

**RESOLUTION NO. 16-034**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS  
APPROVING CONDITIONAL USE PERMIT NO. UP16-0016 TO ALLOW THE  
OPERATION OF A CERTIFIED FARMERS' MARKET ON SUNDAYS FROM 6:00  
A.M. UNTIL 2:00 P.M. WITHIN THE GREAT MALL PARKING LOT (447 GREAT  
MALL DRIVE, MILPITAS, CA 95035)**

**WHEREAS**, on July 6, 2016, Ben Palazzolo of the Pacific Coast Farmers' Market Association submitted an application to operate a certified Farmers' Market within the Great Mall parking lot on Sundays from 6:00a.m. until 2:00p.m. located at 447 Great Mall Drive (the "Project Site"). The Project Site is within the General Commercial zoning district and bears the same General Plan land use designation (APN: 86-24-060); and

**WHEREAS**, on October 13, 2008, Chang B. Yang, of 2343 South Hughes Avenue in Fresno, submitted an application to operate a certified Farmers' Market at the same location as the Project Site on Sundays from 8:00 a.m. until 1:00 p.m. during the months of April until the first Sunday prior to Thanksgiving; and

**WHEREAS**, on January 28, 2009, the Planning Commission approved a Conditional Use Permit (No. UP08-0042) as requested by Mr. Yang, and a Farmers' Market operated at the Project Site from April 2009 until November 2009 when it moved to India Community Center; and

**WHEREAS**, the Pacific Coast Farmers' Market Association now wishes to return to the Project Site and in fact has secured Special Events Permits (Nos. P-MS16-0079 and P-MS16-0097) from the City of Milpitas to begin operation at that location while this Conditional Use Permit application was pending; and

**WHEREAS**, the Planning Division has 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 is categorically exempt from further environmental review pursuant to Categorically Exempt from further environmental review pursuant to 15304 (Minor Alterations to Land) of the Guidelines to the Implementation of CEQA; and

**WHEREAS**, on September 28, 2016, 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: Recitals**. The recitals set forth above are true and correct and incorporated herein by reference.

**SECTION 2: Record.** 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.

**SECTION 3: CEQA.** The project is Categorical Exempt from further environmental review under the California Environmental Quality Act (CEQA) pursuant to 15304 (Minor Alterations to Land) of the Guidelines to the Implementation of CEQA as it constitutes a minor alteration in the condition of land for a use which does not involve the removal of healthy, mature, scenic trees.

**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. UP16-0016:***

- a. *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 Farmers’ Market will serve the community, and, as designed, have no detrimental or injurious impacts on the property or improvements in the vicinity of the property. Rather, it will provide a community benefit by offering farm-fresh produce and goods to consumers and will give customers living in the neighborhood greater and easier access to purchases they would have previously had to travel out of the neighborhood to find. The operation of the Farmers’ Market will be in compliance with all local, state, and federal regulations.

- b. *The proposed use must be consistent with the Milpitas 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>2.a-I-10: Foster community pride and growth through beautification of existing and future development.</i></p>	<p>Consistent. The Farmers’ Market will foster community pride by enlivening an underutilized parking lot with a vibrant market that will bring the community together.</p>
<p><i>2.a-I-3: Encourage Economic pursuits which will strengthen and promote development through stability and balance.</i></p>	<p>Consistent. The Farmers’ Market will strengthen and promote development by offering residents a nearby source of fresh, healthy food and handmade goods. This is particularly welcome in a neighborhood not overly served by grocery stores.</p>

a. *The proposed use must be consistent with the Milpitas Zoning Ordinance.*

The proposed farmers market conforms to the Milpitas Zoning Ordinance in that the use is a conditionally permitted use in the C2 General Commercial Zoning district, per Milpitas Municipal Code Table XI-10-5.01-1.

b. *The proposed use must be consistent with the Transit Area Specific Plan.*

The table below outlines the project's consistency with the goals and implementation policies of the Transit Area Specific Plan.

**Table 2: Milpitas Transit Area Specific Plan Consistency**

<b>Policy</b>	<b>Consistency Finding</b>
<i>TASP Policy No. 4.77: Encourage the addition of new tenants to strengthen sales, and consolidates existing retail tenants.</i>	<b>Consistent.</b> The addition of the Farmer's Market as a new tenant will serve the high density residential developments in the Transit Area Specific Plan and may strengthen sales by drawing customers to the existing retailers at the Great Mall.

**SECTION 5:** The Planning Commission of the City of Milpitas hereby adopts resolution No. 16-034 approving Conditional Use Permit Amendment No. UP16-0016 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 September 28, 2016.

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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 September 28, 2016, and carried by the following roll call vote:

<b>COMMISSIONER</b>	<b>AYES</b>	<b>NOES</b>	<b>ABSENT</b>	<b>ABSTAIN</b>
Sudhir Mandal				
Lawrence Ciardella				
Hon Lien				
Rajeev Madnawat				
Ray Maglalang				
Zeya Mohsin (Alternate)				
Demetress Morris				
Gurdev Sandhu				

CONDITIONS OF APPROVAL  
CONDITIONAL USE PERMIT NO. UP16-0016

**General Conditions**

1. General Compliance. The applicant, including all successors in interest (collectively “Permittee”) shall comply with each and every condition set forth in this Permit. This Conditional Use Permit No. UP16-0016 (“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 Division.
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.
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
  - b. 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.
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:
  - 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.
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.

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 applicant may file a protest has begun under California Government Code Section 66020(d)(1).
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.
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.
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, and in conformance with the approved conditional use permit. **(CA/P)**
11. 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. Permittee shall enter into an indemnification agreement with the City that incorporates the provisions of this condition prior to commencing the use authorized in this Permit.

12. Revocation, Suspension, Modification. This Permit may be suspended, revoked, or modified in accordance with Section XI-10-63.06 of the Milpitas Zoning Code.
13. 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.
14. Permittee shall develop the approved project in conformance with the approved plans approved by the Planning Commission on September 28, 2016 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 Municipal Code. (P)
15. 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)

### **Project Specific Conditions**

16. Permittee is hereby authorized to operate a certified Farmers' Market only within that portion of the Great Mall parking lot shown on Attachment 1 hereto. Operating hours shall be Sundays from 6:00 a.m. until 2:00 p.m. (P)
17. There will be NO vehicles allowed to drive around within the market area during hours of operation. The only vehicles allowed within the market area will be the vendors' vehicles, during set up (from 6:00-8:00 a.m.) and after the market is closed (from 1:00-2:00 p.m.). (P)
18. Permittee will provide trash bins throughout the market area during hours of operation to ensure the area stays free of trash and debris. (P)
19. In accordance with the approved Traffic Control Plan, the Farmers' Market operator shall install and remove Traffic Control Elements for each event. Farmers' Market staff shall provide a crossing guard to guide pedestrians from parking areas to the market area. Such Traffic Control Elements shall be in place by 7:00 a.m. each event day. Traffic control Elements shall be removed by 2:00 p.m. each event day. (P)
20. No music, performances or special event activities (i.e., cooking show, recipe contests, face painters, etc.) will be allowed within 200 feet of any residential property line unless specifically approved by the Planning Director or designee. (P)

21. All foods must be produced, prepared, packaged, stored, transported and marketed in compliance with County Environmental Health Standards and applicable law. Permittee shall maintain in good standing with all necessary health permit for the operations of the Farmers' Market and shall be responsible for requiring all vendors to be in possession of necessary health permits for all products sold. (P)
22. Permittee shall obtain a master business license with the City of Milpitas for participating farmers and other vendors. (P)
23. An operational annual permit (calendar cycle) shall be obtained from the Fire Department for the operations of an assembly (the gathering together of 50 or more persons for such purposes as entertainment, drinking or dining). Fire Code, Section 105.6.34 (F)
24. Applicable codes shall be 2013 California Building Code (CBC), California Mechanical Code (CMC), California Electrical Code (CEC), California Plumbing Code (CPC), Green Building Standards Code (CalGreen), California Energy Code (CEnC) and 2014 Milpitas Municipal Code (MMC). (B)
25. Min. 4' clear aisle width between barricade or any obstruction for access or exit path shall be maintained. (B)
26. Location of stalls, tables, booths and other equipment shall not obstruct accessible parking and accessible path of travel from accessible parking stalls to the farmers market. (B)
27. People with disabilities accessible parking shall be provided as per 2013 CBC sec. 11B-208.1 Accessible parking spaces shall be dispersed and located closest to the farmers market. One in every six accessible parking spaces, but not less than one accessible parking space shall be Van accessible as per 2013 CBC sec11B-208.2.4. (B)
28. Parking access aisle shall adjoin an accessible route to the farmers market as per 2013 CBC sec.11B-502.3. (B)
29. If new electrical equipment is installed, such as temporary generator, electrical permits shall be obtained as per 2014 MMC sec.II-1-17.01 by a California licensed contractor or property owner. Fees for inspection during business hours will be \$199.88 and after hours will be \$677.18. (B)
30. Serving food at the farmers market may require approval from Health Department. Applicant shall check with the Santa Clara County Department of Public Health at (408) 918-3400. (B)
31. Applicant is advised that, per MMC V-200-7.61, Right of Individual to Dispose of Recyclable Waste Material, that individual vendors, or the Permittee, may keep or "back haul" non-putrescible recyclable materials. (E)

(P): Planning  
(E): Engineering  
(F): Fire  
(B): Building