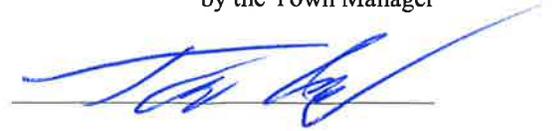


This material has been reviewed
by the Town Manager



**CORTE MADERA TOWN COUNCIL
STAFF REPORT**

REPORT DATE: JUNE 14, 2018

MEETING DATE: JUNE 19, 2018

TO: TOWN MANAGER, MAYOR AND COUNCIL MEMBERS

FROM: DOUGLAS BUSH, ASSOCIATE PLANNER

**SUBJECT: SECOND READING AND ADOPTION OF ORDINANCE NO. 976
AN ORDINANCE OF THE CORTE MADERA TOWN COUNCIL
AMENDING CHAPTER 18 OF THE CORTE MADERA
MUNICIPAL CODE TO MAKE RESTAURANTS WITH DRIVE-
THROUGH LANES A CONDITIONAL USE IN THE C-3 ZONING
DISTRICT**

APPLICANT: AMY'S DRIVE-THRU

PURPOSE:

The Corte Madera Town Council is required to have a second reading of proposed Ordinance amendments. At the June 4, 2018 Town Council meeting, the Corte Madera Town Council made a unanimous motion to introduce draft Ordinance No. 976.

STAFF RECOMMENDATION:

Staff recommends that the Town Council adopt draft Ordinance No. 976. (Attachment 1).

TOWN MANAGER'S RECOMMENDATION:

Town Manager supports staff recommendations.

FISCAL IMPACT:

The adoption of the proposed Zoning Ordinance amendments will not have an impact on the Town's General Fund.

BACKGROUND:

Relevant background related to the proposed Ordinance may be found at the following link:

<https://www.townofcortemadera.org/AgendaCenter/ViewFile/Item/2455?fileID=3523>

ENVIRONMENTAL ASSESSMENT

Based on the facts and analysis of the proposed zoning ordinance amendments included in the Staff Report to the Planning Commission and Town Council, the Town Council finds that the project before the Planning Commission is not subject to the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) since it can be seen with certainty that there is no possibility that the changes to the zoning code (activity in question) will have a significant effect on the environment.

Furthermore the Council finds that the project is categorically exempt from the California Environmental Quality Act (CEQA) Guidelines pursuant to California Code of Regulations, Title 14, Division 6, Chapter 3, ("CEQA Guidelines"), under Section 15302. The Class 2 exemption consists of replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced, including but not limited to – replacement of a commercial structure with a new structure of substantially the same size, purpose, and capacity.

ATTACHMENTS

1. ORDINANCE 976
2. BACKGROUND INFORMATION AND PRIOR STAFF REPORTS CAN BE FOUND AT THE FOLLOWING LINK
<https://www.townofcortemadera.org/AgendaCenter/ViewFile/Item/2455?fileID=3523> OR MAY BE OBTAINED BY CONTACTING THE PLANNING DEPARTMENT AT (415)927-5064 OR VISITING TOWN HALL AT 300 CORTE MADERA AVE.

ORDINANCE NO. 976

**AN ORDINANCE OF THE CORTE MADERA TOWN COUNCIL ADOPTING
AMENDMENTS TO CHAPTER 18 OF THE CORTE MADERA MUNICIPAL CODE
REGARDING RESTAURANTS WITH DRIVE-THROUGH LANES IN THE C-3
ZONING DISTRICT**

WHEREAS, on August 25, 2017 an application was submitted for a preliminary study session; and

WHEREAS, on September 1, 2017 a notice of public hearing was sent to all properties within 300 feet of the subject property; and

WHEREAS, on September 12, 2017 a preliminary application was brought before the Planning Commission for a study session. Both the Planning Commission and a majority of members of the public provided positive feedback on the preliminary application; and

WHEREAS, on December 6, 2017 an application was submitted to the Planning Department to make restaurants with drive-through lanes a conditional use in the C-3 Zoning District and update other sections of the ordinance in relation to this additional use; and

WHEREAS, on January 11, 2018 the application was deemed incomplete and a letter was provided to the applicant requesting additional materials to make the application complete; and

WHEREAS, on January 31, 2018 a revised application was submitted to the Planning Department including responses to the prior completeness letter; and

WHEREAS, on February 14, 2018 Staff determined that the application was incomplete and requested further information; and

WHEREAS, on April 17, 2018 a revised application was resubmitted with revisions in response to staff incompleteness comments; and

WHEREAS, on April 23, 2018 story poles were installed according to a story pole plan that was approved by staff and an informational board was installed at the project site to facilitate interpretation of the story poles; and

WHEREAS, on April 26, 2018 Staff determined the application to be complete; and

WHEREAS, on April 27, 2018 Notice of public hearing was mailed to all properties within 300 feet of the subject property, noticed in the Marin IJ, posted on the Town website and emailed to subscribers of the town's newsflash service; and

WHEREAS, on May 8, 2018, the Planning Commission held a public hearing on the proposed zoning ordinance amendments, reviewed the staff report, received a presentation from the Planning Department and received comments from the public; and

WHEREAS, the Planning Commission made all required findings and adopted Resolutions No. 18-006 and 18-007, recommending approval of the proposed project to the Corte Madera Town

Council; and

WHEREAS, on May 24, 2018 notice of public hearing was mailed to all properties within 300 feet of the subject property, posted as a 1/8 page notice in the Marin IJ, posted on the Town website and mailed to local groups associated with the blind, aged and disabled pursuant to California Govt. Code Section 65090; and

WHEREAS, on June 4, 2018 the Corte Madera Town Council held a duly noticed public hearing, received the staff report and materials associated with the project, received a presentation from the Planning Department, received comments from the public and considered the recommendations of the Planning Commission and made a unanimous motion, with one absent, to introduce the proposed Ordinance; and

WHEREAS, on June 19, 2018 the Corte Madera Town Council held a second reading for Ordinance 976,

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF CORTE MADERA DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. RECITALS

The foregoing recitals are true and correct and are incorporated into the findings herein.

SECTION 2. RECORD

The Record of Proceedings (“Record”) upon which the Town Council makes its findings and decision includes, but is not limited to:

(1) the 2009 General Plan, (2) all staff reports, Town files and records and other documents prepared for and/or submitted to the Planning Commission and Town Council relating to these zoning ordinance amendments, (3) all documentary and oral evidence received at public hearings or submitted to the Town relating to the zoning ordinance amendments, and (4) all matters of common knowledge to the Planning Commission, Town Council and the Town, including, but not limited to, Town, state, and federal laws, policies, rules, regulations, reports, and records related to development within the Town and its surrounding areas.

SECTION 3. COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Based on the facts and analysis of the proposed zoning ordinance amendments included in the Staff Report to the Planning Commission and Town Council, the Town Council finds that the project before the Planning Commission is not subject to the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) since it can be seen with certainty that there is no possibility that the changes to the zoning code (activity in question) will have a significant effect on the environment.

The Council finds that the Zoning Ordinance Amendments will not have any significant effect on the environment for several reasons. The number and distribution of parcels where such a use could be contemplated is highly limited. There are approximately 20 parcels in the C-3 Zoning District. The Council is unaware of any plans to redevelop any of these parcels with a restaurant

use at this time. In addition, taking into consideration the general characteristics and location of these parcels, it is unlikely that an application for a drive-through restaurant could meet the existing and proposed Conditional Use Findings. For example, a majority of the C-3 parcels are within the vicinity of established residential neighborhoods – such as those along Casa Buena Drive and Lucky Drive. For this reason it is reasonable to assume that many parcels would not meet the proposed findings or standards.

Beyond the siting limitations created through existing and proposed policies to encourage reasonable siting of the use, physical characteristics of the parcels may also limit the potential for future applications. Drive-through lanes require physical length that is adequate to accommodate the expected demand of drive-through customers. Some sites may not have the physical size, or linear dimension to accommodate a drive-through lane. Furthermore, drive-through restaurants are required to provide parking spaces in addition to queuing spaces, and are required to have a minimum seating area, further limiting the potential sites where such a use could be established while meeting the findings and development standards required by the Zoning Ordinance. For these reasons Staff finds that it would be speculative and unreasonable at this time to assume any other development of drive through restaurants resulting from the proposed amendments.

For the proposed project and zoning ordinance amendments as applied, this project is categorically exempt from the California Environmental Quality Act (CEQA) Guidelines pursuant to California Code of Regulations, Title 14, Division 6, Chapter 3, (“CEQA Guidelines”), under Section 15302. The Class 2 exemption consists of replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced, including but not limited to – replacement of a commercial structure with a new structure of substantially the same size, purpose, and capacity.

Approval of the zoning ordinance amendment and the Design Review Permit would allow for the demolition of a building that was used as a restaurant for almost 40 years, and for the replacement of that building with a new structure of a similar size. Approval of the Use Permit would allow for the operation of a restaurant, consistent with the history of the site. While the use permit for a restaurant with drive-through is estimated to create an increase in vehicular traffic compared to the prior sit-down restaurant, the size, purpose and general capacity of the proposed structure will be substantially similar to the existing structure. There are no unusual circumstances applicable to this site or this application. For these reasons, the Council has determined that the proposed project is exempt under CEQA.

SECTION 4. FINDINGS AND GENERAL PLAN CONSISTENCY

General

The Town Council finds that the Zoning Ordinance Amendment is in the best interest of the Town by allowing for the redevelopment of a vacant parcel of land with a use that is compatible with the underlying purpose of the C-3 Zoning District and has the potential to significantly add to the economic development goals of the Town and to enliven and improve the physical condition of this commercial area. The amendment would also provide a desired service to residents and facilitate access to food options for those who may wish or need to remain in their vehicles and while ensuring that any potential negative land use issues are evaluated and addressed on a case-by-case basis.

Required Zoning Ordinance Amendment Findings

Pursuant to Corte Madera Municipal Code Section 18.36.090, for an application for the addition of a permitted use or a conditional use, the Planning Commission may recommend to the Town Council that a use be added to the list of permitted uses or conditional uses prescribed for any zoning district; provided that all of the following findings are made. The Planning Commission and Town Council make the following findings:

- (1) Addition of the use to the list will be consistent with the general plan and will be in accord with the purposes of the district in which it is proposed to be added.

This parcel is in the Mixed Use Commercial General Plan Land Use Designation. This designation is intended to support infill activities, and site and building redevelopment of existing neighborhood commercial centers and along commercial corridors. Allowable uses include office, light industrial (non-manufacturing), and commercial services, as well as new housing developments. The designation is intended to encourage a variety of community activities and services to coexist in close proximity to one-another (such as jobs, housing and services), thereby reducing the need for extensive automobile travel.

This parcel is in the C-3 Highway Commercial Zoning District. The C-3 district is intended to create and enhance areas where automobile associated traveler services are desired. The C-3 district regulations are applied to areas near freeway interchanges or in areas with convenient access to the freeway, and provide for commercial uses which typically are freeway-oriented but do not locate in shopping centers, such as automotive dealers, automotive services, gas stations, restaurants and motels.

Restaurants are a conditionally permitted use in the C-3 Zone. The proposed Zoning Ordinance Amendment would make drive-through restaurants a conditionally permitted use in the C-3 Zone. The addition of this use is consistent with the purpose of the C-3 Zoning District, because the district is intended to create areas where "automobile associated traveler services are desired," and a drive-through restaurant is designed specifically to accommodate customers arriving by vehicle. The use is consistent with the Mixed Use Commercial general plan designation because it is an infill project which would active an underutilized site in an area that is built out. The proposed use would be accessible by pedestrians and cyclists from the businesses in the immediate vicinity and the residential development on San Clemente Drive, Mariner Cove, Mariner Estates and other neighborhoods in the area.

- (2) The use will be an appropriate addition to the list because it has the same basic characteristics as other uses listed in the regulations.

The list of permitted uses in the C-3 Zone includes numerous automobile oriented commercial uses, such as catering establishments, gymnasiums and athletic clubs, motorcycle sales and services, garden supply stores, offices and office buildings and car sales. Conditional uses in the C-3 Zone include bars and cocktail lounges, hotels and motels, restaurants and cafes, service stations with mini-mart, and uses open for business between eleven p.m. and six a.m. The addition of a drive-through restaurant is most similar to the restaurant, bars and cocktail lounges that are already conditionally permitted uses in the zone. Due to the similarities between uses on the list and the proposed use, the use will be an appropriate addition to the list of uses for this Zone.

- (3) The use will not be detrimental to the public health, safety or welfare.

The proposed use will not be detrimental to the public health, safety or welfare, due in part to the special development and operational standards required for the development and/or operation of a drive-through restaurant. These standards relate to the site layout and circulation, including parking, drive-through lane, ingress and egress points, relationship to major bicycle corridors, as well as the access to the site for pedestrians and cyclists. The standards for this specific use together with preexisting standards which apply to all commercial uses, serve to reduce the potential for traffic collisions, glare and noise related impacts, reduce traffic generation adjacent to residential neighborhoods, limit impacts on major bicycle corridors, require landscaping for personal enjoyment, habitat value, and storm water retention, and allowing for limits to operating hours as necessary to ensure compatibility with surrounding uses.

- (4) The use will not adversely affect the character of any district in which it is proposed.

The use is consistent with existing permitted and conditional uses and therefore, the use is consistent with the character of uses intended for the C-3 District. Any new structure or any existing structure proposed to be modified to accommodate the proposed use would be subject to Design Review which would assess the visual character of the physical development within the context of the district on a case by case basis.

- (5) The use will not create more vehicular traffic than the volume created by the uses presently on the list.

Among the many uses presently on the list of permitted or conditionally permitted uses in the C-3 Zone, a "service station with a mini-mart," is most likely to generate the greatest amount of traffic according to the 2010 ITE Manual. As stated in the Traffic Impact Study from independent consultant Fehr and Peers, a service station with a mini-mart would be expected to generate four times that amount of traffic that a drive-through restaurant is expected to generate. Based on these professional estimates, it is reasonable to infer that the proposed use would not create more vehicular traffic than the volume created by the uses presently on the list.

- (6) The use will not create more odor, dust, dirt, smoke, noise, vibration, illumination, glare, unsightliness or any other objectionable influence than the amount created by the uses presently on the list.

The proposed use would be governed by general standards for commercial uses as well as standards specific to the use itself (CMMC Section 18.12). Together these standards eliminate or limit the generation of odor, dust, dirt, smoke, noise, vibration, illumination and glare. In particular, 18.12.030(5) specifically states that "No use shall be permitted and no process, equipment or material shall be employed which is found by the planning commission to be objectionable to persons residing or working in the vicinity by reason of odor, fumes, dust, smoke, cinders, dirt, refuse, water-carried wastes, noise, vibration, illumination, glare, unsightliness or heavy truck traffic, or to involve any hazard of fire or explosion." In terms of unsightly design, Design Review is required for the construction of any new structure or the modification of an existing structure, which has the effect of preventing unsightly design.

SECTION 5. AMENDMENT TO THE CORTE MADERA MUNICIPAL CODE

The following sections of the Corte Madera Municipal Code are amended as follows: 18.04.199, 18.12.020, 18.12.030, 18.26.050. Text proposed for removal is indicated with a strikethrough (~~example~~). Text proposed to be added is shown as underlined (example).

18.04.661 – Restaurant With Drive-Through

“Restaurant With Drive-Through,” means any establishment, building, or structure where food is served and service is provided in part, to the customer from a service window accessible to motor vehicles with access provided by a drive-through lane incorporated into the site design. A Restaurant With Drive-Through shall provide within the establishment, a minimum of 1000 square feet of area accessible to customers and a minimum of 40 seats. No establishment may provide service solely through a drive-through lane. A “restaurant with drive-through” may also be referred to as a “drive-through restaurant.”

18.12.020 - Permitted and conditional uses in commercial districts.

The following schedule indicates by the symbol "X" the permitted and conditional uses in each commercial district.

Conditional Uses	Local Shopping C-1	Regional Shopping C-2	Highway Commercial C-3	Commercial Service C-4
<u>Restaurant With Drive-Through</u>			<u>X</u>	

18.12.030 - Required standards in commercial districts.

The following conditions shall be required for all permitted uses and conditional uses:

(14) Drive-through Restaurants shall be located, developed, and operated in compliance with the following standards:

- a) Vehicular access to the drive-through lane and vehicular circulation within the drive-through lane shall not require vehicular circulation through on-site parking areas or parking lot maneuvering areas.
- b) A minimum five foot-wide landscaped planter area shall be provided between the drive-through lane and parking areas. Such planter area shall include shade trees.

18.20.030 - Required number of parking spaces.

Subject to the provisions of Section 18.20.020, off-street parking spaces shall be provided at least in accord with the following schedule:

Use	Requirement
<u>Drive-through Restaurant</u>	<u>One space for each 100 square feet of gross floor area, plus one additional space for each three employees.</u>

18.26.050 - Required findings.

(f) The planning commission may grant an application for a use permit for a Drive-through Restaurant if it makes all of the following additional findings:

1. Drive-through service windows, outdoor dining areas, driveways and queuing lanes have been appropriately sited and designed to avoid interference with uses on adjacent properties. Consideration may include, but is not limited to, noise from amplification systems, speakers, music and outdoor dining areas, odor, refuse, headlight glare, or any other potential impacts that may interfere with uses on adjacent properties.
2. As determined through an independent transportation analysis, the drive-through lane provides adequate on-site capacity and length to meet the anticipated demand for the drive-through lane on the site.
3. The proposed restaurant does not have substantially the same design as the same restaurant in another location.
4. The Restaurant with Drive-Through will not significantly increase vehicular circulation through or immediately adjacent to residential neighborhoods located within the vicinity of the project site.

SECTION 6. SEVERABILITY

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of the ordinance. The Town Council hereby declares that it would have passed this and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrases, or clauses be declared unconstitutional on their face or as applied.

SECTION 7. EFFECTIVE DATE

This ordinance shall go into effect thirty (30) days after the date of its passage and adoption.

SECTION 8. POSTING.

The Town Clerk shall cause a summary of this ordinance to be published in the Marin Independent Journal within 5 days prior to passage and within 15 days after passage.

* * * * *

This ordinance was introduced on the 4th day of June, 2018, and adopted on the 19th day of June, 2018, by the following vote:

- AYES:
- NOES:
- ABSTAIN:
- ABSENT:
- RECUSED:

CARLA CONDON, MAYOR

ATTEST:

REBECCA VAUGHN, TOWN CLERK