

RESOLUTION NO. _____

A RESOLUTION OF THE CUPERTINO CITY COUNCIL
APPROVING A HEART OF THE CITY EXCEPTION MODIFYING THE PREVIOUSLY
APPROVED WESTPORT CUPERTINO PROJECT BY RECLASSIFYING
APPROXIMATELY 8,000 SQUARE FEET OF PUBLIC DINING AREA TO PRIVATE
DINING WITHIN THE ASSISTED LIVING FACILITY (BUILDING 1) LOCATED AT
21267 STEVENS CREEK BOULEVARD (APN: 326-27-043)

SECTION I: PROJECT DESCRIPTION

Application No.: EXC-2021-003
Applicant: Related California (Cascade Zak)
Property Owner: 190 West St. James, LLC
Location: 21267 Stevens Creek Blvd. (APN #326-27-043)

SECTION II: FINDINGS FOR HEART OF THE CITY EXCEPTION:

WHEREAS, the Planning Department of the City of Cupertino received an application for a Heart of the City Exception as described in Section I of this resolution; and

WHEREAS, The Westport Cupertino Mixed-Use Project (“Project”), including the Heart of the City Exception, is fully described and analyzed in the Initial Study and proposed Final Environmental Impact Report (State Clearinghouse No. 2019070377) (“EIR” or “Final EIR”) for the Project; and

WHEREAS, on August 18, 2020, after consideration of substantial evidence contained in the entire administrative record, the City Council approved the Westport Cupertino project, by adopting resolutions including the Development Permit Resolution No 20-106, the Heart of the City Exception No. 20-110, and Resolution No. 20-105 certifying the EIR, adopting and requiring as conditions of approval all of the mitigation measures for the Project that are identified in the EIR and are within the responsibility and jurisdiction of the City , and adopting the Mitigation Monitoring and Reporting Program for the Project; and

WHEREAS, on October 15, 2021, the applicant submitted and requested the City to consider modifications to the approved Westport Development project which include adjusting unit mix in the assisted living facility (Building 1) to 123 assisted living units and 35 memory care rooms, reclassification of approximately 8,000 square feet of public dining area to private dining, reducing the underground parking to reflect adjustments

in uses, and reduction of massing on the top floor to accommodate a sixth floor aqua therapy pool; and

WHEREAS, other than the changes described above, the Heart of the City Exception proposes the same development and public improvements approved in August 2020, covering 8.1 gross acres, and providing for 88 single-family units, and 48 below-market-rate units; and

WHEREAS, the proposed changes to the project would not have any new or substantially more severe significant environmental impacts; and

WHEREAS, all necessary public notices having been given as required by the Procedural Ordinance of the City of Cupertino and the Government Code, and on December 7, 2021, the City Council held a public hearing to consider the Heart of the City Exception; and

WHEREAS, the City Council moved to continue the item the City Council hearing on December 21, 2021; and

WHEREAS, the City Council of the City of Cupertino is the decision-making body for this Resolution; and

WHEREAS, the applicant has met the burden of proof required to support the application for a Heart of the City Exception; and

1. The proposed development is otherwise consistent with the City's General Plan and with the goals of this specific plan and meets one or more of the criteria for an exception for reasons to provide design flexibility in situations when small lot size, unusually shaped parcels, or unique surrounding land uses make it difficult to adhere to the development standards and where all efforts to meet the standards have been exhausted.

The project site is located along Stevens Creek Boulevard (identified Priority Development Area), surrounded by a mix of uses, proximity to services, and access to public transportation makes it conducive to a residential development. However, the location of the project site is constrained by the fact that the Stevens Creek Boulevard frontage is adjacent to the onramp for Highway 85. This would discourage pedestrian traffic and reduce the visibility of future retail tenants significantly limiting the viability for commercial use. With the approved density bonus and associated waivers, the project is consistent with the General Plan. Other than this requested exception, the project is consistent with the Heart of the City Specific Plan.

2. The proposed development will not be injurious to property or improvements in the area nor be detrimental to the public health and safety.

The project site is designated as a Priority Housing Site in the City's Housing Element. The location is surrounded by similar urban uses and, with the approved density bonus and associated waivers and incentive/concession, the project is consistent with the General Plan for density, landscaping, private outdoor space, access, streetscape, setbacks, and design. The existing shopping center will be developed with a mix of residential housing stock including affordable, age-restricted apartment complexes and market rate townhome/rowhouse condominiums built to the current building and fire safety codes. Therefore, the project will not be detrimental or injurious to properties or improvements in the vicinity, and will not be detrimental to the public health, safety, general welfare, or convenience.

3. The proposed exception will not result in a hazardous condition for pedestrian and vehicular traffic.

The exception requested for the proposed project does not relate to the creation of a hazardous condition for pedestrian and vehicular traffic.

4. The proposed development has legal access to public streets and public services are available to serve the development.

The proposed project proposes the installation of a two-way driveway to allow access to Stevens Creek Boulevard and Mary Avenue, public streets, that the property has frontages along. Additionally, all services necessary for development are available to serve the development. The proposed project will provide the appropriate hook-ups for access.

5. The proposed development requires an exception, which involves the least modification of, or deviation from, the development regulations prescribed in this chapter necessary to accomplish a reasonable use of the parcel.

The proposed development has met all other development standards for height, parking, landscaping, density, and building placement as mandated by the General Plan, Heart of the City Specific Plan, and Zoning Ordinance, with the exception of those the applicant has requested density bonus waivers and incentive /concession for. The only regulation it does not meet is the provision of at least 75% of the building frontage along Stevens Creek Boulevard and 50% of the rear of the building be occupied by uses that allow direct retailing of goods. The development is providing retail frontage along Mary Avenue where it is not required by the Heart of the City Specific Plan, in an equivalent size and scope that would have been needed to meet the retail frontage requirement along Stevens Creek Boulevard.

NOW, THEREFORE, BE IT RESOLVED:

That after careful consideration of maps, facts, exhibits, testimony and other evidence submitted in this matter and the Environmental Impact Report and the Mitigation Monitoring and Reporting Program for the Project (EA-2018-04), subject to the conditions which are enumerated in this Resolution, beginning on PAGE 3 herein, and subject to the conditions contained in all other Resolutions approved for this Project,

The application for Heart of the City Exception, Application No. EXC-2021-003, is hereby approved, and that the subconclusions upon which the findings and conditions specified in this Resolution are based are contained in the Public Hearing record concerning Application No. EXC-2021-003 as set forth in the Minutes of the City Council Meeting of December 21, 2021 Meeting, and are incorporated by reference as though fully set forth herein.

SECTION III: CONDITIONS ADMINISTERED BY THE COMMUNITY DEVELOPMENT DEPT.

1. APPROVED EXHIBITS

Approval is based on the plan set dated December 15, 2021, consisting of 14 sheets labeled as Westport Cupertino Building 1: Enhanced Senior and Living Project, G00 – G1, and A10-A31, drawn by Steinberg Hart except as may be amended by conditions in this resolution.

2. ACCURACY OF PROJECT PLANS

The applicant/property owner is responsible to verify all pertinent property data including but not limited to property boundary locations, building setbacks, property size, building square footage, any relevant easements and/or construction records. Any misrepresentation of any property data may invalidate this approval and may require additional review, including any misrepresentation related to the note on the Vesting Tentative Map that the Townhouse/Rowhouse units will be for-sale.

3. CONCURRENT AND PRIOR APPROVAL CONDITIONS

The conditions of approval contained in file nos. M-2021-002, and ASA-2021-007 shall be applicable to this approval. The conditions of approval contained in file nos. TR-2018-22, TM-2018-03, TM-2021-002, DP-2018-05, U-2019-03 and EA-2018-04 shall be applicable to this approval unless in conflict with the conditions of approval of this resolution.

4. ANNOTATION OF THE CONDITIONS OF APPROVAL

The conditions of approval set forth shall be incorporated into and annotated on the first page of the building plans.

5. EXCEPTION

A Heart of the City Exception is granted to allow the construction of the proposed project with a maximum of 40% of the building frontage along Stevens Creek Boulevard and 75% of the rear of the building to be occupied by non-retail uses.

6. PUBLIC ACCESSIBILITY TO RETAIL SPACES

All proposed retail space shall be open to the public for the consumption of any goods or services offered in the mixed-use buildings.

7. CONSULTATION WITH OTHER DEPARTMENTS

The applicant is responsible to consult with other departments and/or agencies with regard to the proposed project for additional conditions and requirements. Any misrepresentation of any submitted data may invalidate an approval by the Community Development Department.

8. INDEMNIFICATION

To the fullest extent permitted by law, the applicant shall agree to indemnify, defend with the attorneys of the City's choice, and hold harmless the City, its City Council, and its officers, employees, and agents (collectively, the "indemnified parties") from and against any liability, claim, action, cause of action, suit, damages, judgment, lien, levy, or proceeding (collectively referred to as "proceeding") brought by a third party against one or more of the indemnified parties or one or more of the indemnified parties and the applicant related to any Ordinance, Resolution, or action approving the project, the related entitlements, environmental review documents, finding or determinations, or any other permit or approval authorized for the project. The indemnification shall include but not be limited to damages, fees, and costs awarded against the City, if any, and cost of suit, attorneys' fees, and other costs, liabilities, and expenses incurred in connection with such proceeding whether incurred by the Applicant, the City, or the parties initiating or bringing such proceeding.

The applicant shall agree to (without limitation) reimburse the City its actual attorneys' fees and costs incurred in defense of the litigation. Such attorneys' fees and costs shall include amounts paid to the City's outside counsel and shall include City Attorney time and overhead costs and other City staff overhead costs and any costs directly related to the litigation reasonably incurred by City. The applicant shall likewise agree to indemnify, defend, and hold harmless the indemnified parties from and against any damages, attorneys' fees, or costs awards, including attorneys' fees awarded under Code of Civil Procedure section 1021.5, assessed or awarded against the indemnified parties. The Applicant shall cooperate with the City to enter a Reimbursement Agreement to govern any such reimbursement.

The Applicant shall agree to (without limitation) reimburse the City for all costs incurred in additional investigation or study of, or for supplementing, redrafting, revising, or amending, any document (such as an Environmental Impact Report, negative declaration, specific plan, or general plan amendment) if made necessary by proceedings challenging the project approvals and related environmental review, if the applicant desires to continue to pursue the project.

The Applicant shall agree that the City shall have no liability to the Applicant for business interruption, punitive, speculative, or consequential damages.

9. NOTICE OF FEES, DEDICATIONS, RESERVATIONS, OR OTHER EXACTIONS

The Conditions of Project Approval set forth herein may include certain fees, dedication requirements, reservation requirements, and other exactions.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Cupertino this 21st day of December 2021, by the following vote:

Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

SIGNED: _____ Darcy Paul, Mayor City of Cupertino	 _____ Date
ATTEST: _____ Kirsten Squarcia, City Clerk	 _____ Date