

RESOLUTION NO. 14-004

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS, APPROVING AN AMENDMENT TO CONDITIONAL USE PERMIT NO. UA05-0013 FOR DISH DASH RESTAURANT TO ALLOW THE SALE OF DISTILLED SPIRITS FOR AN EXISTING RESTAURANT LOCATED AT 181 RANCH DRIVE

WHEREAS, A Conditional Use Permit (No. 1602) was approved by the City in August of 2001 for the use of a restaurant with outdoor and indoor seats, site modifications, and a parking reduction.

WHEREAS, Conditional Use Permit Amendment (UA-2005-13) was approved by the City on November 9, 2005 to allow beer and wine sales for the restaurant Pasta Pomodoro.

WHEREAS, on December 2, 2013, an application was submitted by Dish Dash Restaurant, 181 Ranch Drive, Milpitas, CA 95035 for a Conditional Use Permit Amendment for the sale of distilled spirits in addition to beer and wine for the restaurant located at 181 Ranch Drive (the "Project"). The property is located within General Commercial with Recreation and Entertainment Overlay (C2-RE), (APN: 22-53-002).

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 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).

Section 3: The City previously issued Conditional Use Permit No. 1602 in August of 2001 and an amendment to Conditional Use Permit UA05-0013 on November 9, 2005 relating to the property located at 181 Ranch Drive. Provisions of the Conditional Use Permit No. 1602 approved by the City in August of 2001 and an amendment to Conditional Use Permit UA05-0013 approved by the City on November 9, 2005 not modified by this Resolution shall remain in full force and effect. In the event of any conflicts between the Conditional Use Permit No. 1602 approved by the City in August of 2001 and an amendment to Conditional Use Permit UA05-0013 approved by the City on November 9, 2005 and this Resolution, this Resolution shall control.

Any provision of UA05-0013 approved by the City of Milpitas on November 9, 2005 not amended by Conditional Use Permit UA13-0007 shall remain in full force and effect. Additionally, UA13-0007 shall govern and control in the event there is any conflict or discrepancies between the two documents.

Section 4: 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. UA13-0007:

2. *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.*

2. *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 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 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 5: 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 two (2) on-sale licenses while the census tract currently has twenty-eight (28) active licenses and one (1) off-sale license. 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 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 Dish Dash Restaurant*
- *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 surrounded 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. 14-004 amending Conditional Use Permit UA05-0013 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				
Sudhir Mandal				
Gurdev Sandhu				
Garry Barbadillo				
Demetress Morris				

EXHIBIT 1**CONDITIONS OF APPROVAL
CONDITIONAL USE PERMIT AMENDMENT NO. UA13-0007****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. UA13-0007 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 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. The project shall be operated in accordance with all local, state and federal regulations. **(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)**

(P) = Planning