

Attachment 2
Resolution No. 2024-__

**A RESOLUTION OF THE CITY OF KERMAN PLANNING COMMISSION APPROVING A MODIFICATION TO
CONDITIONAL USE PERMIT 2023-06, TO ALLOW FOR AN INCREASE OF OUTDOOR DINING SEATING FOR
CHIPOTLE MEXICAN GRILL, INC. LOCATED AT 15215 WEST WHITESBRIDGE ROAD IN KERMAN, CA
ZONED CG (GENERAL COMMERCIAL) WITH A GC (GENERAL COMMERCIAL) GENERAL PLAN LAND USE
DESIGNATION (APN: 023-060-20S)**

WHEREAS, the Planning Commission adopted Resolution 23-15, approving Conditional Use Permit 2023-06 allowing for the operation of a drive-through facility and a 423 sq. ft. outdoor dining area with twelve seats for Chipotle Mexican Grill, Inc.; and

WHEREAS, the Planning Commission considered a request for a modification to Conditional Use Permit 2023-06 filed by Associated Design and Engineering (applicant) on behalf of Sunnyside Investments (property owner) to allow for an increase of outdoor dining seating for Chipotle Mexican Grill, Inc. located at 15215 West Whitesbridge Road, in Kerman, CA (APN: 023-060-20S); and

WHEREAS, a public notice was circulated to adjacent properties within a 300-foot radius of the project site and published in the local newspaper at least 10 days prior to the meeting as required by law; and

WHEREAS, a written report was prepared by staff which included a recommendation for approval of a modification to Conditional Use Permit 2023-06 and was made available for public review at least 72 hours prior to the public hearing; and

WHEREAS, the project was assessed under the California Environmental Quality Act (CEQA); and

WHEREAS, the Planning Commission, after hearing public testimony and deliberating, now desires to approve a modification of Conditional Use Permit 2023-06 subject to findings and conditions of approval, and adopt a finding of a Class 3 Categorical Exemption (New Construction or Conversion of small Structures) pursuant to CEQA Guidelines Section 15303.

NOW, THEREFORE, BE IT RESOLVED by the City of Kerman Planning Commission as follows:

- 1) Recitals: The above recitals are true and correct and are incorporated herein:
- 2) CEQA: Staff performed a preliminary environmental assessment of this Project under the California Environmental Quality Act (CEQA) and has determined that it falls within the Class 3 Categorical Exemption (New Construction or Conversion of Small Structures) outlined in CEQA Guidelines Section 15303. None of the exceptions to the Class 3 Categorical Exemption that are listed in Section 15300.2 of the CEQA Guidelines would apply. No further environmental review is required.
- 3) Conditional Use Permit:
 - A. That the proposed establishment, maintenance, and operations of the use applied for will not be detrimental to the public health, safety, and welfare of the persons residing or working in the

neighborhood of such proposed use, or whether it will be injurious or detrimental to property and improvements in the neighborhood or the City.

Finding A (1). The project will not be detrimental to public health, safety, or welfare. It is located in a designated general commercial area with hours of operation and conditions of approval which will minimize any potential negative impacts on adjacent land uses. The conditions of approval limit types of uses that may be objectionable or detrimental to other permitted uses or adverse to the public interest health, safety, convenience, or welfare of the City.

- B. That the proposed use is consistent with the Kerman General Plan.

Finding B (1). As seen in CUP 2023-05 and CUP 2023-06 outdoor dining areas are permitted uses subject to a conditional use permit in the CG (General Commercial) zone district, which is a consistent zone with the General Plan GC (General Commercial) land use designation. Therefore an increase of outdoor dining seating is in keeping with the approvals set forth in CUP 2023-05 and CUP 2023-06. The Project is consistent with the General Plan, including General Plan objectives ED-1.1, and CIRC-4.2.

Finding B (2). The Project is located along a general commercial corridor suitable for many retail, business professional, service commercial, and other similar activities and uses.

Finding B (3). The conditions of approval preserve the integrity and character of the zone district and ensure compliance with the General Plan and Zoning Ordinance.

- C. That the environmental document is prepared as per the California Environmental Quality Act.

Finding C (1). The Project falls within Categorical Exemption per CEQA Guidelines Section 15303 (New Construction or Conversion of Small Structures) as the Project as a whole meets the required criteria described in said section. There are no Project-specific significant effects on the Project or the site that would require additional environmental review.

- D. That the site for the proposed use is adequate in size, shape, and location to accommodate the use as it relates to the district for which the use is proposed.

Finding D (1). The location of the Project is within the CG - General Commercial zone district which is located along a commercial corridor suited for retail, office, commercial services, and other similar activities and uses along the Whitesbridge Road corridor on an undeveloped parcel of land. The Project's design and operations are appropriate to meet all applicable development and operational standards of the Zoning Ordinance.

4. Conditions of Approval: Given the foregoing, the Planning Commission approves a Conditional Use Permit 2023-06 MOD, subject to the conditions of approval attached herein as **Exhibit "A"**.
5. Effective Date: This Resolution shall take effect immediately.

I HEREBY CERTIFY that the foregoing Resolution was approved at a regular meeting of the Planning Commission of the City of Kerman on the 12th day of February 2024, and was fully adopted at said meeting by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

The foregoing resolution is hereby approved.

Scott Bishop
Chairperson

ATTEST:

Jesus R. Orozco
Planning Commission Secretary

Exhibit "A"

Conditions of Approval Sunnyside Investments – CUP 2023-06 MOD February 12, 2024

Notice To Applicant

Pursuant to Government Codes Section 66020(d)(1) and/or Section 66499.37, any protest related to the imposition of fees, dedications, reservations, or exactions for this project or any proceedings undertaken regarding the City's actions taken or determinations made regarding the project, including but not limited to the validity of conditions of approval must occur within ninety (90) calendar days after the date of this decision. This notice does not apply to those fees, dedications, reservations, or exactions that were previously imposed and duly noticed; or where no notice was previously required under the provisions of Government Code Section 66020(d)(1) in effect before January 1, 1997.

Important: Please Read Carefully

This project is subject to a variety of discretionary conditions of approval. These include conditions based on adopted City plans and policies; those determined through conditional use permit review and environmental assessment essential to mitigate adverse effects on the environment including the health, safety, and welfare of the community; and recommended conditions for development that are not essential to health, safety, and welfare, but would, on the whole, enhance the project and its relationship to the neighborhood and environment.

Discretionary conditions of approval may be appealed. All code requirements, however, are mandatory and may only be modified by variance, provided the findings can be made.

All discretionary conditions of approval for CUP 2023-06 MOD will ultimately be deemed mandatory unless appealed by the applicant to the City Council within ten (10) working days after the decision by the Planning Commission. In the event you wish to appeal the Planning Commission's decision or discretionary conditions of approval for this entitlement, you may do so by filing a written appeal with the City Clerk. The appeal shall state the grounds for the appeal and wherein the Commission failed to conform to the requirements of the zoning ordinance. This should include identification of the decision or action appealed (including its identification number) and specific reasons why you believe the decision or action appealed should not be upheld, and the identity of the appellant.

Approval of this conditional use permit shall be considered null and void in the event of failure by the applicant and/or the authorized representative, architect, engineer, or designer to disclose and delineate all facts and information relating to the subject property and the proposed development.

Approval of this conditional use permit may become null and void in the event that development is not completed in accordance with all the conditions and requirements imposed on this use permit, the zoning ordinance, and all City standards and specifications. This use permit and site plan review is granted, and the conditions imposed, are based upon the application submittal provided by the applicant, including any operational statement. The application is material to the issuance of this use permit. Unless the conditions of approval specifically require an operation inconsistent with the application, a new or revised use permit is required if the operation of this establishment changes or becomes inconsistent with the application. Failure to operate in accordance with the conditions and requirements imposed may result

in revocation of the use permit, or any other enforcement remedy available under the law. The City shall not assume responsibility for any deletions or omissions resulting from the use permit review process, or for additions or alterations to any construction or building plans not specifically submitted and reviewed and approved pursuant to this use permit or subsequent amendments or revisions. These conditions are conditions imposed solely upon the use permit as delineated herein and are not conditions imposed on the City or any third party. Likewise, imposition of conditions to ensure compliance with federal, state, or local laws and regulations does not preclude any other type of compliance enforcement.

These conditions are applicable to any person or entity making use of this use permit, and references to "developer" or "applicant" herein also include any applicant, property owner, owner, lessee, operator, or any other person or entity making use of this use permit.

General Conditions

1. Project approval is conditioned upon acceptance of the conditions of approval contained herein, as evidenced by the receipt in the Planning Division of the applicant's signature upon an Acknowledgement and Acceptance of Conditions within 30 days of the date of approval. Project approval is conditioned upon acceptance of the conditions of approval contained herein, as evidenced by the receipt in the Planning Division of the applicant's signature upon an Acknowledgement and Acceptance of Conditions within 30 days of the date of approval.
2. Any intensification or expansion of the use(s) beyond its approval shall be cause for review and modification of the use permit to be approved by the Commission.
3. Any proposed future modifications to the site not specifically contemplated by CUP 2023-06 MOD including but not limited to; the building exterior, parking/loading areas, drive-through lane widths, fences/walls, new buildings, or landscaping specifically condition as part of this use permit shall require an amendment to its respective entitlement application.
4. All conditions of approval shall be the sole financial responsibility of the applicant/owner, except where specified in the conditions of approval listed herein or mandated by statute.
5. It shall be the responsibility of the property owner and/or applicant to ensure that any required permits, inspections, and approval from any regulatory agency are obtained from the concerned agency prior to the issuance of a business license or final occupancy issuance.
6. Failure to comply with the conditions of approval contained herein shall be cause for review and possibly modification or revocation to CUP 2023-06 MOD.
7. Approval of CUP 2023-06 MOD is for the benefit of the applicant. The submittal of application(s) by the applicant for this project was a voluntary act on the part of the applicant not required by the City. Therefore, as a condition of approval of this project, the applicant agrees to defend, indemnify, and hold harmless the City of Kerman and its agents, officers, consultants, independent contractors, and employees ("City") from any and all claims, actions, or proceedings against the City to attack, set aside, void, or annul an approval by the City concerning the project, including any challenges to associated environmental review, and for any and all costs, attorney's fees, and damages arising therefrom (collectively "claim"). The City shall promptly notify the applicant of any claim.

Nothing in this condition shall obligate the City to defend any claim and the City shall not be required to pay or perform any settlement arising from any such claim not defended by the City, unless the City approves the settlement in writing. Nor shall the City be prohibited from independently defending any claim, and if the City does decide to independently defend a claim, the applicant shall be responsible for City's attorneys' fees, expenses of litigation, and costs for that independent defense, including the costs of preparing any required administrative record. Should the City decide to independently defend any claim, the applicant shall not be required to pay or perform any settlement arising from any such claim unless the applicant approves the settlement.

8. All conditions as required under CUP 2023-06 shall continue to apply except as amended herein.

Building Division

9. Plans, building permits, and inspections will required, including site development and accessibility based upon the California Codes in effect at the time of plan check submittal.
10. A grading and drainage plan shall be prepared by a California-registered civil engineer and submitted for review prior to permit issuance.

Planning Division

General

11. On-site litter and graffiti shall be corrected per Kerman Municipal Code Chapter 9.09 – Abatement of Graffiti Nuisance.
12. Businesses and/or property owners shall operate in a manner that does not generate noise, odor, blight, or vibration that adversely affects the project site and the surrounding properties.
13. The business and/or property owner shall keep the property clear of all trash, rubbish, and debris at all times. Dumping of refuse shall be restricted to the refuse containers scheduled to service the site.
14. The business and/or property owner shall comply with all applicable federal, state, or local laws, rules, and regulations. Material violations of said laws, rules, and regulations may be cause for review and possible revocation of the use permit.
15. Business owner(s) shall be responsible for securing a business license from the Finance Department before the commencement of any commercial activity.
16. A six-foot-tall block wall shall be installed at the south property line of the business center prior to the issuance of a certificate of occupancy for any building within the business center.
17. **CUP 2023-06 MOD shall require Chipotle (Building C) to provide an additional three (3) parking stalls above the required parking stalls for employees.**

Conditional Use Permit 2023-06 MOD

18. **Conditional Use Permit 2023-06 MOD shall allow for an increase of ten (10) additional outdoor dining seats for the outdoor dining patio at 15215 W. Whitesbridge Rd.**

Drive-Through Facility

19. The site shall be permitted to operate a drive-through facility consistent with the approved site plan review (SPR 2023-03) and between the hours of 8 AM to 11 PM.
20. The applicant shall provide and maintain the necessary directional signage for the drive-through window.
21. Drive-through preview and ordering boards shall not be closer than 100 feet from the residential use located to the south.
22. A three-and-a-half-foot tall (3'-6") block wall shall be installed along the outward perimeter of the drive-through and shall be landscaped. The exact location of the block wall and landscaping shall be determined at the plan check submittal stage to the specifications of the Planning Division.

Outdoor Dining Area

23. Outdoor dining areas shall be properly lit during hours of operation and properly secured with decorative fencing and shall be landscaped. The exact location of the landscaping shall be determined at the plan check submittal stage to the specifications of the Planning Division.
24. The outdoor dining area shall not be allowed to operate past 10 PM, seven days a week.
25. **Outdoor seating shall not exceed twenty-two (22) seats.**
26. No amplified music shall be permitted.
27. The outdoor dining area shall provide shading via portable umbrellas.

Signage

28. Proposed and future permanent signage shall comply with the Sign Ordinance of the KMC.
29. No sign shall interfere with a driver's or pedestrian's view of public right-of-way or in any other manner impair public safety or interfere with the safe operation of a motor vehicle on public streets. This includes, but is not limited to, the driver's view of approaching, merging, or intersecting traffic.
30. Temporary signage shall be permitted for special events (i.e. grand opening, local, State, or Federal recognized holiday(s), to be displayed for thirty (30) days or less per year and a promotional period, or as otherwise permitted by the Sign Ordinance,

Police Department

31. The business and/or property owner shall be responsible for equipping the proposed and any future site facilities with functional color digital video camera systems. These systems shall be capable of producing a CD or digital playback feature. They may be provided to an authorized representative of the Kerman Police Department within twenty-four hours of the initial request relating to a criminal investigation only. The camera storage capacity should be for at least two weeks (fourteen calendar days). Such cameras must be capable of producing a retrievable and identifiable image that can be made a permanent record and that can be enlarged through projection or other means.
32. The operation of the uses shall not result in criminal activity or repeated nuisance activities on the property.
33. The business owner or operator shall be responsible for causing the removal of deterrent behavior including loitering and/or vagrancy in or upon the business site or properties adjacent to the licensed premises. If necessary, the effort to remove deterrent behavior may include contacting law enforcement for assistance. The business owner shall install "No Trespassing" and "No Loitering" signs on the premises to the specifications of the Police Department.

End of Conditions