



MEETING DATE: 10-20-08

AGENDA ITEM: 5

COUNCIL AGENDA REPORT

DATE: October 10, 2008
TO: MAYOR AND TOWN COUNCIL
FROM: ORRY P. KORB, TOWN ATTORNEY
SUBJECT: RESOLUTION GRANTING APPROVAL TO MODIFY AN EXISTING CONDITIONAL USE PERMIT TO ALLOW FULL LIQUOR SERVICE WITH MODIFIED HOURS OF OPERATION.

RECOMMENDATION:

Adopt resolution granting approval to modify an existing conditional use permit to modify existing conditional use permit to allow full liquor service with modified hours of operation.

DISCUSSION:

On October 6, 2008, Council considered and voted to grant approval to modify an existing conditional use permit to allow full liquor service with modified hours of operation. The attached resolution finalizes that decision.

Attachment: Proposed Resolution

PREPARED BY: ORRY P. KORB, TOWN ATTORNEY

OPK:LMB/wp [N:\ATY\Reports\Report MSD Restaurant.wpd]

Reviewed by: [Signature] Town Manager [Signature] Assistant Town Manager [Signature] Clerk
Finance Community Development

Rev: 10/15/08 10:35 am
Reformatted: 7/19/9

**RESOLUTION**

**RESOLUTION GRANTING A REQUEST TO MODIFY AN EXISTING CONDITIONAL USE PERMIT TO ALLOW FULL LIQUOR SERVICE WITH MODIFIED HOURS OF OPERATION.**

**APN: 529-04-040  
CONDITIONAL USE PERMIT APPLICATION: U-08-010  
PROPERTY LOCATION: 330 NORTH SANTA CRUZ AVENUE  
PROPERTY OWNER: MELDIMAR LLC  
APPLICANT: M.S.D. RESTAURANT CO. LLC**

**WHEREAS:**

A. This matter came before the Town Council for public hearing on October 6, 2008, and was regularly noticed in conformance with State and Town law.

B. Council received testimony and documentary evidence from the applicant and all interested persons who wished to testify or submit documents. Council considered all testimony and materials submitted, including the record of the Planning Commission proceedings and the packet of material contained in the Council Agenda Report dated September 26, 2008, along with any and all subsequent reports and materials prepared concerning this application.

C. The applicant seeks to modify an existing Conditional Use Permit (CUP) to allow full liquor service as well as extend the hours of operation. Currently, the applicant does not have full liquor service and the hours of operation end at 10:00 p.m. However, the applicant is requesting to allow full liquor service and extend the operating hours to 11:00 p.m. Sunday thru Thursday and to 1:00 a.m. to midnight Friday and Saturday.

D. On September 10, 2008, the Planning Commission considered the request to modify the existing CUP to allow the applicant to have full liquor service and to extend the operating hours. The Commission recommended approval of the request finding that the applicant is demonstrating a community benefit by providing a late night dining opportunity.

E. The Town's Alcohol Policy requires any change in the service of alcoholic

beverages to be approved by Council. Council reviews CUP requests for a change in alcohol service on a case-by-case basis to ensure that the request is appropriate for the specific restaurant and its location.

F. Council finds as follows:

1. Pursuant to Town Code section 29.20.190, the requested modification of an existing CUP is desirable to the public convenience; will not impair the integrity and character of the zone; would not be detrimental to public health, safety or general welfare; and is in harmony with the various elements or objectives of the General Plan and the purposes of the Town Code. Evidence in the record demonstrates that the proposed change in the service of alcohol (1) will not adversely impact adjacent residential neighborhoods, (2) is not precluded by a history of complaints and non-compliance with local ordinances or the Alcoholic Beverage Policy, and (3) the applicant has demonstrated a clear benefit to the community. This finding is based on the evidence presented in the Council Agenda Report dated September 26, 2008, and incorporates the findings made by the Planning Commission on September 10, 2008, regarding this application.

2. The project is categorically exempt from environmental review pursuant to Section 15301 of the State Environmental Guidelines as adopted by the Town.

3. The proposed use is consistent with the Redevelopment Plan for the Central Los Gatos Redevelopment Project Area (section IV.B), as evidenced by the staff report prepared for the public hearing on September 26, 2008.

**RESOLVED:**

1. The application for modification of CUP application U-08-010 is granted. The Conditions of Approval attached hereto as Exhibit A are hereby adopted as the Conditions of Approval for modification of this permit.

2. The decision constitutes a final administrative decision pursuant to Code of Civil

Procedure section 1094.6 as adopted by section 1.10.085 of the Town Code of the Town of Los Gatos. Any application for judicial relief from this decision must be sought within the time limits and pursuant to the procedures established by Code of Civil Procedure section 1094.6, or such shorter time as required by State and Federal Law.

**PASSED AND ADOPTED** at a regular meeting of the Town Council of the Town of Los Gatos, California on the \_\_\_\_\_ day of October 2008, by the following vote.

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

\_\_\_\_\_  
MAYOR OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

ATTEST:

\_\_\_\_\_  
CLERK ADMINISTRATOR  
TOWN OF LOS GATOS, CALIFORNIA

330 North Santa Cruz / U-08-010  
October 6, 2008

**RECOMMENDED CONDITIONS OF APPROVAL FOR:**

**330 North Santa Cruz Avenue**  
**Conditional Use Permit U-08-010**

**Requesting approval to modify a conditional use permit to allow full liquor service with modified hours of operation on a property zoned C-2. APN: 529-04-040**

**PROPERTY OWNER: Meldimar LLC**  
**APPLICANT: M.S.D. Restaurant Co. LLC**

**TO THE SATISFACTION OF THE PLANNING DIRECTOR:**  
(Planning Section)

1. **APPROVAL:** This application shall be completed in accordance with all of the conditions of approval listed below and in substantial compliance with the plans approved and noted as received by the Town on June 23, 2008. Any changes or modifications to the approved plans and/or business operation shall be approved by the Community Development Director or the Planning Commission, depending on the scope of the changes.
2. **EXPIRATION OF APPROVAL:** The Conditional Use Permit will expire two years from the date of approval unless it is used before expiration. Section 29.20.335 defines what constitutes the use of an approval granted under the Zoning Ordinance.
3. **HOURS OF OPERATION:** Hours of operation shall not exceed 10:00 am to 11:00 pm Sunday thru Thursday and 10:00 am to 12:00 am Friday and Saturday.
4. **SEATING.** A maximum of thirty two (32) seats are allowed inclusive of indoor and outdoor dining areas. A maximum of eight seats may be placed in the outdoor dining area.
5. **OUTDOOR DINING AREA.** The outdoor dining area shall be maintained and kept litter free.
6. **OUTDOOR DINING BARRIER.** The barrier around the outdoor dining area shall remain, to provide clear delineation of the eating area, and to provide adequate separation from the adjacent public areas. The final design of the barrier shall be approved by the Director of Community Development, Consulting Architect and the Police Chief, prior to issuance of any building permits.
7. **ALCOHOL SERVICE:** The service of alcoholic beverages is permitted only with meals. A meal is defined as a combination of food items selected from a menu (breakfast, brunch, lunch, or dinner). Appetizers such as popcorn, nachos, pretzels, potato skins, relish trays, etc. (hot or cold) are not meals.
8. **OUTDOOR SPEAKERS:** The use of the outdoor speakers shall be limited to the hours before 9:00 pm daily.
9. **TAKE OUT.** Take out food shall be served in recycled material containers.
10. **UTENSILS.** All beverages and food served on site shall be served on reusable materials.
11. **LIVE ENTERTAINMENT.** No live entertainment shall be provided unless the

- applicant receives future approval of live entertainment.
12. NEIGHBORHOOD MEETING AND COMPLAINTS. The applicant shall meet with neighbors at least twice a year for the first year, and as necessary thereafter to address any concerns, including noise, that might arise out of the applicant's operations. The applicant shall give written invitations to the neighborhood meetings to all residents located within a 300 foot radius of the property. Within 15 days of the date of approval by the Town Council, the applicant shall provide all residents located within a 300 foot radius of the property with a telephone number for receipt of complaints about the applicant's operations. The telephone number shall be maintained 24 hours a day, seven days a week. The applicant must respond to all complaints within 72 hours. The applicant shall maintain a record of all calls received and all responses thereto, stating, if known, the name, telephone number and address of the complaining party, the nature of the complaint, the date and time received, and the response thereto. The record must be available for review by Town staff during normal working hours.
  13. ONE-YEAR REVIEW. Town staff shall review the Conditional Use Permit within one year from approval to determine if there are any problems associated with the Permit and report their findings to the Planning Commission. The Planning Commission may direct that a public hearing be held to review the permit as specified in Section 29.20.310 of the Town Code.
  14. LAPSE FOR DISCONTINUANCE. If the activity for which the Conditional Use Permit has been granted is discontinued for a period of one (1) year, the approval lapses pursuant to Section 29.20.340 of the Zoning Ordinance.
  15. TOWN INDEMNITY: Applicants are notified that Town Code Section 1.10.115 requires that any applicant who receives a permit or entitlement from the Town shall defend, indemnify, and hold harmless the Town and its officials in any action brought by a third party to overturn, set aside, or void the permit or entitlement. This requirement is a condition of approval of all such permits and entitlements whether or not expressly set forth in the approval.

TO THE SATISFACTION OF THE CHIEF OF POLICE:

16. UNIFORMED SECURITY: Uniformed privately provided security guards may be required in or around the premises by the Chief of Police if alcohol related problems recur that are not resolved by the licensed owner.
17. CONSULTATION AND TRAINING: At the discretion of the Chief of Police, periodic meetings will be conducted with representatives from the Police Department for on-going employee training on alcoholic beverage service to the general public.
18. TRAINING MANUAL: The restaurant operator shall use an employee training manual that addresses alcoholic beverage service consistent with the standards of the California Restaurant Association.
19. DESIGNATED DRIVER PROGRAM: The restaurant operator shall actively promote a designated driver program such as complimentary non-alcoholic beverages for designated drivers.

330 North Santa Cruz / U-08-010  
October 6, 2008

20. POSTING OF TAXICAB TELEPHONE NUMBERS: Taxicab telephone numbers shall be posted in a visible location.

N:\DEV\CONDITNS\2008\330 NSC.doc  
Oct 6, 2008