

RESOLUTION NO. 22-07

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL APPROVING A CONDITIONAL USE PERMIT TO ALLOW THE FULL SERVICE OF ALCOHOLIC BEVERAGES IN CONJUNCTION WITH A RESTAURANT AT 90 E. THIRD ST IN THE DOWNTOWN MIXED-USE/GROUND FLOOR OVERLAY DISTRICT (APN 726-13-058).

WHEREAS, on February 1, 2022, Frank Leal submitted an application for a Conditional Use Permit to allow the service of a full range of alcoholic beverages in conjunction with a new restaurant in an existing building. The restaurant proposes alcohol beverage service beyond beer and wine; and

WHEREAS, such request was considered by the Planning Commission at its regular meeting on April 26, 2022; and

WHEREAS, pursuant to the Morgan Hill Municipal Code Section 18.136.050.A, the Director of Development Services determined the project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 Existing Facilities; 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 Project approved pursuant hereto is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 of Guidelines for CEQA as it consists of the operation of a restaurant within an existing building involving a negligible expansion of use.

SECTION 2. The approved conditional use has been found consistent with the criteria for Conditional Use Permit approval contained in Section 18.108.030 of the Zoning Code and hereby adopted:

a. **The proposed use is allowed in the applicable district.**

The zoning designation for the site is Downtown Mixed Use (MU-D) with a Ground Floor (GF) Overlay District. The permitted land uses in the MU-D zoning district are identified in Figure 8 in the Downtown Specific Plan. A restaurant without a bar (beer and wine only) is a permitted use. A restaurant that serves more than beer and wine requires a Conditional Use Permit.

- b. **The proposed use is consistent with the general plan, zoning code, and any applicable specific plan or area plan adopted by the city council.**

The proposed use is consistent with the general plan, zoning code, and Morgan Hill Downtown Specific Plan, as restaurant uses are a permitted use. A restaurant that serves more than beer and wine requires the issuance of a Conditional Use Permit.

- c. **The site is suitable and adequate for the proposed use.**

The 1.6-acre project site at the southeast corner of Depot Street and N. Third Street and 4,000-foot single-story commercial tenant space is suitable and adequate for the proposed restaurant.

- d. **The location, size, design, and operating characteristics of the proposed use will be compatible with the existing and future land uses in the vicinity of the property.**

The proposed restaurant is in Downtown Morgan Hill, which is the primary district for dining and entertainment and will add to the variety of available dining options.

- e. **The proposed use will not be detrimental to the public health, safety, and welfare.**

As conditioned and as regulated by state and local laws, the project's operations would not adversely affect peace, health, safety, morals, or welfare of persons residing or working in surrounding areas. The project would not impair the utility or value of the property of other persons located in the vicinity of the site and will not be detrimental to the health, safety, or general welfare. Implementation of the project would include being compliant with building codes.

- f. **The proposed use would not have a substantial adverse effect in traffic circulation and on the planned capacity of the street system.**

Development of the project is consistent with the General Plan land use and zoning designations, so the associated effects on local transportation facilities have already been anticipated by the city within the General Plan Circulation Element.

- g. **The proposed use is properly located within the city and adequately served by existing or planned services and infrastructure.**

The proposed use is located within the city limits and utilities, such as gas, water, sewer, and electricity, and public services are available at the site and are adequately sized to support the use at the proposed location.

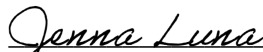
SECTION 3. The California Department of Alcohol Beverage Control (ABC) has stated that the subject census tract has an overconcentration of liquor licenses, and a determination of Public Convenience or necessity finding is required from the ABC prior to the issuance of the Type 47 license. While this finding is determined by ABC alone, the Planning Commission has reviewed the permit request and determined that the allowance for alcohol sales is typical of most restaurants in the Downtown that operate with a Type 47 license and will be consistent with the City's General Plan Goals by providing thriving restaurants that meet local resident's needs and attract tourists.

SECTION 4. The Planning Commission hereby approves the conditional use subject to the conditions set forth in Exhibit A, attached hereto and incorporated herein by this reference. Any expansion, intensification, or changes to the uses approved under this Conditional Use Permit shall be permitted only upon amendment of this Conditional Use Permit or approval of a separate Conditional Use Permit application.

PASSED AND ADOPTED THIS 26TH DAY OF APRIL 2022, AT A REGULAR MEETING OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:


AYES:	COMMISSIONERS:	KUMAR, GONZALEZ-ESCOTO, DOWNEY, TANDA, MUELLER, HABIB, LAKE
NOES:	COMMISSIONERS:	NONE
ABSTAIN:	COMMISSIONERS:	NONE
ABSENT:	COMMISSIONERS:	NONE

ATTEST:



JENNA LUNA, Deputy City Clerk


APPROVED:


Malisha Kumar (Apr 27, 2022 15:15 PDT)

MALISHA KUMAR, Chair

AFFIDAVIT

I, Frank Leal, applicant, hereby agree to accept and abide by the terms and conditions specified in this resolution.


Frank Leal (Apr 27, 2022 09:53 PDT), Applicant

Date: Apr 27, 2022

EXHIBIT "A"

STANDARD CONDITIONS

APPLICATION: UP2022-0001: E. THIRD – MOHI FARMS, INC.

THE FOLLOWING APPROVAL REQUIREMENTS AND ANY SPECIAL CONDITIONS SHALL BE APPLIED THROUGH THE DEVELOPMENT APPROVAL PROCESS.

Legend

MHMC= Morgan Hill Municipal Code
MHARH= Morgan Hill Architectural Review Handbook
CMH= City of Morgan Hill
CFC= California Fire Code

I. PROJECT DESCRIPTION

The project includes a Conditional Use Permit to allow the service of a full range of alcoholic beverages in conjunction with a new restaurant in an existing building. The restaurant proposes alcohol beverage service beyond beer and wine.

II. PROJECT CONDITIONS OF APPROVAL

This Conditional Use Permit approval is limited to allowing the on-site general sale of alcoholic beverages at a “bona fide eating place”. The restaurant will be limited to a Type 47 liquor license from the California Department of Alcohol Beverage Control (ABC). The business shall operate and maintain the licensed premises as a bona fide eating place, shall maintain suitable kitchen facilities, and shall make actual and substantial sales of meals for consumption on the premises.

It shall be the responsibility of the Owner to ensure that any changes or modifications to the Project are following the original City Conditions of Approval of the Project, which are hereby incorporated herein as set forth in full.

DEFENSE AND INDEMNITY

A. As part of, and in connection, with this application to the City of Morgan Hill, Applicant agrees to defend, indemnify, and hold harmless the City of Morgan Hill, its officers, agents, employees, officials and representatives (Indemnitees) from and against any and all claims, actions, or proceedings arising from any suit for damages or for equitable or injunctive relief which is filed against City to attack, set aside, void or annul its approval of this application or any related decision, or the adoption of any environmental documents which relates to said approval. The City shall promptly notify the Applicant of any such claim, action or proceeding and the City shall cooperate fully in the defense thereof. In the event that Applicant is required to defend Indemnitees in connection with the proceeding, Indemnitees shall retain the right to approve (a) the counsel to so defend

Indemnitees; (b) all significant decisions concerning the manner in which the defense is conducted; and (c) any and all settlements, which approval shall not be unreasonably withheld. This indemnification shall include, but is not limited to, (a) 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; (b) reasonable internal City administrative costs, including but not limited to staff time and expense spent on the litigation, after tender is accepted; and (c) all damages, costs, expenses, attorney fees or expert witness fees that may be awarded to the prevailing party arising out of or in connection with the approval of the application or related decision. City may, in its sole discretion, participate in the defense of such action; but such participation shall not relieve Applicant of its obligations under this condition. The undersigned hereby represents that they are the Applicant or 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.

TIME LIMITS

- A. **Term:** The Conditional Use Permit approval granted pursuant to this Resolution shall remain in effect for two years to April 26, 2024. Failure to obtain building permits within this term shall result in termination of approval unless an extension of time is granted with a showing of just cause prior to expiration date. **(MHMC 18.108.040)**

GENERAL

- A. **Mitigation Fee Act:** 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 this development project for the purpose of defraying all or a portion of the cost of public facilities related to this development project (Mitigation Fee Act Fees). These fees do not include fees for processing applications for governmental regulatory actions or approvals, fees collected as part of development agreements, or as a part of the application for the City's Residential Development Control System. The Mitigation Fee Act Fees applying to this project are listed in the schedule of fees to be provided at building permit stage. Notice is also hereby given that the Developer has an opportunity to protest the imposition of the Mitigation Fee Act Fees within 90 days of the approval or conditional approval of this development project and that the 90-day protest period has begun.
- B. **Signed copies of Approval Certificate:** Submit two (2) signed copies of Approval Resolution No. 22-02 to the Planning Division prior to issuance of a building permit.

ENGINEERING DIVISION

- A. Public Works Impact fees may be required for this project and must be paid prior to the issuance of Building Permit.

BUILDING DIVISION

- A. The owner or designee shall follow all applicable building codes.

POLICE DEPARTMENT

- A. Entertainment as defined in Section 5.28 of the Morgan Hill Municipal Code may not be conducted unless an Entertainment Permit is approved by the Police Department.

Resolution No. 22-07 UP2022-0001 Third-Mohi Farms Inc

Final Audit Report

2022-04-27

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