

RESOLUTION NO. 15-004

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS
APPROVING CONDITIONAL USE PERMIT NO. UP14-0012 AND MINOR SITE
DEVELOPMENT PERMIT NO. MS15-0004 TO ALLOW FOR THE SALE OF ALL
TYPE OF ALCOHOL FOR AN EXISTING CONVENIENCE MART AND LIQUOR
STORE LOCATED AT 81 DIXON ROAD**

WHEREAS, on June 6, 2014, an application was submitted by Thuy Vo, 1925 Washington St. Santa Clara, CA 95050 (“Applicant”) for a Conditional Use Permit and Site Development Permit for to permit the sale of all types of alcohol and site improvements to an existing 1,775 square foot mart and liquor store located at 81 Dixon Road (“Project”). The property is located within Neighborhood Commercial Zoning District (APN: 26-05-021).

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 28, 2015, 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.

WHEREAS, the all previous planning entitlements for the operations of a restaurant with beer and wine sales shall be rescinded and superseded by the adoption of this Resolution.

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 Planning 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 CEQA review under Section 15301 (Existing Facilities), 15304 (Minor Alterations to Land) and 15344 (Accessory Structures) of the CEQA Guidelines. The Project entails a request to permit the sale of all types of alcohol to an existing mart and liquor store. The project also includes minor site modifications that include repairing an existing public sidewalk and driveway to comply with city standards and accessibility requirements; removal of an unpermitted septic tank; and installation of a new 3-inch sewer lateral, landscaping consisting of twenty-four inch box trees and shrubbery, and a 314 square foot concrete masonry trash enclosure. Therefore, the proposed Project is exempt under Section 15301 (Existing Facilities), 15304 (Minor Alterations to Land) and 15311 (Accessory Structures) of the CEQA Guidelines.

Section 3: Any and all provision of Conditional Use Permit No. UP 249 approved by the City of Milpitas Planning Commission in April 1973 is hereby expressly rescinded and superseded by the adoption of this Resolution and the Prior Conditional Use Permits and all other prior approvals inconsistent with this Resolution shall be considered null and void and have no legal effect whatsoever.

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. UP14-0012:*

- i. *The project will not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety, and general welfare.*

Since 1999, the Dixon Mart and Liquor Store held an active City business license and Type 21 Off-Sale Permit from the California Department of Alcohol and Beverage Control (ABC) for off-site consumption of beer, wine and distilled spirits (liquor). The Neighborhood Commercial Zoning District requires a conditional use permit for the sale of alcoholic beverages. The non-conformity was discovered when there was a request to change business owners and to transfer the ABC permit from the prior owner to the current owner.

In review of the property for code violations, the property was cited on two (2) occasions for zoning violations in the past twenty (20) years. The first code violation was issued in May 1996 for storage of U-Haul trucks on the premise. The Notice of Violation was abated in December 1996. The second code violation was issued in July 2012 for vehicle storage of an RV camper, boat, and tent structure. The structures were removed and the code enforcement case was closed in July 2012. To date, there are no open violations.

The Milpitas Police Department reviewed the application request, Project plans, and previous calls for service and has stated they are neutral to the issuance of the conditional use permit application. The Project location is not located in a high crime rate area. There are no significant operational issues that have been identified by the Milpitas Police Department. Based on the types of calls for services has been related to transients, pedestrian stops, and disturbances on or around the premises. There were a total sixteen (16) incidents reported in 2014 including five (5) of sixteen (16) calls were police initiated service calls.

As conditioned, the Permittee shall be required to provide the following measures:

- *Responsible Alcohol Training* - The Permittee 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 and copying upon City request.
- *Liter and Graffiti Prevention* - Pick up litter and abate graffiti on a daily basis.
- *Security Video Surveillance System* - Install video surveillance camera(s) to monitor and provide complete coverage of the Project site including the parking areas. Prior to occupancy, the Permittee shall provide detail and manufacturer's specification for a video surveillance security system for Milpitas Police Department review and approval. Video

recordings shall be retained for a minimum of thirty (30) days and shall be made available for review and copying to law enforcement upon request.

- No Loiter Signs: Permittee shall display information signs to remind customers and other not to loiter and prohibit any drinking of alcohol on the property and shall enforce the same.

Based on the history of the Project site and with the added conditions, the Project will not negatively impact property, improvement or public safety and general welfare based on the following:

- The project provides various foods, convenience and beverage items that would cater to the general commercial needs of the neighborhood.
- The project promotes a stable and attractive commercial in that the proposed site improvements enhances that site with new landscaping that includes fourteen (14) twenty-four (24) inch box trees and various shrubs, an improved public sidewalk with 4-foot by 4-foot tree wells, a new concrete masonry trash enclosure and repainting of the building.
- The project maintains its existing building form, architecture, and site layout that would complement adjacent properties in terms of building setbacks, height, and architectural style. Additionally, the project would install a row of twenty-four (24) inch box Podocarpus trees that provides a natural screen between the project and residential homes. The trash service area would be concealed behind a new concrete masonry enclosure which will not be visible from the public street. The public street frontage would also be improved with new landscaping and two new twenty-four (24) inch box Crape Myrtle street trees.
- The project will not generate any objectionable noise, odor, or public nuisance since it's an existing retail store selling convenience items and alcohol with only two (2) code violations in the past twenty (20) years and a minimum amount of police calls in the past twelve (12) months.
- The existing use is not a regional attraction that would bring customers or traffic from other areas to this location.

ii. *The proposed use is consistent with the Milpitas General Plan*

The Project is consistent with the Retail Sub Center General Plan designation in that the land use provides for the general commercial needs of the surrounding neighborhood. The Project is an existing convenience mart selling food items, convenience goods, and alcoholic beverages. The Project includes various site and building improvements that would enhance the site and create a pleasant shopping environment. The project also provides opportunity for business retention, employment opportunities, and encourages economic pursuits for small businesses which are consistent with the following General Plan Policies:

- Policy 2.a-I-3 - Encourage economic pursuits which will strengthen and promote development through stability and balance.
- 2.a-I-7 Provide opportunities to expand employment, participate in partnerships with local business to facilitate communication, and promote business retention.

iii. *The use is consistent with the Milpitas Zoning Ordinance*

As discussed in detail in the staff report and herein, the proposed Project is consistent with the Milpitas Zoning Ordinance based on the following:

- a) With respect to land use, the Neighborhood Commercial Zoning District allows for general retail as a permitted use and conditionally permits the sale of alcoholic beverages with Planning Commission approval of a conditional use permit. Furthermore, the Project is consistent with purpose and intent of the Neighborhood Commercial Zoning District in that the proposed convenience items and alcoholic beverage sales would serve the general commercial needs of the neighborhood. The project will not create any objectionable noise or odors. Furthermore, the land use is not a regional attraction and will not generate customers or traffic outside of the neighborhood it serves.
- b) With respect to development standards, the proposed Project complies with setback, height, floor area ratio as described in the Table 1 below:

Table 1:
Summary of Development Standards

	Standard	Existing	Complies?
<u>Setbacks</u> (Minimum)			
Front	20 feet	40 feet	Yes
Interior	0 feet,	3 feet	Yes
Rear	15 feet	45 feet	Yes
<u>Floor Area Ratio</u> (Maximum)	0.35	0.13	Yes
<u>Building Height</u> (Maximum)	35'	15-foot 2-inches	Yes

- c) With respect to compliance with parking requirements, the proposed Project complies with the parking requirements by providing the nine (9) parking spaces as required for retail uses that have a parking ratio of one space per 200 square feet of use.

Section 5: *Site Development Permit (Section XI-10-57-03-1(F)) - The Planning Commission makes the following findings based on the evidence in the public record in support of Minor Site Development Permit No. MS15-0004:*

- i. *The layout of the site and design of the proposed buildings, structures and landscaping are compatible and aesthetically harmonious with adjacent and surrounding development.*

The Project is consistent with this finding because the Project promotes a stable commercial development that is compatible and harmonious with the surrounding properties. The Project includes site improvements that improve and enhance the overall appearance of the site with new landscaping. As conditioned, the Project would provide eleven (11) twenty-four (24) inch box trees and various shrubs. The Project would also improve a public sidewalk to conform to City standards, install a new concrete masonry trash enclosure that would keep the trash service area out of the public view, and update the building with new paint color. The Project maintains its existing building form, architecture, and site layout that would complement adjacent properties in terms of building setbacks, height, and architectural style.

ii. The project is consistent with the Milpitas Zoning Ordinance.

The Project is consistent with this finding as described above

iii. The project is consistent with the Milpitas General Plan.

The Project is consistent with this finding as described above.

Section 6: Department of Alcoholic Beverage Control Findings pursuant to Business and Profession Code Section 23958.4: The Planning Commission makes the following findings based on the evidence in the public record in support of Business and Profession Code Section 23958.4:

- i. Based on the staff report and as described herein, the Project will not be detrimental to the surrounding area and serves the public convenience or necessity because:
 - The existing mart and liquor store is not located within a crime reporting district.
 - There are no existing violations against the property or Applicant that would discourage the issuance of a Type 21 alcohol license.
 - As conditioned, the Applicant shall be required to obtain training for responsible alcohol serving and incorporate measures such as video surveillance and signage to discourage loitering.
 - The proposed off-premises sale of alcoholic beverages is incidental and appurtenant to a neighborhood convenience and customer experience.
 - The Dixon Mart and Liquor is not located within 500-feet of any public or private elementary, primary, high school, college, university or public park. However, the Project is located within 460-feet of a Montessori preschool childcare center, provided the two uses would be separated by N. Milpitas Blvd., a major street arterial (4-lane roadway).
 - The proposed use is not located closer one hundred fifty feet from any residentially zoned property measure from the project site to the front door of closest, adjacent residential unit.
 - The proposed hours of operations would not disruption the quiet and peaceful enjoyment of the neighborhood. The mart and liquor store operates seven days a

week from the hours of 10AM to 10PM Monday through Saturday and 9AM to 9PM on Sundays.

- The proposed use has been in existence since 1999 with only one (1) City Code violation and a minimal amount of police calls that will be mitigated with conditions of approval.

Section 7: This Resolution shall repeal, rescind and supersede all prior Conditional Use Permits issued for the subject property. Additionally, this Resolution shall repeal, rescind and supersede all prior City approvals related to the subject property that is inconsistent with this Resolution.

Section 8: The Planning Commission of the City of Milpitas hereby adopts **Resolution No. 15-004 approving Conditional Use Permit No. UP14-0012 and Minor Site Development Permit No. MS15-0004 for the sale of alcohol and site improvements located at 81 Dixon Road, based on the above Findings and subject to the Conditions of Approval attached hereto as Exhibit 1 incorporated herein.**

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Milpitas on January 28, 2015.

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 28, 2015, and carried by the following roll call vote:

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
Sudhir Mandal				
Larry Ciardella				
Gurdev Sandhu				
Rajeev Madnawat				
Demetress Morris				
Hon Lien				
Ray Maglalang				

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
Zeya Mohsin (alternate)				

EXHIBIT 1

**CONDITIONS OF APPROVAL
CONDITIONAL USE PERMIT NO. UP14-0012 AND MINOR SITE DEVELOPMENT
PERMIT NO. MS15-0004**

General Conditions

1. General Compliance. The applicant and owner, including all successors in interest (collectively “Permittee”) shall comply with each and every condition set forth in this Permit. This Conditional Use Permit No. UP14-0012 and Minor Site Development Permit No. MS15-0004 (collectively “Permit”) shall have no force or effect and no building permit shall be issued unless and until all things required by the below-enumerated precedent conditions have been performed or caused to be performed and this Resolution has been recorded by the Permittee with the Santa Clara County’s Recorder Office and a copy shall be provided to the Planning Department. **(P)**
2. Effective Date. Unless there is a timely appeal filed in accordance with the Milpitas Zoning Code, the date of approval of this Permit is the date on which the decision-making body approved this Permit. **(P)**
3. Acceptance of Permit. Should Permittee fail to file a timely appeal within twelve (12) calendar days of the date of approval of this Permit, inaction by Permittee shall be deemed to constitute each of the following:
 - a. Acceptance of this Permit by Permittee; and
 1. Agreement by the Permittee to be bound by, comply with, and to do all things required of or by Permittee pursuant to all of the terms, obligations, and conditions of this Permit. **(P)**
4. Permit Expiration. Pursuant to Section XI-10-64-06 of the Milpitas Zoning Code, this Permit shall become null and void if the activity permitted by this Permit is not commenced within two (2) years from the date of approval, or for a project submitted with a tentative map, within the time limits of the approved tentative map. Pursuant to Section XI-10-64.06(B) of the Milpitas Zoning Code, an activity permitted by this Permit shall be deemed to have commenced when the project: **(P)**
 - 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. **(P)**
5. Time Extension. Pursuant to Section XI-10-64.07 of the Milpitas Zoning Code, unless otherwise provided by State law, Permittee shall have the right to request a one-time

extension of the Permit if the request is made in writing to the Planning Division prior to the expiration date of the approval. **(P)**

6. Project Job Account. If Permittee's project job account is at any time delinquent or below the required deposit amount, City will not continue to review or process the application until Permittee's private job account is paid in full and the required deposit has been made. Additionally, prior to the issuance of any building permit or occupancy permit, as applicable, Permittee shall pay in full the project account balance and establish a remaining balance of at least twenty-five percent (25%) of the required initial deposit. **(P)**
7. Notice. Pursuant to California Government Code Section 66020, any protest filed in court relating to the imposition of fees, dedication, reservations, or other exactions to be imposed on the development project shall be filed within ninety (90) days after the date of the adoption of this Resolution. This provision serves as notice from the local agency to the Permittee that the ninety (90) day period in which the Permittee may file a protest has begun under California Government Code Section 66020(d)(1). **(P)**
8. Cost and Approval. Permittee shall fully complete and satisfy each and every condition set forth in this Resolution and any other condition applicable to the project to the sole satisfaction of the City. Additionally, Permittee shall be solely responsible and liable for the cost to satisfy each and every condition. Permittee shall pay all required fees and charges to City at the rate in effect at time of building permit issuance, or, the rate in effect when the fees and charges are due and paid in full to City. There is no vesting of any fees or charges with the adoption of this Resolution. **(P)**
9. Conditions. Each and every condition set forth in this Exhibit shall apply to the project and continue to apply to the project so long as the Permittee is operating the project under the permits and approvals in this Resolution. **(P)**
10. Compliance with Laws. The construction, use, and all related activity authorized under this Permit shall comply with all applicable local, state, and federal laws, rules, regulations, guidelines, requirements, and policies. **(CA/P)**
11. Previous Approvals. Permittee shall abide and continue to comply with all previous City approvals, permits, or requirements relating to the subject property, unless explicitly superseded or revised by this Permit. **(P)**
12. Indemnification. To the fullest extent permitted by law, Permittee 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 (i) City's approval of the project, 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, and (ii) Permittee's construction, operation, use, or related activity under this

Permit. 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. Permittee 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. Permittee 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. **(P/CA)**

13. Revocation, Suspension, Modification. This Permit may be suspended, revoked, or modified in accordance with Section XI-10-63.06 of the Milpitas Zoning Code. **(P)**
14. Severability. If any term, provision, or condition of this Permit is held to be illegal or unenforceable by the Court, such term, provision, or condition shall be severed and shall be inoperative, and the remainder of this Permit shall remain operative, binding, and fully enforceable. **(P)**
15. Permittee shall develop the approved project in conformance with the approved plans approved by the Planning Commission on (January 28, 2015), in accordance with these Conditions of Approval. Any deviation from the approved site plan, elevations, materials, colors, landscape plan, or other approved submittal shall require that, prior to the issuance of building permits, the Permittee 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 or City Council, as applicable, in accordance with the Milpitas Zoning Code. **(P)**
16. Compliance with Fire Department and CA Fire Code. The Project shall comply with the requirements of the Milpitas Fire Department and the CA Fire Code. Changes to the site plan and/or building(s) requires review and approval by the Fire Department. **(F)**
17. Written Response to Conditions. The Permittee shall provide a written response to the Conditions of Approval indicating how each condition has been addressed with the building permit application submittal. **(ALL)**

Conditional Use Permit

18. Responsible Alcohol Training. Permittee shall be solely responsible and liable 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 copy and inspection upon City request.
19. Liter and Graffiti Prevention. Permittee shall at all times maintain the subject property in a clean and orderly manner, free of litter and graffiti. All litter and graffiti shall be removed and abated on a daily basis.

20. Security Video Surveillance System. Prior to issuance of any occupancy, Permittee shall install video surveillance camera(s) to monitor and provide complete coverage of the subject property including parking areas. The detail and manufacturer's specification for a video surveillance security system shall be reviewed and approved by the Milpitas Police Department. Video recordings shall be retained for a minimum of thirty (30) days and subject to immediate review and copy by any law enforcement upon request.
21. No Loiter Signs. Permittee shall install "No Loitering" signs throughout the subject property to remind customers not to loiter and shall prohibit any drinking of alcohol on the property. Permittee shall be solely responsible to enforce the "No Loitering" and "No Drinking" on the subject property.

Site Development Permit

22. Parking Lot Re-pavement and Restriping. Permittee shall repair all damaged paved areas and re-surface the existing pavement prior to certificate of occupancy. The applicant shall submit a parking re-stripping plan and demonstrate conformance with parking development standards.
23. Prior to building permit issuance, Permittee shall revise landscaping plans to show and provide the following:
 - a. Install two additional twenty-four inch box Crape Myrtle trees in the planting area located at the southeast corner of the lot.
 - b. Replace the Podocarpus Chinese Yew tree with the Podocarpus Fern Pine tree type.
 - c. Replace the two Crape Myrtle street trees with twenty-four inch box Tristania Conferta trees.
 - d. Provide a mulch layer to all planting areas to conserve moisture, improve soil fertility, reduce weed growth and enhance the visual appeal of the area.
 - e. Incorporate a two and a half (2 ½) foot wide curbed planting strip along the east edge of the property that includes three new Crape Myrtle trees and a two and a half (2 ½) foot wide curbed planting strip along the building on the west elevation.

(P) = Planning
(B) = Building
(E) = Engineering
(F) = Fire Prevention
(CA) = City Attorney