



# City of West Allis

## Legislation Text

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**File #:** R-2013-0230, **Version:** 1

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Resolution relative to determination of Special Use Permit Amendment to establish Iago's Burrito Heaven, a proposed new restaurant, to be located at 9130 W. Greenfield Ave.

WHEREAS, James Sierszyn, d/b/a Lollipopguild, LLC filed with the City Administrative Officer-Clerk/Treasurer an application for a Special Use Permit, pursuant to Sec. 12.41(2) and Sec. 12.16 of the Revised Municipal Code, to amend an existing special use resolution to establish an Iago's Burrito Heaven restaurant located at 9130 W. Greenfield Ave.; and,

WHEREAS, after due notice, a public hearing was held by the Common Council on October 15, 2013, at 7:00 p.m., in the Common Council Chambers to consider the application; and,

WHEREAS, the Common Council, having carefully considered the evidence presented at the public hearing and the following pertinent facts noted:

1. The applicant, James Sierszyn, d/b/a Lollipopguild, LLC, resides at 7714 Evergreen Terrace, Burlington, WI 53105 and has a valid offer to lease the premise from the property owner Quattro Miguel LLC, of 6526 River Parkway Blvd. Wauwatosa, WI 53226.
2. The subject property at 9130 W. Greenfield Ave. had previously been approved for a Big Mike's Sub Shop restaurant in 2001 under Resolution #26603 approved January 16, 2001. The special use terms of the aforesaid Resolution required the S. 92 St. driveway to be closed and also stated that the hours of operation would be between 10:00 a.m. and 9:00 p.m., seven days per week. This Resolution serves as an amendment to the previous special use approval and as the updated agreement between the City of West Allis and the applicant. The amendment will allow for the existing driveway opening on S. 92 St. to remain open and for the hours of operation to be expanded as indicated under the terms of this special use.

The property is located at 9130 W. Greenfield Ave., West Allis, Milwaukee County, Wisconsin, more particularly described as follows:

All the land of the owner being located in the Southwest  $\frac{1}{4}$  of Section 33, Township 7 North, Range 21 East, City of West Allis, Milwaukee County, Wisconsin, described as follows:

Lots 6 and 7 in Block 1 of the Assessors Plat No. 258 subdivision.

Tax Key No. 442-0533-003

Said land located at: 9130 W. Greenfield Ave.

3. The applicant is proposing to establish an Iago's Burrito Heaven restaurant. This is formerly the site of Big Mike's Super Subs and Milios sandwiches. Iago's Burrito Heaven is proposing to establish a new quick service burrito restaurant for dine-in/carry-out service. The business owner is relocating from their current

location in Waterford, WI to West Allis. The site is zoned C-2, Neighborhood Commercial. A special use was approved for the former restaurant uses, but the new applicant is seeking an amendment to the existing special use to extend the hours of operation to remain open (an additional 2 hours) later until 11:00 p.m. and to keep the existing S. 92 St. driveway open and modify the parking configuration.

4. The aforesaid premises is zoned C-2 Neighborhood Commercial District under the Zoning Ordinance of the City of West Allis, which permits restaurants and outdoor dining as a special use, pursuant to Sec. 12.41(2) and Sec. 12.16 of the Revised Municipal Code.

5. The subject property is part of a block along the north side of W. Greenfield Ave. between I-894 St. and S. 84 St., which is zoned for commercial uses. Properties to the south and west are developed for commercial uses. Properties to the east and north are developed as residential uses.

6. The proposed development should not adversely contribute to traffic volumes or traffic flow in the area as the property has previously been utilized as a restaurant, offers off-street parking and is served by public transit.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of West Allis that the application of James Sierszyn, d/b/a Lollipopguild, LLC to establish an Iago's Burrito Heaven, an amend/update to the terms of the special use for the premise located at 9130 W. Greenfield Ave., be, and is hereby granted on the following grounds:

That the establishment, maintenance and operation of the proposed use, with the imposition of certain conditions hereinafter set forth, reasonably satisfies the standards set forth in Secs. 12.16 of the Revised Municipal Code, so as to permit the issuance of a special use permit as therein provided.

BE IT FURTHER RESOLVED that said special use permit is granted subject to the following conditions:

1. Site, Landscaping, Screening and Architectural Plans. The grant of this special use permit is subject to and conditioned upon the site, landscape, screening and architectural plans approved on September 25, 2013 by the City of West Allis Plan Commission as provided in Sec. 12.13 of the Revised Municipal Code of the City of West Allis. No alteration or modification of the approved plan shall be permitted without approval by the Plan Commission.
2. Building Plans and Fire Codes. The grant of this special use is subject to building plans being submitted to and approved by the Department of Building Inspections and Zoning and by the Fire Department.
3. Restaurant Operations. The restaurant will be permitted to be used for dine-in, carry-out, delivery and outdoor dining per the approved plans and in accordance with the following:
  - A. All exterior doors shall be kept closed to prevent sound/noise emissions into the adjacent neighborhood.
  - B. Excessive odors from cooking on premises shall be controlled within limits of current technology.
  - C. Excessive noise and vibrations shall not emanate from the building or premise.
  - D. Employees shall inspect the site and immediate vicinity and pick up litter on a daily basis.

- E. Exterior pest control shall be contracted on a monthly basis.
4. Hours of Operation. The hours of operation will be from 6:00 a.m. to 11:00 p.m., seven days per week.
5. Off-Street Parking. A total of 8 spaces are required on site and 8 parking spaces are provided. Calculations have been calculated using a parking ratio of 1 parking stall required for every 150 gross sq. ft. in accordance with Sec. 12.19 of the Revised Municipal Code.
6. Litter. Employees shall inspect the area and immediate vicinity and pick up litter on a daily basis. Refuse, recyclables, grease and other waste materials will be fully enclosed within an approved 4-sided structure to match the building.
7. Marketing Displays. The use of pennants, special lighting, flags, streamers or other signage typically temporary in nature, hanging, floating or attached to a structure or vehicle shall not be permitted.
8. Deliveries and Refuse Collection. All refuse to be provided by a commercial hauler. All refuse, recyclables and other waste material shall be screened from view within an enclosure approved by the Department of Development. All tenants of the property will be required to abide by the City of West Allis health/public nuisance rules per Chapter 7 of the Revised Municipal Code. Because there are residents that live within the residential neighborhood adjacent to the site, delivery operations and refuse pick up shall only be permitted during daytime hours. These functions shall not be permitted between the hours of 9:00 p.m. and 7:00 a.m.
9. Pagers, Intercoms. The use of outdoor pagers, intercoms, or loud speakers shall not be permitted on site.
10. Sidewalk Repair. The grant of this special use is subject to compliance with Policy No. 2814 of the Revised Municipal Code relative to the City's sidewalk improvement policy as it relates to damaged, abutting sidewalk.
11. Outdoor Lighting. The grant of this special use is subject to all lighting fixtures being orientated and/or shielded in such a manner that no light spills from the property boundaries.
12. Noxious Odors, Etc. The use shall not emit foul, offensive, noisome, noxious, or disagreeable odors, gases, or effluvia into the air. Mechanical systems shall be maintained to efficiently remove noxious odors.
13. Pollution. The use shall not cause any noxious or unwholesome liquid or substance or any dirt, mud, sand, gravel, or stone refuse or other materials to be deposited upon any public right of way or flow into any sanitary sewer, storm sewer, or water supply system, or onto adjacent properties.
14. Expiration of Special Use Permit. Any special use approved by the Common Council shall lapse and become null and void one (1) year from and after that approval if the use has not commenced, construction is not underway, or the owner has not obtained a valid building permit. An extension of these time limitations may be granted without a public hearing by the Common Council by resolution reauthorizing the special use in accordance with the following criteria:

- A. The applicant requesting the extension shall complete a planning application available from the Department of Development and shall submit a \$250.00 extension fee;
- B. A written explanation for the extension of time shall accompany the planning application along with a timeline/schedule for obtaining necessary permits, zoning, state and municipal approvals and a target date for construction start;
- C. The request for extension shall be submitted within sixty (60) days of the expiration of the special use permit;
- D. The extension, if granted, shall be valid for a period of six (6) months. If no building permit has been issued and construction has not commenced within six (6) months from and after the extension has been granted, the special use shall become null and void.

15. Miscellaneous.

- A. Applicants are advised that the foregoing conditions are reasonably necessary to protect the public interest and to secure compliance with the standards and requirements specified in Sec. 12.16 of the Revised Municipal Code; that the issuance of the special use is expressly subject to compliance with said conditions.
- B. The use, as granted herein, is subject to applicants' compliance with all other state and local laws and regulations which may be applicable to the proposed use of the real estate in question.
- C. The special use, as granted herein, shall run with the land and benefit and restrict all future owners and occupants of the property, unless the use shall lapse or be terminated and the use will not be altered or extended (including structural alterations and/or additions) without the approval of the Common Council, following public hearing, all as provided in Sec. 12.16 of the Revised Municipal Code.

16. Lapse. If the applicant does not meet all of the terms and conditions set forth in this grant of a special use within one year of the granting thereof, then the Special Use Permit shall lapse and become null and void and the applicant shall forfeit any right to use the property as conferred by the Special Use Permit. The failure of the applicant to meet the terms and conditions of the Special Use Permit shall subject the permit to being declared void by the Common Council after notice to the applicant and a hearing before the Safety and Development Committee. Upon a finding and recommendation by the Committee to the Common Council on the matter, the applicant and/or any interested person may make comments regarding the matter to the Common Council prior to the Common Council's next regular meeting following the recommendation. Upon the Common Council's finding that the Special Use Permit has lapsed and become void, the applicant shall cease all operations at the property.

17. Termination of Special Use. If the person or entity granted the special use violates, allows or suffers the violation of the ordinances of the City of West Allis, the State of Wisconsin or the United States on the premises covered by the special use, then the special use may be terminated.

18. Acknowledgement. That the applicants sign an acknowledgment that he has received these terms and conditions and will abide by them.

The undersigned applicant agrees to the terms and conditions and has agreed that the grant of the Special Use Permit is conditioned on meeting the terms and conditions of this resolution.

James Sierszyn, d/b/a Lollipopguild, LLC/Iago's or agent

Quattro Miguel LLC, Property owner or agent

Mailed to applicants on the

\_\_\_\_\_ day of \_\_\_\_\_, 2013

Assistant City Clerk

cc: Dept. of Development  
Dept. of Building Inspections and Zoning  
Div. of Planning

ZON-R-929-10-15-13