQA), and recommends that the Planning Commission determine that this project is categorically except pursuant to Section 15301 for "Existing Facilities" of the California Environmental Quality Act Guidelines; and

WHEREAS, on October 22, 2008, the Planning Commission held a duly noticed public hearing on the subject application, and considered evidence presented by City staff, the applicant, and other interested parties.

NOW THEREFORE, the Planning Commission of the City of Milpitas hereby finds, determines and resolves as follows:

Section 1: The recitals set forth above are true and correct and incorporated herein by reference.

Section 2: The project is categorically except pursuant to Section 15301 of the California Environmental Quality Act Guidelines for "Existing Facilities" consisting of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing structures, facilities, mechanical equipment, involving negligible or no expansion of use. The applicant is proposing to install storefront window blinds with no expansion of the karaoke entertainment use.

Section 3: The project is an amendment to a previously approved Conditional Use Permit for a 2,400 square feet karaoke establishment. The project entails installation of storefront blinds. The addition of the blinds does not alter the existing use and therefore remains consistent with the Milpitas General Plan Implementing Policies and Milpitas Zoning Ordinance.

Section 4: The proposed installation of storefront window blinds will not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety, and general welfare since (a) the existing conditions of approval and approved operating procedures will remain in full force and effect and ensure public safety; (b) the project is required a six month review to address any potential issues; and (c) new condition requiring the installation of a new observation window to allow for visual inspection of the VIP room.

EXHIBIT 1

**CONDITIONS OF APPROVAL
CONDITIONAL USE PERMIT AMENDMENT NO. UA08-0004
(Restated and revised original conditions)**

Planning Division

1. The owner or designee shall develop the approved project in conformance with the approved plans approved by the Planning Commission on October 22, 2008, in accordance with these Conditions of Approval.
2. Any deviation from the approved site plan, floor plans, elevations, materials, colors, landscape plan, or other approved submittal shall require that, prior to the issuance of building permits, the owner or designee shall submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the Planning Director or Designee. If the Planning Director or designee determines that the deviation is significant, the owner or designee shall be required to apply for review and obtain approval of the Planning Commission, in accordance with the Zoning Ordinance.
3. Conditional Use Permit Amendment No. UA08-0004 shall become null and void if the project is not commenced within 18 months from the date of approval. Pursuant to Section 64.04-2 of the Zoning Ordinance of the City of Milpitas, since the project requires the issuance of a building permit, the project shall not be deemed to have commenced until the date of the building permit is issued and a foundation is completed.
4. Pursuant to Section 64.04-1, the owner or designee shall have the right to request an extension of Conditional Use Permit Amendment No. UA08-0004 if said request is made, filed and approved by the Planning Commission prior to expiration dates set forth herein.
5. Planning approval is for 2,400 square foot tenant space denoted on the site and floor plan. The uses approved include 9 karaoke stations with no food or alcohol beverage service. The floor plan proposed for building permits shall substantially conform to the approved plans dated October 22, 2008 except as modified herein. (P)
6. Any changes to the use, business operations or modifications to the approved plans shall require a use permit amendment and Planning Commission review and approval. (P)
7. The use at the facility shall not engage and/or render any services as defined in Section 13.04, Adult Businesses, of the Milpitas Zoning Ordinance. (P)
8. Proposed use shall comply with all Federal, State and local code requirements. (P)
9. Prior to business license issuance, the business owner must submit their background check to the Planning Division and Milpitas Police Department. (PC Sub)
10. No alcoholic beverages may be consumed within or outside of the karaoke facility. (P)

11. The applicant shall maintain signs stating “No loitering or consumption of alcoholic beverages” on the exterior of the building and within the establishment. (P)
12. The hours of operations for the facility shall be limited to 4 P.M. to 2 A.M., Monday through Sunday. All patrons must be off the premises within 30 minutes after the facility’s closure. (P)
13. All patrons within and employees of the facility must be the age of 18 years or older. (P)
14. Lighting within the facility, especially within the hallways and all stations, shall be established and kept at a level not less than forty (40) watts per hundred (100) square feet of floor area to provide visibility and to ensure the safety of patrons, employees, security and emergency personnel. The established lighting within the facility will be subject to the review, modification and approval of the City’s Police Department. (P)
15. Prior to building permit final, the applicant shall install tempered glass doors for all (9) karaoke rooms. Doors shall not include any locking devices. (PC)
16. Prior to building permit final, the applicant shall install closed circuit video surveillance cameras in all (9) karaoke rooms and shall be maintained for no less than one-month or 30 days. Surveillance tapes shall be made available at any time to the Police Department upon request. (PC)
17. Surveillance equipment shall be operable and maintained at all times. Surveillance equipment shall not be down for more than two days. The Planning Director may require the applicant to cease operation until compliance with this condition of approval is met. (PC)
18. Posters and signs shall be displayed in a manner that does not obstruct the view of the interior area from outside of the facility or directly into the individual karaoke rooms. (P)
19. The lobby is reserved for patrons waiting for service only. No exterior loitering shall be allowed. All patrons waiting for service must wait in the designated lobby. No waiting list may be maintained beyond the seating capacity provided in the lobby. (P)
20. The walls separating the establishment from adjacent commercial tenants shall employ effective noise attenuating devices to achieve a minimum standard transmission coefficient (STC) sound rating of 45-50. Such wall shall be soundproofed where no amplified music shall be audible on the exterior of the premises or adjoining tenant spaces. Should the improvements installed not provide acceptable noise levels, or should the noise emanating from the establishment cause noticeable discomfort to adjacent tenants, the establishment may be required to install additional noise attenuating devices. In doing so, the applicant may be required to request the services of a professional consultant specializing in noise attenuating devices to mitigate such impacts. (P)
21. Should additional security measures be needed in order to address any public safety concerns arising from the business, the applicant shall provide those additional security measures as requested by the City’s Police Department. (P)
22. The applicant shall work, as necessary, with the Police Department to review and upgrade (if necessary) surveillance equipment installed on site. Surveillance shall be provided for the front lobby and all hallway areas. Surveillance monitors will be located at the front lobby and will be monitored by the business operator at the site. The Police

Department shall approve the proposed surveillance equipment prior to the issuance of a business license. The recorded surveillance tapes shall be kept for a period of no less than one month or 30 working days and made available to the Police Department upon request. (P)

23. All karaoke stations shall be limited to the approved appurtenances; no Internet service or online electronic gaming shall be allowed within these stations. (P)
24. All patrons entering the facility must provide picture identification before engaging in the karaoke service rendered at the facility to ensure that those patrons are adhering to the facility's regulations and conditions. A log must be kept at the facility. Such log shall be maintained for at least 120 days and surrendered to any city official upon request. The log shall include the patron's name, a state license/identification number, date and time service rendered, and specific station within the facility retained for the service. (P)
25. All conditions applicable to patrons, particularly the stated prohibitions included in these "Conditions of Approval", of the facility incorporated herein shall be conspicuously posted in the front lobby area in a sign at the entrance with lettering of at least two (2) inches in size. (P)
26. This report and its conditions shall be kept on the premises and made available to any officer/employee of the City upon request. (P)
27. Should the City receive any complaints arising from the facility's use and/or an indication that the facility's use has resulted in an increased need for service calls from emergency personnel (i.e., the Police Department), the Planning Director shall be authorized to refer this use permit to the Planning Commission. The Planning Commission may require modifications to the facility's "Conditions of Approval", or revoke the permit entirely, if it has been found that the use has caused a substantial adverse impact on the community. (P)
28. Applicant shall provide Police Department with an Emergency Contact database that consist of after hours contact information for responsible parties of the business in the event of an emergency or when the employee cannot reach a manager or business owner. The applicant shall submit any changes within two weeks utilizing the Police Department procedures. (PD)
29. The Operator shall lock the front doors at closing to prevent people from enter the business after hours. People can be let out under the control of employees. (PD)
30. The project shall be subject to six months review until the Planning Commission deems them unnecessary. The applicant shall submit all the necessary public hearing materials and fees to the Planning Division. (P)
31. The operator or designee shall develop a training manual that ensures that staff is properly trained on how to effectively handle emergency situations. A copy of this procedure manual shall be submitted to the Planning Division. Adequacy of the manual shall be determined by Planning staff. Any revisions to the manual shall be submitted to the Planning Division. (P, PC)

32. The applicant shall install an adequately sized window to allow for visual inspection of the VIP room. The window shall be installed within 30-days from the Planning Commission approval of the amendment to allow for storefront window blinds.

