

RESOLUTION NO.

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL APPROVING A CONDITIONAL USE PERMIT TO ALLOW FOR A WINE BAR, RESTURANT WITH ANCILARY BARS, AND LIVE ENTERTAINMENT/AMPLIFIED SOUND AT 17395 MONTEREY ROAD (APN: 767-07-047)

WHEREAS, such request was considered by the Planning Commission at their regular meeting of September 27, 2016 at which time the Planning Commission approved application UP2016-0014: Monterey - McCranie; and

WHEREAS, testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

NOW, THEREFORE, THE MORGAN HILL PLANNING COMMISSION DOES RESOLVE AS FOLLOWS:

SECTION 1. The approved use is consistent with the Zoning Ordinance and the General Plan.

SECTION 2. In 2009, the Morgan Hill City Council adopted a resolution certifying the Final Environmental Impact Report (FEIR) for the Downtown Specific Plan. In accordance with Section 15164 of the State Guidelines for Implementation of California Environmental Quality Act (CEQA), in August the City of Morgan Hill completed an environmental assessment which concluded that the project would not result in any new environmental impacts that were not previously disclosed in the FEIR for the Downtown Specific Plan, nor would it result in a substantial increase in the magnitude of any significant environmental impacts previously identified.

SECTION 3. The approved conditional use has been found consistent with the criteria for use permit approval contained in Section 18.54.050 of the Zoning Code. The basis and the findings are set forth in the staff report of the Planning Commission Meeting of September 27, 2016, which findings were duly considered by the Commission and are hereby adopted.

SECTION 4. The use shall be expressly conditioned on conformance to conditions incorporated herein and as attached as Exhibit "A".

SECTION 5 The approved project shall be conducted in a manner consistent with the proposed operations explained within the staff report of the Planning Commission Meeting of September 27, 2016 and Site Plans titled 2nd & Monterey, and stamped date received September 13, 2016 and by this reference incorporated herein.

SECTION 6. Notice is hereby given that, pursuant to the Mitigation Fee Act, the City of Morgan Hill charges certain fees (as such term is defined in Government Code Section 66000) in connection with approval of your use for the purpose of defraying all or a portion of the cost of public facilities related to your development project (Mitigation Fee Act Fees). These fees do not include fees for processing applications for governmental regulatory actions or approvals, or

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fees collected (a) under development agreements, (b) pursuant to agreements with the Morgan Hill Redevelopment Agency or (c) as a part of your application for development allocations under the City's Residential Development Control System. The Mitigation Fee Act Fees applying to your project are listed in the schedule of fees provide. Notice is also hereby given that you have the opportunity to protest the imposition of the Mitigation Fee Act Fees within 90 days of the approval of the approval or conditional approval of your development project and that the 90-day approval period in which you may protest has begun. This right to protest does not apply to voluntary Residential Development Control System fees.

PASSED AND ADOPTED THIS 27th DAY OF SEPTEMBER 2016, AT A REGULAR MEETING OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSTAIN: COMMISSIONERS:

ABSENT: COMMISSIONERS:

ATTEST:

APPROVED:

Jenna Luna , Deputy City Clerk

Wayne Tanda, Chair

EXHIBIT "A"

CONDITIONS OF APPROVAL

APPLICATION: UP2016-0014: Monterey-McCranie

THE FOLLOWING CONDITIONS SHALL BE MET PRIOR TO THE ISSUANCE OF BUILDING AND/OR COMMENCEMENT OF USE UNLESS OTHERWISE SPECIFIED IN THE CONDITIONS. APPROVAL REQUIREMENTS ARE NOT LIMITED TO THE ITEMS LISTED BELOW.

PLANNING DIVISION

1. This Conditional Use Permit is for a wine bar that functions in conjunction with an art gallery on the 1st and 2nd floors of the building, and a restaurant with two bar and lounge areas on the third floor and third floor roof deck. The hours of operation for the wine bar are 10:00 am to 9:00 pm daily, and for special events may stay open until 11:00pm. The hours for the restaurant are from 11:00 am - 10:00 pm with the bar and lounge areas closing by 1:00 am.
2. The live entertainment and amplified sound shall comply with the Morgan Hill Municipal Code Chapter 8.28 (Noise) which limits live entertainment/amplified sound, radios, musical instruments and similar devices to no louder than is necessary for convenient hearing for the persons listening. Music played between the hours of 11:00 pm and 7:00 shall not disturb anyone beyond 50 feet of the building or structure where such device is located. The project shall comply with Section 18.48.075 of the Zoning Ordinance which states that noise shall not exceed 70 db(A).
3. Responsible Beverage Service Training. The owner or designee shall require responsible beverage service training for the operator and employees offered by the State Department of Alcoholic Beverage Control. Demonstration of completion of such training shall be made available to the City upon request.
4. The Conditional Use Permit approval granted under this Resolution shall remain in effect for 24 months to **September 27, 2018**. Failure to commence the use within this term shall result in termination of approval unless an extension of time is granted prior to the expiration date. **(MHMC 18.54.070 A)**
5. In accordance with Section 18.54.090 of the Municipal Code, the Community Development Department may conduct an annual review of the approved use for compliance with specified conditions. The Department may initiate corrective action as specified in the aforementioned Code Section if necessary to ensure compliance with said conditions. **(MHMC 18.54.090)**

OTHER CONDITIONS

6. Defense and indemnity. Applicant agrees to defend and indemnify and hold City, its officers, agents, employees, officials and representatives free and harmless from and against any and all claims, losses, damages, injuries, costs and liabilities arising from any suit for damages or for equitable or injunctive relief which is filed against City by reason of its approval of this conditional use permit. In addition, applicant shall pay all pre-tender litigation costs incurred on behalf of the City including City's attorney's fees and all other litigation costs and expenses, including expert witnesses, required to defend against any lawsuit brought as a result of City's approval or approvals, but shall not be

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required to pay any litigation from the City. However, applicant shall continue to pay reasonable internal City administrative costs, including but not limited to staff time and expense spent on the litigation, after tender is accepted. The undersigned hereby represents that they are fully empowered by the applicant as their agent to agree to provide the indemnification, defense and hold harmless obligations, and the signature below represents the unconditional agreement by applicant to be bound by such conditions.

- a. Submit two (2) signed copies of the approved resolution to the Planning Division prior to the commencement of the use or issuance of building permits.
- b. Prior to occupancy, an emergency evacuation plan shall be developed by the restaurant and approved by the Fire Department. All employees shall be trained on the implementation of the emergency evacuation plans.

PUBLIC WORK DEPARTMENT

7. An occupancy permit will not be issued until impact fees, if any, have been paid.
8. Impact fees will be calculated upon submittal of accurate floor plans showing existing and proposed usages.

POLICE DEPARTMENT

9. The property owner/designee shall obtain approval of a security camera plan from the Police Department.
10. The property owner/designee shall provide the Police Department with the ability to view live feed and review recorded footage if deemed necessary by the Police Department.
11. The property owner/designee shall obtain approval of a venue safety and security plan from the Police Department.
12. The property owner or designee shall obtain a live entertainment permit processed through the Police Department for live performances at the venue.
13. The applicant shall comply with applicable provisions of the City's building security ordinance. Exterior lighting shall comply with criteria specified in the Design Review Ordinance. **(MHMC 18.74.370)**