



# City of West Allis

## Legislation Text

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**File #:** R-2010-0158, **Version:** 1

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Resolution relative to determination of Special Use Permit to establish a restaurant and catering business, Get Them While They're Hot Tamales, within the existing mixed-use building located at 8223 W. Becher St.

WHEREAS, Jann Martinez, d/b/a La Cena, LLC, duly 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 establish a restaurant (no drive-through) and catering facility at 8223 W. Becher St.; and,

WHEREAS, after due notice, a public hearing was held by the Common Council on July 6, 2010, 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, Jann Martinez, d/b/a La Cena, LLC, resides at 7726 W. Becher St. #1, West Allis, WI 53219.
2. The applicant will lease space at 8223 W. Becher St., West Allis, Milwaukee County, Wisconsin, more particularly described as follows:

All the land of the owner being located in the Southeast  $\frac{1}{4}$  of Section 4, Township 6 North, Range 21 East, in the City of West Allis, Milwaukee County, State of Wisconsin, described as follows:

Lot 1 in Block 1 of West Allis Homestead Subdivision.

Tax Key No. 477-0480-000

Said land is located at 8217-31 W. Becher St.

3. The applicant is proposing to occupy 4,000 sq. ft. of the 4,600 sq. ft. first-floor for restaurant, catering, office and storage uses.
4. The aforesaid premises is zoned C-2 Neighborhood Commercial District under the Zoning Ordinance of the City of West Allis, which permits restaurants as a special use, pursuant to Sec. 12.41(2) and Sec. 12.16 of the Revised Municipal Code.
5. The subject property is located at the southeast intersection of S. 83 St., W. Becher St. Surrounding properties are zoned commercial. Properties to the north, east and south are used for residential uses and property to the west is a mixed commercial and residential use.
6. The use, value and enjoyment of other property in the surrounding area will not be substantially impaired or diminished by the establishment, maintenance or operation of the special use.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of West Allis that the application of Jann Martinez, d/b/a La Cena, LLC, to establish a restaurant and catering facility known as "Get Them While They're Hot Tamales" within a mixed-use property, 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 June 23, 2010, 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 Neighborhood Services and by the Fire Department.
3. Restaurant Operations. The restaurant will be utilized for dine-in as shown on the approved set of plans, and will also offer food for take-out. Catering operations will also take place from this site.
  - 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.
  - D. Exterior pest control shall be contracted on a monthly basis.
  - E. While not part of current plans, outdoor dining shall be permitted on site upon review and approval of Plan Commission.
  - F. Use of a mobile vending cart is permitted for "off-site" sales and subject to proper permits being obtained through the Clerks office.
4. Noxious Odors, Etc. The restaurant shall not emit foul, offensive, noisome or disagreeable odors, gases or effluvia into the air. Mechanical systems shall be maintained to efficiently remove noxious odors.
5. Hours of Operation. The hours of operation will be from 8:00 a.m. to 8:00 p.m., seven days per week.
6. Off-Street Parking. A total of 16 parking spaces are required on site; however, zero are provided. On-street parking exists along S. 83 St. and W. Becher St.
7. 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 maintained as approved by Plan Commission.
8. Refuse Collection to be provided by commercial hauler. (All refuse, recyclables and other waste material shall be maintained and screened as approved by Plan Commission.
9. Signage. Any building window signage shall not exceed twenty (20) percent of each window's area. Any existing non-conforming signage on site shall be removed, per Plan Commission's recommendation.
10. 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.
11. Outdoor Lighting. All outdoor fixtures shall be shielded in such a manner that no light splays from the property boundaries.

12. Sidewalk Repair. The grant of this special use is subject to compliance with Policy No. 2806 of the Revised Municipal Code relative to the City's sidewalk improvement policy as it relates to damaged, abutting sidewalk.

13. 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.

14. 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.

15. 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.

16. Termination of Special Use. 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.

17. Acknowledgement. That the applicant signs an acknowledgment that she 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.

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Jann Martinez, d/b/a La Cena, LLC

Mailed to applicant on the

\_\_\_\_\_ day of \_\_\_\_\_, 2010

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Assistant City Clerk

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

ZON-R-770-7-6-10