

RESOLUTION NO. 14-003**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS APPROVING CONDITIONAL USE PERMIT NO. UP13-0022 TO ALLOW ON-SITE FULL SERVICE ALCOHOL SALES AS AN ANCILLARY AND IN CONJUNCTION WITH THE EXISTING RESTAURANT LOCATED AT 560 NORTH ABEL STREET**

WHEREAS, on December 6, 2013, an application was submitted by Pradeep Kumar, 560 North Abel Street, Milpitas, CA 95035 for a Conditional Use Permit for the sale of distilled spirits (liquor), beer, and wine at Vedas Indian restaurant located at 560 North Abel Street. The property is located within the General Commercial District (C2), (APN: 22-07-004).

WHEREAS, the sale of alcohol in the State of California is regulated by the Alcoholic Beverage Control Act (California Business and Profession Code Sections 23000-25762). The California Department of Alcoholic Beverage Control is required to deny an application for a license if issuance of the license would result in or add to an undue concentration of licenses in a particular area, unless the local governing body finds that it would serve the public convenience or necessity. An undue concentration is defined under Business and Profession Code Section 23958.4 as an area where: (a) there is a crime reporting district that has a 20% greater number of reported crimes than the average of all crime reporting districts in the jurisdiction, or (b) the ratio of retail licenses of the type applied for, to the population in the census tract or census division exceeds the ratio for the county in which the applicant premises are located.

WHEREAS, the project falls within in an undue concentration area for liquor licenses, and therefore, the Planning Commission is required to make a finding that the sale of alcohol will not have a negative impact on the surrounding community and serves the public convenience or necessity.

WHEREAS, on January 2, 2014, Planning staff completed review of the proposed project and determined it is in conformance with the General Plan and development standards of the Zoning Ordinance.

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 this project exempt under CEQA.

WHEREAS, on January 22, 2014, 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 Planning Commission has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the Commission. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

Section 2: The proposed Project is categorically exempt from further environmental review pursuant to Section 15301 (Existing Facilities) of the California Environmental Quality Act (CEQA) because there is no expansion or alteration of the existing restaurant use.

Section 3: Conditional Use Permit (Section XI-10-57.04(F) - The Planning Commission makes the following findings based on the evidence in the public record in support of Conditional Use Permit No. UP13-0022:

1. The proposed use, at the proposed location will not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety, and general welfare.

The proposed sale of alcoholic beverages at the existing restaurant will not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety, and general welfare because the project site is zoned General Commercial and is located within a commercial center surrounded by commercial retail and restaurant uses. The sale of alcoholic beverages is ancillary and in conjunction with the existing restaurant. The existing restaurant with ancillary sales of all types of alcoholic beverages will provide a service not currently offered increasing economic opportunity. The Milpitas Police Department has not responded to a call for service at Vedas Indian Restaurant since its establishment in 2010 and does not oppose the request for Conditional Use Permit No. UP13-0022.

2. The proposed use is consistent with the Milpitas General Plan.

The proposed use is consistent with the Milpitas General Plan, specifically:

- *Policy 2.a-I-3 - Encourage economic pursuits which will strengthen and promote development through stability and balance.*
- *Policy 2.a-I-5 - Maintain policies that promote a strong economy which provides economic opportunities for all Milpitas residents within existing environmental, social fiscal and land use constraints.*

The existing restaurant is a compatible and permitted use within the shopping center, and the service of alcoholic beverages is an ancillary use to the existing restaurant. This use promotes and encourages social and economic interests while providing Milpitas residents with enhanced restaurant services, and promotes business within the City.

3. The proposed use is consistent with the Milpitas Zoning Ordinance.

The use is consistent with the Milpitas Zoning Ordinance because a restaurant with full service bar is permitted with a Conditional Use Permit and meets the development standards for lot area minimum, floor area ratio, and parking within the Zoning Ordinance. Further, the restaurant is not proposing additional seats or extended hours and therefore will not generate additional traffic or parking demand.

Section 4: Department of Alcoholic Beverage Control findings pursuant to Business and Profession Code Section 23958.4:

According to the Department of Alcohol Beverage Control, the project falls within an undue concentration area for the type of liquor license sought, which authorizes seven (7) on-sale licenses in this census tract. The census tract currently has ten (10) active on-site licenses and three (3) off-sale licenses. In order for the Department of Alcoholic Beverage Control to grant the pending license application, the Planning Commission is required to make a finding pursuant to Business and Profession Code Section 23958.4 that the sale of alcohol will not have a negative impact on the surrounding community and serves the public convenience or necessity.

Based on staff's analysis, the following findings can be made that the project will not be detrimental to the surrounding area and serves the public convenience or necessity because:

- *The existing restaurant is not located within a crime reporting district.*
- *The Milpitas Police Department has not responded to a call for service at Vedas Indian Restaurant since its establishment in 2010.*
- *The proposed alcohol sales is an ancillary service to the existing food service.*
- *The project is located in a General Commercial Zoning District and is surrounding by other commercial and restaurant uses. The addition of alcohol sales at this location would provide a public convenience for dining customers in that the sale of alcoholic beverages is ancillary and in conjunction with the existing restaurant.*
- *As conditioned, the applicant shall be required to obtain training for responsible alcohol serving.*

Section 6: The Planning Commission of the City of Milpitas hereby adopts Resolution No. 14-003 approving Conditional Use Permit UP13-0022 based on the above Findings and subject to the Conditions of Approval attached hereto as Exhibit 1 and incorporated herein.

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Milpitas on January 22, 2014.

Chair

TO WIT:

I HEREBY CERTIFY that the following resolution was duly adopted at a regular meeting of the Planning Commission of the City of Milpitas on January 22, 2014, and carried by the following roll call vote:

| COMMISSIONER | AYES | NOES | ABSENT | ABSTAIN |
|---------------------|-------------|-------------|---------------|----------------|
| Lawrence Ciardella | | | | |
| John Luk | | | | |
| Rajeev Madnawat | | | | |
| Ussher Mandal | | | | |
| Gurdev Sandhu | | | | |
| Garry Barbadillo | | | | |
| Demetress Morris | | | | |

EXHIBIT 1

**CONDITIONS OF APPROVAL
CONDITIONAL USE PERMIT NO. UP13-0022**

General Conditions

1. The owner or designee shall develop the approved project in conformance with the plans approved by the Planning Commission on January 22, 2014, in accordance with these Conditions of Approval.

Any deviation from the approved site plan, floor plans, 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. **(P)**

2. Conditional Use Permit No. UP13-0022 shall become null and void if the project is not commenced within two (2) years from the date of approval. Pursuant to Section 64.06(B) of the Zoning Ordinance of the City of Milpitas:

- a. Completes a foundation associated with the project; or
- b. Dedicates any land or easement as required from the zoning action; or
- c. Complies with all legal requirements necessary to commence the use, or obtains an occupancy permit, whichever is sooner.

3. Pursuant to Section 64.06(1) of the Milpitas Zoning Code, the owner or designee shall have the right to request an extension of Conditional Use Permit Amendment No. UA13-0007 if said request is made, filed and approved by the Planning Commission prior to expiration dates set forth herein. **(P)**

4. 4. The use shall comply with all applicable local, state and federal laws, rules, regulations, policies and guidelines.
(P)

5. Private Job Account - If at the time of application for building permit there is a project job account balance due to the City for recovery of review fees, review of permits will not be initiated until the balance is paid in full. **(P)**

6. The operator shall be responsible for ensuring that all employees receive 'Responsible Alcoholic Beverage Service' training as offered through programs established by the Alcoholic Beverage Control of the State of California. Evidence of such training and the training records of

all employees shall be maintained on-site during business hours, and made available for inspection upon request. **(P)**

7. The owner or designee shall at all times comply with all applicable State laws applicable to the sale of alcohol including any California Department of Alcoholic Beverage Control licensing requirements for the sale alcohol. **(P)**

8. Indemnification. To the fullest extent permitted by law, owner or designee shall indemnify, defend with counsel of the City's choosing, and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to owner or designee's use of the property under this permit, City's approval of the conditional use permit, including but not limited to, the approval of the discretionary permits, maps under the Subdivision Map Act, and/or the City's related determinations or actions under the California Environmental Quality Act. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand or, as applicable, to counsel of City's choosing, any amount owed pursuant to the indemnification requirements prescribed in this condition. **(CA)**

(P) = Planning

(CA) = City Attorney