

CITY OF CUPERTINO  
10300 Torre Avenue  
Cupertino, California 95014

DRAFT RESOLUTION

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF  
CUPERTINO RECOMMENDING APPROVAL OF A USE PERMIT TO  
ALLOW A MIXED USE DEVELOPMENT ON A PRIORITY HOUSING  
SITE THAT EXCEEDS THE NUMBER OF RESIDENTIAL UNITS  
DESIGNATED FOR THAT PRIORITY HOUSING SITE AS WELL AS  
ALLOWING MEMORY CARE UNITS WITHIN A PORTION OF A  
SENIOR HOUSING FACILITY LOCATED AT 21267 STEVENS CREEK  
BOULEVARD (APN: 326-27-042, -043)

---

The Planning Commission recommends that the City Council approve the Use Permit, in substantially similar form to the Draft Resolution attached hereto as Exhibit U.

PASSED AND ADOPTED at a Regular Meeting of the Planning Commission of the City  
of Cupertino the 14<sup>th</sup> day of July 2020, by the following roll call vote:

---

AYES: COMMISSIONERS:  
NOES: COMMISSIONERS:  
ABSTAIN: COMMISSIONERS:  
ABSENT: COMMISSIONERS:

ATTEST:

APPROVED:

---

Ben Fu  
Director, Community Development

---

Kitty Moore  
Chair, Planning Commission

## RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CUPERTINO CITY COUNCIL  
 APPROVING A USE PERMIT TO ALLOW A MIXED USE  
 DEVELOPMENT ON A PRIORITY HOUSING SITE THAT EXCEEDS  
 THE NUMBER OF RESIDENTIAL UNITS DESIGNATED FOR THAT  
 PRIORITY HOUSING SITE AS WELL AS ALLOWING MEMORY CARE  
 UNITS WITHIN A PORTION OF A SENIOR HOUSING FACILITY  
 LOCATED AT 21267 STEVENS CREEK BOULEVARD  
 (APN: 326-27-042, -043)

---

SECTION I: PROJECT DESCRIPTION

Application No.: U-2019-03  
 Applicant: KT Urban (Mark Tersini)  
 Property Owner: 190 West St. James, LLC  
 Location: 21267 Stevens Creek Blvd. (APN #326-27-042, -043)

SECTION II: FINDINGS FOR A USE PERMIT:

WHEREAS, the City of Cupertino received an application for a Use Permit as described in Section I of this resolution; and

WHEREAS, The Westport Cupertino Mixed-Use Project ("Project"), including the Use Permit, 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, the City of Cupertino's Environmental Review Committee at its April 16, 2020 meeting reviewed the Final EIR consisting of the April 7, 2020 Public Review Draft EIR and Response to Comments, received public comments, and voted 5-0 to recommend that the City Council certify the EIR for the Project; and

WHEREAS, based on substantial evidence in the record, on May 12, 2020, the Planning Commission recommended on a 5-0 vote that the City Council certify that the EIR has been completed in compliance with the California Environmental Quality Act, Public Resources Code Section 21000 et seq. ("CEQA") and reflects the independent judgment and analysis of the City, adopt Findings, adopt and require as conditions of approval all of the mitigation measures for the Project which are within the responsibility and jurisdiction of the City that are identified in the EIR, and adopt the Mitigation Monitoring and Reporting Program for the Project (EA-2018-04); and

WHEREAS, on May 12, 2020 the Planning Commission recommended on a 5-0 vote that the City Council approve the Vesting Tentative Map (TM-2018-03), in substantially

similar form to the Resolution presented (Resolution No. 6904), approve the Development Permit (DP-2018-05) in substantially similar form to the Resolution presented (Resolution No. 6901), approve the Architectural and Site Approval Permit (ASA-2018-05) in substantially similar form to the Resolution presented (Resolution No. 6902), approve the Use Permit (U-2019-03) in substantially similar form to the Resolution presented (Resolution No. 6903), approve the Tree Removal Permit (TR-2018-22) in substantially similar form to the Resolution presented (Resolution No. 6906), approve the Heart of the City Exception (EXC-2019-03) in substantially similar form to the Resolution presented (Resolution No. 6905) for the Senior Enhanced Alternative; and

WHEREAS, on June 4, 2020, as updated on June 25 and 26, 2020, the applicant submitted and requested the City to consider revisions to the Project (“Revised Senior Enhanced Project”) that include relocating nine Below Market Rate (“BMR”) units from Building 1 to an additional top story on Building 2, altering the unit mix in Buildings 1 and 2 to provide additional space for terraces on the tops of those buildings, and changing the unit mix in Buildings 2 to include two-bedroom units in addition to studios and one-bedroom units; and

WHEREAS, because the revisions in the Project affect building height and dispersion of BMR units, the Revised Senior Enhanced Project was reviewed by the Planning Commission on July 14, 2020 for recommendation to the City Council; and

WHEREAS, based on substantial evidence in the record, on July 14, 2020, the Planning Commission recommended on a X-X vote that the City Council certify that the EIR has been completed in compliance with CEQA and reflects the independent judgment and analysis of the City, adopt Findings, adopt and require as conditions of approval all of the mitigation measures for the Project which are within the responsibility and jurisdiction of the City that are identified in the EIR, and adopt the Mitigation Monitoring and Reporting Program for the Project (EA-2018-04); and

WHEREAS, on July 14, 2020 the Planning Commission recommended on a X-X vote that the City Council approve the Vesting Tentative Map (TM-2018-03), in substantially similar form to the Resolution presented (Resolution No. \_\_\_\_), approve the Development Permit (DP-2018-05) in substantially similar form to the Resolution presented (Resolution No. \_\_\_\_), approve the Architectural and Site Approval Permit (ASA-2018-05) in substantially similar form to the Resolution presented (Resolution No. \_\_\_\_), approve the Use Permit (U-2019-03) in substantially similar form to the Resolution presented (Resolution No. \_\_\_\_), approve the Tree Removal Permit (TR-2018-22) in substantially similar form to the Resolution presented (Resolution No. \_\_\_\_), approve the Heart of the City Exception (EXC-2019-03) in substantially similar form to the Resolution presented (Resolution No. \_\_\_\_); 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 the Planning Commission held at least one public hearing in regard to this application, and on August 18, 2020, the City Council held a public hearing to consider the Architectural and Site Approval; 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 the Planning Commission held at least one public hearing in regard to this application, and on August 18, 2020, the City Council held a public hearing to consider the Heart of the City Exception; and

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

WHEREAS, on August 18, 2020, after consideration of substantial evidence contained in the entire administrative record, and prior to consideration of the Vesting tentative Map, the City Council adopted Resolution No. [####] certifying the EIR, adopting and requiring as conditions of approval all of the mitigation measures for the Project which are within the responsibility and jurisdiction of the City that are identified in the EIR, and adopting the Mitigation Monitoring and Reporting Program for the Project; and

WHEREAS, the applicant has met the burden of proof required to support the application for a Use Permit; and

WHEREAS, the City Council finds as follows with regard to this application:

- a) The proposed development, at the proposed location, will not be detrimental or injurious to property or improvements in the vicinity, and will not be detrimental to the public health, safety, general welfare, or convenience;

*With the conditions of approval, approved Specific Plan exception, and approved density bonus, parking reduction, and waivers, the project is consistent with the densities and land uses as allowed in the General Plan, Zoning Ordinance, and Heart of the City Specific Plan, and the project will not be detrimental or injurious to property or improvements in the vicinity, and will not be detrimental to the public health, safety, general welfare, or convenience. The EIR also concludes that, with mitigation, the Project will have no significant environmental impacts.*

- b) The proposed development will be located and conducted in a manner in accord with the Cupertino General Plan and the purpose of the City's zoning ordinances.

*With the conditions of approval, approved Specific Plan exception, and the approved density bonus, parking reduction, and waivers the proposed development is in conformance with the Cupertino General Plan, Municipal Code, and Heart of the City Specific Plan Requirements. The Project is also consistent with the existing land use designations (Commercial,*

*Residential), Municipal Code and with other code requirements as demonstrated in the staff report.. Further, memory care facilities and similar residential care uses are ancillary to senior housing developments as evident by similar developments in the City such as The Forum and Sunnyview.*

NOW, THEREFORE, BE IT RESOLVED:

That after careful consideration of maps, facts, exhibits, testimony and other evidence submitted in this matter and the EIR 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 2 thereof, and those contained in all other Resolutions approved for this Project,

The application for a Use Permit, Application No. U-2019-03, 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. U-2019-03 as set forth in the Minutes of the City Council Meeting of August 18, 2020 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 June 4, 2020, as updated June 25, 2020, consisting of 39 sheets labeled as Westport Cupertino, G200 – G213, A001-A222, VTM-1-VTM-6, and L100-L300, drawn by C2K, and Kimley Horn 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.

#### 3. CONCURRENT APPROVAL CONDITIONS

The conditions of approval contained in file nos. TR-2018-22, EXC-2019-03, TM-2018-03, ASA-2018-05, DP-2018-05 and EA-2018-04 shall be applicable to this approval.

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. RESIDENTIAL CARE FACILITY

The memory care facility shall remain in operation in accordance with the City of Cupertino's Municipal Code land use restrictions for the Residential Care Use Class, including but limited any required State and County licensing for its operation.

6. USE APPROVAL AND PROJECT AMENDMENTS

Approval is hereby granted to allow a residential density above the allocation for a Priority Housing Site and for a memory care unit in Building 1 as labeled on the project plans. The Planning Commission shall review amendments to the project considered major by the Director of Community Development.

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 18<sup>th</sup> day of August, 2020, by the following vote:

Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

<p>SIGNED:</p>  <p>_____ Steven Scharf, Mayor City of Cupertino</p>	<p>_____ Date</p>
<p>ATTEST:</p>  <p>_____ Kirsten Squarcia, City Clerk</p>	<p>_____ Date</p>