



COMMUNITY DEVELOPMENT DEPARTMENT

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CITY COUNCIL STAFF REPORT

Meeting: December 5, 2023

Subject

Consider a Municipal Code Amendment to Chapter 19.76 and a Conditional Use Permit and Parking Exception for the use of a former public school site by a pre-kindergarten through 9th grade private educational facility and associated Categorical Exemption under CEQA. (Application No.: MCA-2023-003; U-2023-002; EXC-2023-009 Applicant: City of Cupertino; Grace Stanat on behalf of Tessellations; Location: BA-zoned (Public Building) properties in Cupertino; 1170 Yorkshire Drive; APN# 362-08-001)

Recommended Action

That the City Council:

1. Find the proposed actions exempt from the California Environmental Quality Act (CEQA) and CEQA Guidelines;
2. Conduct the first reading of Ordinance No. XX-XXX: "An Ordinance of the City Council of the City of Cupertino amending Cupertino Municipal Code Chapter 19.76 (Table 19.76.030) to allow privately operated educational uses and privately operated public serving uses in the BA zoning district";
3. Approve the Conditional Use Permit (U-2023-002); and
4. Approve the Parking Exception (EXC-2023-009)

Discussion

Background

Permit Requirements

The applicant, Tessellations, requests a Conditional Use Permit ("CUP") to operate a private education facility at a former public school site (the former Regnart Elementary School) in the Public Building, or BA, zoning district. Per Cupertino Municipal Code ("Municipal Code") Section 19.76.030(1), allowed uses in the BA zoning district consist of "[b]uildings and other uses on land owned or utilized by a federal, State, county, or city government or authority, or by a special district created for public purposes under the laws of the State of California"

As such, the language in Municipal Code Section 19.76.030(1) pertains specifically to public uses operated by public entities and does not explicitly allow a private entity (e.g., a private school) performing a similar use on BA zoned properties. However, such uses

have historically been allowed with a CUP (discussed below). Since the practice of conditionally permitting private operators in a district intended for public uses is not explicitly stated in the current Municipal Code, a Municipal Code Amendment is proposed to clarify the process by which private school uses may operate on a BA zoned site.

Due to the size (i.e., greater than 10,000 square feet) of the former public school facility, approval of a Major CUP application, which must be reviewed by the Planning Commission, is required. However, since the proposed Municipal Code Amendment requires review by both the Planning Commission and approval by the City Council (Municipal Code Section 19.12.030), per Municipal Code Section 19.04.090, the reviewing body having final approval over a combined application shall be the highest body in the City. Therefore, the City Council will be the final decision-making body for both the BA district's Municipal Code amendment and the CUP. For the CUP to be approved, the Code amendment must first be adopted. Since Code amendments are not effective until 30 days after a second reading of the ordinance, the effective date of the CUP is conditioned to coincide with the date the Code amendment goes into effect.

Context of Municipal Code Amendment

Chapter 19.76 of the Municipal Code governs Public Buildings (BA), Quasi Public Building (BQ), and Transportation (T) Zones. The chapter notes that the BA, BQ, and T zoning districts are designed to accommodate governmental, public utility, educational, religious, community service, transportation, or recreational facilities in the city.

There are currently 23 sites zoned BA in the City, 14 of which are owned and operated by Cupertino Union School District ("CUSD") and Fremont Union High School District ("FUHSD"). Over the last decade or more CUSD and FUHSD have experienced a steady and significant decline in student enrollment. This decline is projected to continue for the foreseeable future. Based on projections from the two school districts' 2022 enrollment numbers, CUSD expects to see an approximate 23% decline in transitional kindergarten to eighth grade students by 2027¹ and FUHSD expects to see an approximately 21% decline in ninth to twelfth grade students by 2027².

On October 14, 2021, in response to this downward trend in enrollment and its budgetary impacts, the CUSD Board voted to close Regnart and Meyerholz (located in San Jose)

¹ See [Analysis of Enrollment Projections – Fall 2023 Cupertino Union School District](#), Page 10 "Figure 11: Moderate 5 Year District-Wide Projection by Grade Level"

² See <https://resources.finalsite.net/images/v1674170884/fuhsdorg/bnyvzlp4kovphpdxdm6z/2022-23FUHSDForecastUpdateReportFINAL.pdf> "October Enrollments, 2016 to 2027"

Elementary Schools, effective in the 2022-2023 school year.³ CUSD, however, retained ownership of both the Regnart and Meyerholz school properties with the intent to lease the property to generate revenue.

Conditional Use Permit Site Description

The former Regnart Elementary School site is located at 1170 Yorkshire Drive, north of Rainbow Drive and west of South Stelling Road, within the South Monta Vista neighborhood. Land uses surrounding the project consist exclusively of single-family detached residential uses (see Figure 1) originally developed in the 1960s, around the time Regnart Elementary was built.



Figure 1. Existing Land Uses

Project Data

General Plan Designation	Public Facilities
Zoning Designation	BA (Public Buildings)
Lot Area	9.41 acres
Building Area	50,650 square feet
Project Consistency with:	
General Plan:	Yes
Zoning:	Yes
Environmental Review:	Categorically Exempt per Section 15301, Class 1 (Existing Facilities), California Environmental Quality Act (CEQA)

Municipal Code Amendment Analysis

Per Municipal Code Section 19.152.010 “[t]his title may be amended ... by changing the regulations applicable within one or more districts, ... whenever the public interest or general welfare so require.” Public school sites are considered a municipal, or local, resource and the school districts that own the properties directly serve the community in

³ See Cupertino Union School District Resolution No. 21-22-07,
“<http://go.boarddocs.com/ca/cusdk8/Board.nsf/goto?open&id=C6TLJF5695DF>”

which they are located; therefore, the maintenance and retention of public school sites as educational facilities is considered as being in the public interest.

The existing regulations in Chapter 19.76 of the Municipal Code pertaining to the use of BA zoned sites have remained unchanged from the approval of City Council Ordinance 220(1)⁴ in 1970, which was later codified via City Council Ordinance 1601 in 1992 and do not explicitly allow private uses on public properties.

However, CUSD has previously leased their properties, either in part or in whole, to private schools, specialized schools, day care facilities, and tutoring operations, and in these instances, as previously mentioned, the City has required CUPs. In 1985, the Planning Commission approved Resolution No. 2616⁵ that outlined recommended guidelines for new uses on public school sites. In general, the resolution recommended that the operations of the new private uses should reflect that of the public school use. While never formally approved by the City Council, the guidelines were used by the Planning Commission to aid in the review of permits for the use of public school sites.

Table 1: Use Permits for Private Uses on Public School Sites			
School	Address	Use Permit	Approved Use
Sedgwick Elementary	19200 Phil Lane	U-1983-40	Private education (600 students)
Eaton Elementary	20220 Suisun Drive	U-1984-15	Private preschool, elementary school, and daycare (210 students)
Eaton Elementary	20220 Suisun Drive	U-1984-20	Specialized school (ballet classes, one classroom)
Collins Elementary	10300 N Blaney Avenue	U-1985-18	Preschool and daycare facility (84 students)
Collins Elementary	10300 N Blaney Avenue	U-1985-18 (Mod)	Two private education institutions in six classrooms
Eaton Elementary	20220 Suisun Drive	U-1986-01	Master Use Permit for Public, Quasi-Public, Private Education, Day Care, Exercise Classes, and Counseling Services

The proposed Municipal Code Amendment would:

- Expand the allowed, or conditionally allowed, uses on BA zoned properties to include a wider range of educational and public service uses.

⁴ See Ordinance 220 (1) at "<https://laserficheio-app.cupertino.org/WebLink/DocView.aspx?id=24869&dbid=0&repo=CityofCupertino>"

⁵ See Resolution No. 2616 at "<https://records.cupertino.org/WebLink/DocView.aspx?id=696268&dbid=0&repo=CityofCupertino>"

- Explicitly require a CUP, to be reviewed and approved by the Planning Commission, for privately operated educational and privately operated public serving uses, including, but not limited to day care facilities and private educational facilities.
- Maintain consistency with the intent of the BA district, as the amendment would continue to require that such uses are conducted on property owned by a federal, State, county, or city government or authority, a special district created for public purposes under the laws of the State of California, or any other governmental agency, and leased for said uses.

The amendment would establish a clear process by which private uses that perform functions similar to public agencies, such as schools, can do so on a site that remains owned by the public entity, subject to appropriate conditions that safeguard the surrounding neighborhood. This Code amendment does not modify the uses, conditional or otherwise, for any zoning district other than the BA district and is therefore expected to have no environmental impacts. The potential for operational impacts to the immediate neighborhood are also considered minimal because the added conditional uses are both similar in nature to the public uses that typically operate on the BA-zoned sites and they are subject to the approval of a CUP, unlike public agencies uses which are permitted by right, without conditions affecting their operations.

While the General Plan does not provide specific recommendations for the use of publicly owned and operated land, it does include several policies that support the retention of property, especially school sites, for public use.

- **Strategy RPC-2.1.2: Public Use of School Sites.** Zone all public school sites for public use to allow for the public to use [the] sites, when not in use by schools, through shared arrangements.
- **Policy RPC-8.1.2: School Expansion.** Encourage schools to meet their expansion needs without reducing the size of their sports fields.
- **Goal RPC-8:** Cooperate with school districts to share facilities and meet community needs.
- **Policy LU-6.4: Public Access.** Coordinate with property owners of public and quasi-public sites to allow public access of Historic and Commemorative Sites to foster public awareness and education. Private property owners will be highly encouraged, but not required, to provide public access to Historic and Commemorative Sites

Since the proposed Municipal Code Amendment would allow for a limited expansion of the uses allowed in the BA zoning district, the public agencies with current ownership would, presumably, have additional options for revenue generation should the current primary use of the sites be altered or removed. This is particularly true of the local school

districts given the continuing trend in decreasing enrollment. As such, the proposed Code amendment supports the extension of the use of those sites in the service of the general public, consistent with the General Plan policies and goals outlined above.

Conditional Use Permit Analysis

If amended, Municipal Code Chapter 19.76 would require a Conditional Use Permit for the operation of a private school on a BA zoned property. As such, Tessellations, the applicant and operator of the private school on the former Regnart school site, is requesting approval of a Conditional Use Permit concurrently with the proposal to amend Code Chapter 19.76 to conditionally allow private uses on publicly owned land through the approval of a CUP.

In February of this year, Tessellations signed a 10-year lease agreement with the CUSD for the use of the former Regnart Elementary School campus (“the site”). In August of 2023, Tessellations began its private educational operation at the site and the City was shortly thereafter made aware of its use of the site. Tessellations then submitted a CUP application in late-August requesting the City’s consideration for the use of the site as a private Preschool through 9th grade operation.

The complete scope of Tessellations’ operation includes the following:

- Pre-K through 9th grade for up to 300 students and 85 staff operating from August to June of each academic year, Monday through Friday, 6:30 a.m. to 4:00 p.m.
- An afterschool program hosting up to 125 of the students enrolled in the Pre-K through 9th grade operation, occurring Monday through Friday from 4 p.m. to 6:30 p.m.
- Up to seven special events annually for up to 500 people, occurring on weekends and weekdays and ending by 9:00 p.m. with special parking arrangements, as proposed
- Small, school-related events for up to 60 people, occurring on weekends and weekdays and ending by 9:00 p.m.
- Summer school operations for up to 300 students and 60 staff, operating from June to August of each year, Monday through Friday from 7:00 a.m. to 4:00 p.m.

Only minor alterations to the campus, including general upkeep, are proposed at this time. No additional development or facility expansion is proposed. Moreover, since the site remains owned by the CUSD, a public agency, Tessellations is required to obtain approval for architectural alterations and site improvements from the Division of the State Architect (“DSA”). A condition has been added to this permit requiring that the City be notified of any approved permits processed through the DSA.

Tessellations proposed scope of work is generally consistent with the operation of a public school. The following paragraphs analyze the general factors for consideration of a private school operation.

Number of Students and Staff

At its peak enrollment in 2008, Regnart Elementary School had 652 students and approximately 41 full-time staff. In its final year, prior to its closing, Regnart had 309 students and approximately 31 full-time staff. As noted above, Tessellations proposes a maximum of 300 students and 85 staff, including part-time staff and seasonal vendors. While there are a higher number of staff expected to be on site on a regular basis, due to Tessellations lower teacher to student ratio (1:5), the total number of persons on site is not expected to exceed what was typically seen at the public school campus during its years of operation. With the parking and travel requirements outlined below, and conditioned as part of this permit, the number of students and staff present on site is expected to result in a use that is consistent with that of a typical public school.

Hours of Operation

Tessellations' proposed hours of operations are Monday through Friday from 6:30 a.m. to 9:00 p.m., with typical school operations, including the afterschool program, occurring between 7:30 a.m. and 6:30 p.m. Classes begin at 8:15 a.m. and end at 3:15 p.m. and staff is expected to arrive between 7:00 a.m. and 7:30 a.m.

Tessellations staff has confirmed that the school's start and end times have been reviewed and approved by CUSD to avoid conflict, to the extent possible, with other schools in the area. Table 2 below indicates the start and end times of the nearby public schools that were taken into consideration in CUSD's review, as reported by Tessellations.

Table 2: School start and end times			
	Distance	Start Time	End Time
Tessellations	n/a	8:15 a.m.	3:15 p.m.
Kennedy Middle School	0.7 miles	8:00 a.m.	3:05 p.m.
Lincoln Elementary School	1.2 miles	8:10 a.m.	2:45 p.m.
Monta Vista High School	1.4 miles	8:30 a.m.	3:50 p.m.

Drop Off and Pick Up

The proposed student drop-off times are between 8:00 a.m. and 8:15 a.m. and student pick-up is proposed between 3:15 p.m. and 3:30 p.m. Pick-up for the after-school program is proposed to occur through to 6:00 p.m.

Student drop-off and pick-up is proposed to occur entirely on the school site, with no drop-off or pick-up occurring on the street. Five staff will supervise the drop-off to assist

children exiting vehicles and to address traffic flow issues. Additionally, a crossing guard is stationed at Yorkshire and Folkstone Drives to ensure the safety of pedestrians and bicyclists and to facilitate traffic management.

For student pick-up, Tessellations requires the use of an App for parents and guardians called DashPass. Per their submission material, “each car has a placard showing the children that are to be picked up. DashPass notifies the school when a parent or guardian car enters a specific geo-fence location. At this point, the teacher is notified to release the student[s] and they proceed to the pick-up area.” The pick-up process has seven staff assigned to monitor traffic and ensure safety.

Parking and Traffic

Municipal Code Section 19.124.040 requires schools and school offices in the BA zoning district to provide parking at a rate of one space per employee, plus one space per 56 square feet of multi-purpose room, plus eight visitor spaces, plus one space for every three students at senior high school or college level. Since Tessellations proposes a maximum of 85 employees, has 3,072 square feet of multi-purpose space, but no driving-age high school or college students, it would be expected to provide 148 parking spaces on site, based on the relevant parking Code requirements.



Figure 2: Location of proposed surface parking

The site currently has 47 parking spaces, four of which are ADA designated spaces. In addition to the existing parking, Tessellations has proposed a new parking area located in the northern portion of the campus on an existing blacktop area, shown in yellow in Figure 2, below. This area could accommodate up to 20 additional spaces, providing an on-site total of 67 spaces. Nine of the spaces will be utilized by the school’s vans, leaving 58 spaces to accommodate staff parking.

Table 3: Parking Required and Provided by location		
Location of Parking		Total parking

Required Parking per Municipal Code <i>(one space per employee, plus one space per 56 square feet of multi-purpose room, plus eight visitor spaces plus 1 space for every 3 senior high school students)</i>		148
Existing on site (including 4 ADA spaces)	47	
Blacktop parking	20	
Total provided		67
Van parking	(9)	
Total available for general parking	58	
Deficit per Municipal Code		(81)
Shared/Alternate Parking Proposed - New Life Church on McClellan Rd – available for 2 years under existing lease		82
Excess – meets Municipal Code requirements		+1

To address this discrepancy between Code-required parking amounts and the on-site parking capacity, Tessellations has proposed the use of a satellite parking lot in the event this is necessary to augment their on-site parking. If a need were indicated, or it becomes apparent that staff parking is not accommodable on the school site as reduced through carpooling, biking, and walking, staff would then park at the satellite parking lot and be shuttled in groups to the Tessellations campus, thereby reducing the number of vehicles parked at the campus. Tessellations is currently proposing to have this satellite parking lot located at 20900 McClellan Road, which is currently occupied by New Life Church. The church parking lot currently has approximately 132 parking spaces. Based on the Municipal Code requirements for parking for churches, 50 spaces must remain available for church-related operations. This leaves 82 remaining spaces on the site which would adequately address Tessellations' 81 space deficit. Additionally, since the church's peak use occurs on weekends, Tessellations' potential use of the parking area on weekdays would not result in any parking deficiencies when the church is in full use.

For special events, Tessellations has proposed the use of the entire on-site blacktop area, typically used for outdoor recreation by students, for temporary overflow parking (see red highlight in Figure 2). This temporary parking lot, when in use, would be operated by a private company, hired by Tessellations to manage and direct parking. Figure 3 below shows an example of the proposed temporary parking layout.

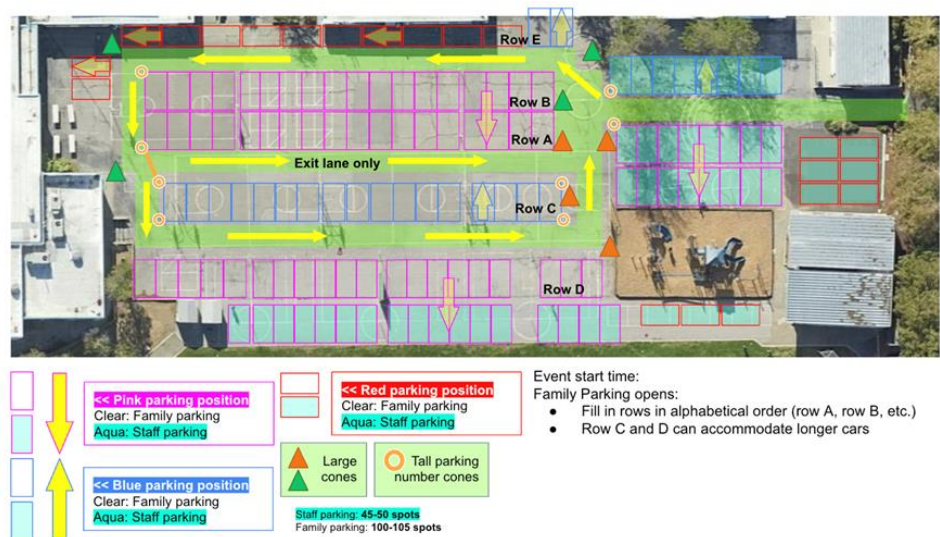


Figure 3: Proposed Event Parking Layout

As these two parking arrangements – satellite parking lots and temporary parking lots – are not a specified alternative to parking standards in the Municipal Code, a Parking Exception is required. Municipal Code Chapter 19.124 allows the City to consider parking exceptions when the proposed project can demonstrate sufficient parking through an alternative means. The findings for approving a parking exception are listed below:

1. The literal enforcement of this chapter will result in restrictions inconsistent with the spirit and intent of this chapter.
2. The granting of the exception will not be injurious to property or improvements in the area nor be detrimental to the public safety, health, and welfare.
3. The exception to be granted is one that will require the least modification and the minimum variance to accomplish the purpose.
4. The proposed exception will not result in significant impacts to neighboring properties.

The proposed Parking Exception considers the alternative parking arrangement of an off-site parking lot for use by the school as well as a temporary parking lot on an existing blacktop area. This total does not account for the staff that may walk, bike, or carpool to work, which would reduce the total number of spaces needed on a regular basis. Through the use of the satellite parking lot, Tessellations would have access to a total of 149 spaces, a surplus of one space over the required parking ratio. Additionally, Tessellations has provided an alternative option for their special events which would accommodate up to approximately 120 additional spaces on site through temporary parking area.

This additional parking is expected to adequately address the potential for spillover into the adjacent areas and does not result in a reduction in the overall number of parking

spaces required through Municipal Code Section 19.124.040. Therefore, staff recommends approval of the Parking Exception.

Review by Other Departments and Agencies

The project application was reviewed by the City's Building Division, Public Works Department, Environmental Services Division, and the County Fire Department. Comments from each of these departments and agencies have been incorporated into the conditions of approval for this project.

Planning Commission Summary

On November 14, 2023, the Planning Commission conducted a public hearing for their recommendation to the Council regarding the proposals. By a 5-0 vote, the Commission adopted Resolution No. 2023-14 (Attachment 6) recommending that the City Council find all actions exempt from CEQA and adopt the proposed Municipal Code Amendment to the standards of the BA zoning district. Separately, by a 4-1 vote (No: Scharf), the Commission adopted Resolution No.s 2023-15 and 2023-16 (Attachments 7 and 8) recommending that the Council approve the Conditional Use Permit and Parking Exception as proposed by Tessellations.

The Commission received comments from the public regarding use of public street parking by school staff and visitors, public access to the school property, potential for increased traffic, concerns of an increase in crime, traffic during large events, the use of the shuttle service, and limited on-site parking.

Municipal Code Amendment Discussion

Discussion related to the Municipal Code Amendment was limited and revolved around an understanding of how the text amendment was exempt from CEQA. Staff clarified that the Municipal Code Amendment would not permit without future review and approval of a CUP, any operations on other BA zoned sites.

Conditional Use Permit Discussion

With regards to the Use Permit, Commissioners noted that there was support for maintaining a school use at the site and that the proposed use was compatible based on its size. The Commission had general comments in the following areas:

- If the barriers to allow for a private school use on school district owned property became too high, it may not be feasible for CUSD to retain ownership of the sites as occurred in the 1980s when school sites were closed.
- One commissioner voiced concerns about impacts to neighborhood traffic and the operation of the school prior to receiving permits while three others noted that some traffic issues were inherent with any school operation.

- One Commissioner was concerned about the use of the blacktop for special events and afterschool program use would limit the public's access to the site. However, the applicant clarified that the school had approval via email from CUSD for use of the black top exclusively until 6 p.m. even though this was not reflected in their lease. It was further clarified that access to the fields would remain open to the public after 4 p.m., unless permitted by the City for use exclusively by Tessellations⁶.

Parking Exception Discussion

Discussion around the Parking Exception included comments and clarifications in the following areas:

- Parking requirements and calculation
- Permit parking
- Whether the school intended to expand beyond the proposed 300 students and 85 staff.
- Use of New Life Church as a satellite lot, clarification on existing uses at the Church and the potential for another site to be a satellite lot. Staff clarified that the resolution for EXC-2023-009 contains a condition of approval which requires notification of and approval by the City if the satellite parking lot is proposed at a new location.
- Need for parking and traffic studies. Staff clarified that these studies were not required since the project is exempt from CEQA. It was also clarified that the 148 space requirement indicates a maximum parking requirement, which is well in excess of what would typically be utilized on a day to day basis.
- One Commissioner noted their support of the school using the parking in the right of way closest to the school along Yorkshire Drive for school parking in the future.

Modifications to Conditions of Approval

Staff has provided two new conditions of approval to address topics discussed by the Planning Commission but not incorporated as a part of their final action, and other minor clarifications, as part of the updated draft resolution for the Council's consideration:

Permit Parking: Following Tessellations' opening at the 1170 Yorkshire Drive location, the neighboring property owners concurrently submitted a petition for permit parking to the City. The Planning Commission discussed the neighborhood's request for permit parking and contemplated the addition of a condition to require that Tessellations cover the costs associated with the permit parking. The Commission did not include this condition in

⁶ Tessellations is currently permitting the field Tuesdays and Thursdays from 4 p.m. to 6 p.m., in accordance with the City's Field Use Policy, available online at <https://www.cupertino.org/our-city/departments/parks-recreation/reservations-permits/sports-fields-courts>

their final motion. Following the Planning Commission meeting, the request for permit parking was withdrawn by residents of the neighborhood.

Staff recommends adding a condition of approval to address the potential for future requests for permit parking in response to the operation of a private school, which requires that the operator defray the cost of City permit fees associated with the initiation and maintenance of permit parking for up to 75 residences in the surrounding area. This condition would only be if, in the opinion of the Public Works Director (or his/her designee), the permit parking request came as a direct result of significant parking impacts from the private school use.

Shuttle Service: The Commission considered whether to include a condition to regulate and mandate the use of the shuttle service. Two Commissioners noted that with implementation of permit parking (which had been applied for at that time), shuttle service would likely not be needed. Three Commissioners also noted that if the school were allowed credit for the on-street parking spaces abutting the school on the east side of Yorkshire Drive, it would be possible that the shuttle service would not be needed. Eventually, this condition was not incorporated into the Planning Commission's action.

Staff recommends adding a condition of approval requiring the use of the shuttle service if it is determined by the Director of Community Development, in consultation with the City's Public Works Director (or his/her designee), that the parking associated with the private school operation is creating a public nuisance in the surrounding neighborhood.

Sustainability Impact

Modifications to BA zoned properties and the site at 1170 Yorkshire Drive will be subject to Title 24 and other applicable state laws governing green building standards.

Fiscal Impact

No fiscal impact.

Environmental Assessment

The project, as proposed, is categorically exempt from the California Environmental Quality Act (CEQA) per section 15301 (Existing Facilities) of the CEQA Guidelines. The key consideration in making this determination is whether the project involves negligible or no expansion of use (CCR Title 14 § 15301). In this instance, the project is the operation of a private educational facility on a former public school site that involves only minor physical changes to the site.

Prepared by:

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Reviewed by:

Benjamin Fu, Director of Community Development

Approved for Submission by:

Pamela Wu, City Manager

ATTACHMENTS

1. Draft Ordinance for MCA-2023-003
2. Draft Resolution for U-2023-002
3. Draft Resolution for EXC-2023-009
4. Plan Set (abridged due to limitations of state law pursuant to SB1214)
5. Applicant's Project Description
6. Planning Commission Resolution 2023-14
7. Planning Commission Resolution 2023-15
8. Planning Commission Resolution 2023-16