

CC 05-06-2025

Item No. 13

Modification to  
Westport  
Development

Written Communications

**From:** [James Lloyd](#)  
**To:** [Liang Chao](#); [Kitty Moore](#); [Sheila Mohan](#); [J.R. Fruen](#); [R "Ray" Wang](#); [City Council](#)  
**Cc:** [Piu Ghosh \(she/her\)](#); [City of Cupertino Planning Dept.](#); [City Attorney's Office](#); [Cupertino City Manager's Office](#); [City Clerk](#)  
**Subject:** public comment re item 13 for 5/6/25 Council meeting  
**Date:** Monday, May 5, 2025 2:54:51 PM  
**Attachments:** [Cupertino - 21267 Stevens Creek Boulevard - HAA Letter - CC.pdf](#)

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Dear Cupertino City Council,

The California Housing Defense Fund ("CalHDF") submits the attached public comment re item 13 for the 5/6/25 Council meeting, the proposed 272-unit housing development project at 21267 Stevens Creek Boulevard, including 29 units affordable to very low-income households.

Sincerely,

James M. Lloyd  
Director of Planning and Investigations  
California Housing Defense Fund  
[james@calhdf.org](mailto:james@calhdf.org)  
CalHDF is grant & donation funded  
Donate today - <https://calhdf.org/donate/>



**May 5, 2025**

**City of Cupertino  
10300 Torre Avenue  
Cupertino, CA 95014**

**Re: Proposed Housing Development Project at 21267 Stevens Creek Boulevard**

**By email: [lchao@cupertino.gov](mailto:lchao@cupertino.gov); [kmoore@cupertino.gov](mailto:kmoore@cupertino.gov); [smohan@cupertino.gov](mailto:smohan@cupertino.gov);  
[jrfruen@cupertino.gov](mailto:jrfruen@cupertino.gov); [rwang@cupertino.gov](mailto:rwang@cupertino.gov); [citycouncil@cupertino.gov](mailto:citycouncil@cupertino.gov)**

**CC: [piug@cupertino.gov](mailto:piug@cupertino.gov); [planning@cupertino.gov](mailto:planning@cupertino.gov); [CityAttorney@cupertino.gov](mailto:CityAttorney@cupertino.gov);  
[CityManager@cupertino.gov](mailto:CityManager@cupertino.gov); [CityClerk@Cupertino.gov](mailto:CityClerk@Cupertino.gov)**

Dear Cupertino City Council,

The California Housing Defense Fund (“CalHDF”) submits this letter to remind the City of its obligation to abide by all relevant state housing laws when evaluating the proposed 272-unit housing development project at 21267 Stevens Creek Boulevard, including 29 units affordable to very low-income households. These laws include the Housing Accountability Act (“HAA”), the Density Bonus Law (“DBL”), and AB 2097.

The HAA provides the project legal protections. It requires approval of zoning and general plan compliant housing development projects unless findings can be made regarding specific, objective, written health and safety hazards. (Gov. Code, § 65589.5, subds. (d), (j).) The HAA also bars cities from imposing conditions on the approval of such projects that would render the project infeasible or reduce the project’s density unless, again, such written findings are made. (*Id.* at subd. (d).) As a development with at least two-thirds of its area devoted to residential uses, the project falls within the HAA’s ambit, and it complies with local zoning code and the City’s general plan. Increased density, concessions, and waivers that a project is entitled to under the DBL (Gov. Code, § 65915) do not render the project noncompliant with the zoning code or general plan, for purposes of the HAA. (Gov. Code, § 65589.5, subd. (j)(3).) The HAA’s protections therefore apply, and the City may not reject the project except based on health and safety standards, as outlined above.

CalHDF also writes to emphasize that the DBL offers the proposed development certain protections. The City must respect these protections. In addition to granting the increase in residential units allowed by the DBL, the City must not deny the project the proposed waivers

and concessions with respect to ground floor retail, in addition to the previously approved waivers and concessions, unless it makes written findings as required by Government Code, section 65915, subdivision (e)(1) that the waivers would have a specific, adverse impact upon health or safety, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact, or as required by Government Code, section 65915, subdivision (d)(1) that the concessions would not result in identifiable and actual cost reductions, that the concessions would have a specific, adverse impact on public health or safety, or that the concessions are contrary to state or federal law. The City, if it makes any such findings, bears the burden of proof. (Gov. Code, § 65915, subd. (d)(4).) Of note, the DBL specifically allows for a reduction in required accessory parking in addition to the allowable waivers and concessions. (*Id.* at subd. (p).) Additionally, the California Court of Appeal has ruled that when an applicant has requested one or more waivers and/or concessions pursuant to the DBL, the City “may not apply any development standard that would physically preclude construction of that project as designed, even if the building includes ‘amenities’ beyond the bare minimum of building components.” (*Bankers Hill 150 v. City of San Diego* (2022) 74 Cal.App.5th 755, 775.)

Finally, the project is exempt from off-street parking pursuant to AB 2097 given its location near transit. CalHDF understands that City staff is contesting the applicability of the law to the project, given that the previous version of the project was entitled before the law came into effect.

First, the project is seeking amended entitlements, and staff have accordingly forced the project to go through additional environmental review accordingly. A denial of the amended entitlements would be a denial of the project, governed by the restrictions imposed on the City by the HAA, outlined above. The presence of any previous entitlement on the site does not change the need for the city to make findings under the HAA for any denial of the project currently under consideration.

Additionally, AB 2097 clearly states “Therefore, this section shall be interpreted in favor of the prohibition of the imposition of mandatory parking minimums as outlined in this section.” (Gov. Code, § 65863.2, subd. (i).) The Legislature has clearly articulated its intent that local agencies should interpret the law as prohibiting parking requirements.

Furthermore, the California Department of Housing and Community Development (“HCD”) has issued [guidance](#) that AB 2097 can, in fact, be applied retroactively. From page 6 of the linked January 2025 memorandum:

Can AB 2097 be used to eliminate an existing parking agreement?

Yes, with the exception of contractual commercial parking agreements with a public agency that were executed before January 1, 2023.

The parking in question is not a contractual commercial parking agreement with a public agency, and therefore the HCD guidance is that AB 2097 can be used to eliminate the parking agreement between the applicant and the city.

Finally, it is unclear why the City is fighting to impose parking requirements on assisted living and memory care units, where residents are likely unable to drive or choose not to.

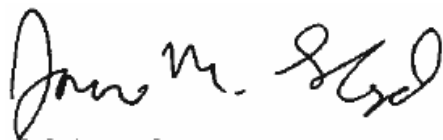
As you are well aware, California remains in the throes of a statewide crisis-level housing shortage. New housing such as this is a public benefit; it will provide badly-needed affordable housing; it will bring increased tax revenue and new customers to local businesses; and it will reduce displacement of existing residents into homelessness. Most importantly, it will allow seniors to age with dignity by providing invaluable assisted living and memory care housing. While no one project will solve the statewide housing crisis, the proposed development is a step in the right direction. CalHDF urges the City to approve it, consistent with its obligations under state law.

CalHDF is a 501(c)3 non-profit corporation whose mission includes advocating for increased access to housing for Californians at all income levels, including low-income households. You may learn more about CalHDF at [www.calhdf.org](http://www.calhdf.org).

Sincerely,



Dylan Casey  
CalHDF Executive Director



James M. Lloyd  
CalHDF Director of Planning and Investigations

**From:** [radler.digiplaces.com](mailto:radler.digiplaces.com)  
**To:** [City Clerk](#)  
**Subject:** PPT slides for May 6 City Council meeting, Item #13  
**Date:** Monday, May 5, 2025 10:55:33 AM  
**Attachments:** [Richard Adler 5.6.25.pptx](#)

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Attached is a Powerpoint presentation (3 slides) that I would like to use with a public comment I plan to make in relation to Item #13 on the City Council meeting agenda for tomorrow night, May 6<sup>th</sup> (*Modification to a previously approved Development Permit and Architectural & Site Approval for the Westport Development*).

Thank you,

Richard Adler

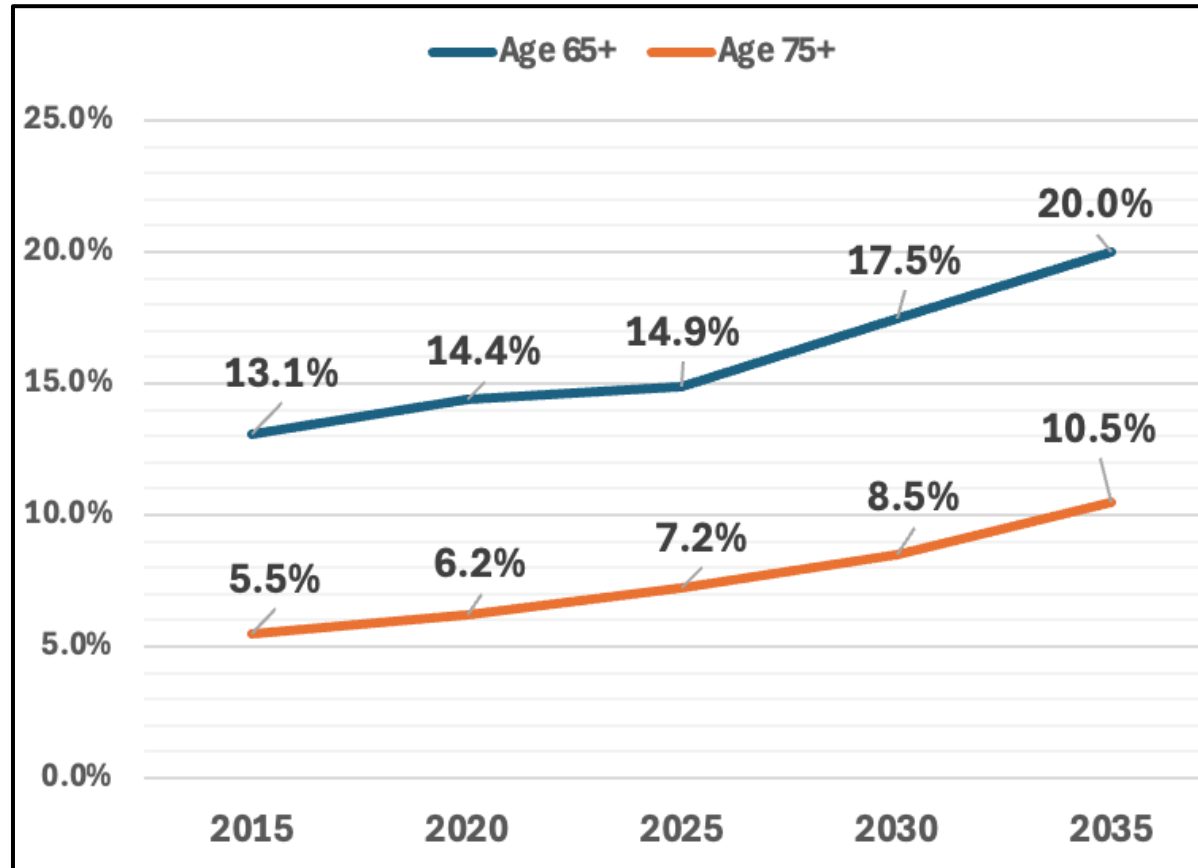
Age Friendly Cupertino

# Presentation to Cupertino City Council

Item #13:  
Westport Development Permit Modification

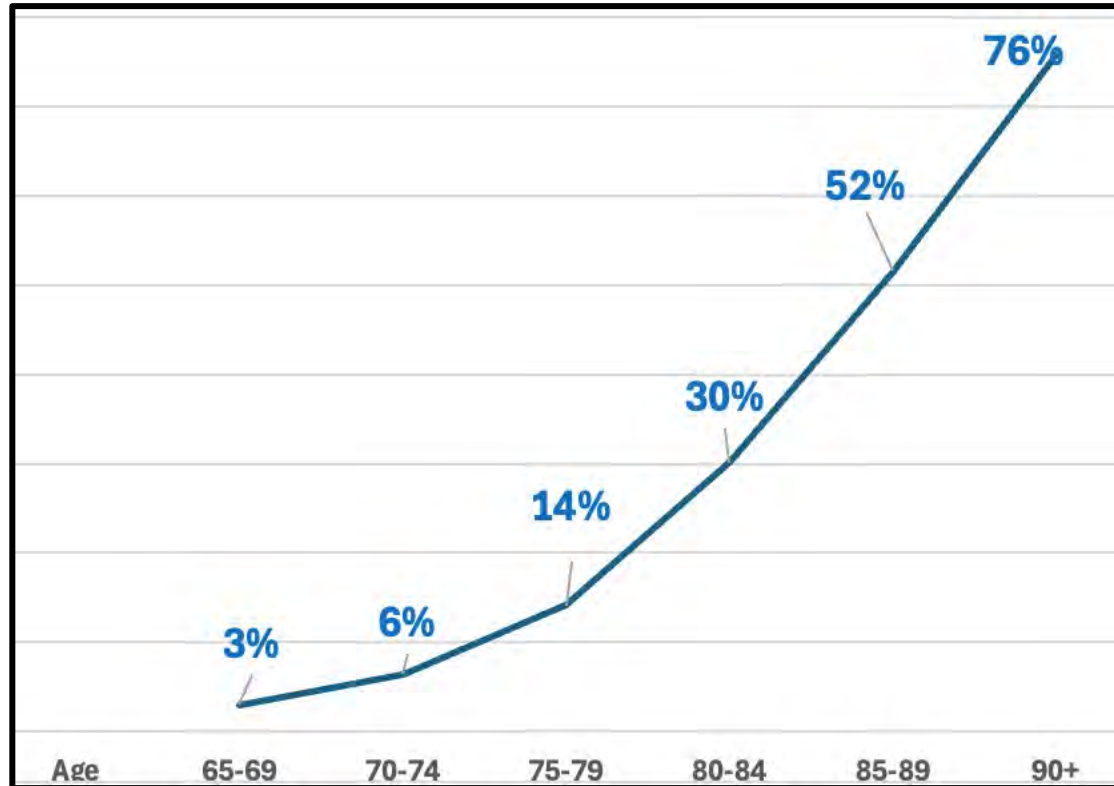
Richard Adler  
Age-Friendly Cupertino  
May 6, 2025

# Cupertino's 65+ and 75+ Population 2015-2035





# Need for Assisted Living by Age



Assisted Living  
Units Available

2025:  
221

2035:  
?

# Prevalence of Alzheimer's in Cupertino's 65+ Population

<u>2025</u>	<u>2035</u>
<b>8,445</b> Cupertino's 65+ population	<b>11,400</b> Cupertino's 65+ population
<b>10.6%</b> % with Alzheimer's	<b>11%</b> % with Alzheimer's
<b>895</b> 65+ residents with Alzheimer's	<b>1,250</b> 65+ residents with Alzheimer's

Memory Care  
Units Available:

103

?

# Data Sources

## 1. Cupertino's 65+ Population, 2015-2035

2015 City of Cupertino Parks and Recreation Master Plan Demographic Analysis (2016)

2020 Same as above (updated for 2020)

2025 Neilsberg demographic insights

2030-35 Projections:

- Santa Clara County Office of Aging Reports
- State of California Department of Finance population projections
- U.S. Census Bureau trends and regional aging patterns in Silicon Valley

## 2. Prevalence of Alzheimer's in Cupertino, 2025-2035

Alzheimer's Association: 2024 Alzheimer's Disease Facts and Figures

<https://www.alz.org/media/Documents/alzheimers-facts-and-figures.pdf>

California Department of Public Health – Alzheimer's in California

<https://www.cdph.ca.gov>

U.S. Census Bureau Population Estimates and Projections

Santa Clara County Public Health Department – Aging and Health Reports

<https://publichealth.sccgov.org>

Neilsberg Demographic Reports (2025 estimates)

<https://www.neilsberg.com/insights/cupertino-ca-population-by-age/>

**From:** DeWitt, Cascade <[cascade.zak@related.com](mailto:cascade.zak@related.com)>  
**Sent:** Monday, May 5, 2025 1:32 PM  
**To:** Nicholas Roosevelt <[nroosevelt@jabramslaw.com](mailto:nroosevelt@jabramslaw.com)>; Liang Chao <[lchao@cupertino.org](mailto:lchao@cupertino.org)>; City Council <[citycouncil@cupertino.gov](mailto:citycouncil@cupertino.gov)>  
**Cc:** James Abrams <[jabrams@jabramslaw.com](mailto:jabrams@jabramslaw.com)>; Simsik, Balint <[Balint.Simsik@related.com](mailto:Balint.Simsik@related.com)>; Gian Martire <[GianM@cupertino.gov](mailto:GianM@cupertino.gov)>; Floy Andrews <[FloyA@cupertino.gov](mailto:FloyA@cupertino.gov)>; City Attorney's Office <[cityattorney@cupertino.gov](mailto:cityattorney@cupertino.gov)>  
**Subject:** RE: Letter Regarding Item #13 on City Council's Agenda for May 6 (Westport Project Building #1)

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Please try this link:

<https://related.box.com/s/qf05uttembjt7hgk3d2frcqyfnhg21xi>

**Cascade Zak DeWitt**

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[cascade.zak@related.com](mailto:cascade.zak@related.com)

**From:** Nicholas Roosevelt <[nroosevelt@jabramslaw.com](mailto:nroosevelt@jabramslaw.com)>  
**Sent:** Monday, May 5, 2025 12:55 PM  
**To:** [lchao@cupertino.org](mailto:lchao@cupertino.org); [citycouncil@cupertino.gov](mailto:citycouncil@cupertino.gov)  
**Cc:** James Abrams <[jabrams@jabramslaw.com](mailto:jabrams@jabramslaw.com)>; Simsik, Balint <[Balint.Simsik@related.com](mailto:Balint.Simsik@related.com)>; DeWitt, Cascade <[cascade.zak@related.com](mailto:cascade.zak@related.com)>; Gian Martire <[GianM@cupertino.gov](mailto:GianM@cupertino.gov)>; Floy Andrews <[FloyA@cupertino.gov](mailto:FloyA@cupertino.gov)>; [cityattorney@cupertino.gov](mailto:cityattorney@cupertino.gov)

**Subject:** Letter Regarding Item #13 on City Council's Agenda for May 6 (Westport Project Building #1)

Dear Mayor Chao and Councilmembers—

In the following link, please find a letter regarding tomorrow's hearing on the proposed modifications to Westport Project Building 1 (Item #13 on the Council's agenda for tomorrow evening):

<https://www.dropbox.com/scl/fi/bo74navus1i21wi48hrs4/J-Abrams-Letter-re-Westport-Revised-Program.pdf?rlkey=0fajpzbthtz0s25jp5rpwne8b&dl=0> [dropbox.com]

Please do not hesitate to contact me if you have any issue accessing the file link (the link is necessary as opposed to an email attachment due to the size of the attached September 6, 2024 plan set for the proposed modifications).

Thanks,

Nick

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Nick Roosevelt

J. Abrams Law, P.C.

538 Hayes Street

San Francisco, CA 94102

Email: [nroosevelt@jabramslaw.com](mailto:nroosevelt@jabramslaw.com)

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**J. ABRAMS LAW, P.C.**

538 Hayes Street  
San Francisco, CA 94102

Nick Roosevelt  
[nroosevelt@jabramslaw.com](mailto:nroosevelt@jabramslaw.com)

**VIA E-EMAIL**

May 5, 2025

Liang Chao  
Mayor  
City of Cupertino  
10300 Torre Avenue  
Cupertino, CA 95014-3255  
[lchao@cupertino.org](mailto:lchao@cupertino.org)

Re: Westport Cupertino Project, Building 1

Dear Mayor Chao and Councilmembers:

This firm represents the project sponsor of the “Building 1” development (“Building 1”) within the Westport Cupertino project (the “Project”). The City Council is scheduled to hear proposed modifications to the Project on May 6, 2025. In advance of the hearing we wish to raise the following issues with the City Council.

**AB2097 & Condition Regarding Additional Parking**

We refer you to our April 18, 2025 letter to the Planning Commission, which provides detailed reasoning why the Staff Report in the case file for your May 6 hearing incorrectly asserts that the Project is not eligible to use AB2097 to reduce its required parking (the letter can be found on page 25 of the public comment pdf included in the case file for the May 6, 2025 hearing). We were disappointed to see the Planning Commission adopt the staff report’s recommended condition of approval requiring that the Project add 20 additional surface parking spaces, but reiterate that in the interest of expedient approval of the Project, the project sponsor is willing to work with Planning staff on modifying the Project’s site plan to include 20 additional parking spaces. This would require reconfiguration of the ground-level plan for the site, likely including changes to the currently proposed landscaped and open areas and potentially including modifications to the building’s first-level floor plan to arrive at a more efficient parking layout capable of supporting the additional 20 spaces.

We continue to maintain that the City Council should reject the recommendation of staff and the Planning Commission and conclude that AB2097 does not permit the City Council to condition Project approval on the requirement to add 20 additional parking spaces. However, should the City Council ultimately chose to include the condition, we would ask that the Council’s condition clarify that any design modifications necessary to accommodate 20 additional spaces

shall be reviewed and finally approved by Planning staff, without additional hearings before the Planning Commission or City Council.

### **Plan Set**

The case file for the May 6 hearing does not include the record plan set proposed by the project sponsor for approval and instead only includes a site plan sheet. Further, the draft approvals include in the case file for the May 6 hearing reference the initially submitted plan set for the Project dated April 1, 2024, instead of the latest resubmittal of the plan set addressing staff comment dated September 6, 2024. For the sake of record clarity, we have attached the September 6, 2024 plan set to this letter as **Attachment 1** and hope that staff will clarify on May 6 the correct plan set date reference for the Project's approvals.

Please note that we have made one change to the September 6, 2024 record plan set included as **Attachment 1**, which is a redline annotation on the cover sheet (Sheet G11) flagging that the listed parking figures are subject to the analysis and modifications recommended by staff in the Staff Report for the May 6 hearing (discussed on the previous page of this letter).

### **Increased Retail / Reduced Park Land Fee**

In response to the Planning Commission's additional recommended condition of approval intended to incentivize adding 4,000 square feet of retail by waiving some or all of the Park Land Dedication In-Lieu Fee, City staff requested supplemental sponsor feedback on the feasibility and cost of including additional retail space on the ground floor of Building 1, the sponsor team conducted a preliminary assessment and believes it may be feasible to add approximately 2,500 square feet of additional retail space on the ground floor. Achieving this outcome would require relocating certain uses to Level 6, expanding the building's overall gross square footage, and reducing the currently proposed setbacks on Level 6 (that is, the building's currently proposed envelope would increase at Level 6). Sponsor estimates the increased cost to implement these changes would be approximately \$3 million.

These figures are based on an early-stage analysis, initiated specifically at City staff's request to evaluate the Planning Commission's recommended condition added at its hearing regarding the potential for any incremental retail that could be added and at what cost.

Notably, to sponsor's knowledge, City staff have not identified a pathway by which any incentive to add retail by waiver of the Park Land fee might be approved. Importantly, to maintain the financial viability of the Project, it is **critical** that no additional delays or discretionary approvals occur beyond the scheduled May 6, 2025 hearing.



We look forward to presenting the Project to the City Council on May 6 and respectfully request the City approve the requested modifications in a manner consistent with requests and clarifications set forth in this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Nick V. Roosevelt", written in a cursive style.

Nick Roosevelt

**CC:**

All City Councilmembers  
citycouncil@cupertino.gov

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**ATTACHMENT 1**

*Record Plan Set Dated September 6, 2024*

*(including redline annotation re parking on Sheet G11)*