TO: HONORABLE CITY COUNCIL

FROM: CITY MANAGER

DEPARTMENTS: PLANNING AND CITY ATTORNEY

DATE: AUGUST 7, 2006

CMR: 312:06

SUBJECT: POTENTIAL STRATEGY REGARDING RESTRICTIONS ON CONVERSION OF COMMERCIAL USES TO RESIDENTIAL USE

RECOMMENDATION
Staff recommends that City Council consider the options outlined below and in the attached memorandum from the City Attorney (Attachment A) and provide direction regarding ordinance amendments or other strategies to pursue.

BACKGROUND
On June 5, 2006, the City Council discussed the work plan for the Comprehensive Plan Amendment, tentatively scheduled to be completed within a two to three year timeframe. One of the key components of the Amendment is to evaluate the environmental and fiscal effects of the conversion of nonresidential land to residential use and the subsequent loss of neighborhood serving retail uses. The Council was concerned that between now and completion of the Amendment, key properties currently in commercial use may redevelop to housing. Several recent housing projects (DR Horton (Hyatt), Trumark, Classic Communities, BUILD and CJL) have been approved on sites previously planned and zoned for commercial or industrial development. In order to ensure that these conversions do not adversely affect Palo Alto’s retail base, the Council requested that staff identify interim or near-term strategies for retention of neighborhood serving uses. The Council specifically directed staff to direct staff to return within 60 days to provide recommendations on measures that might be adopted to retain commercial uses that are not located on sites identified in the Housing Sites Inventory in the Housing Element of the Comprehensive Plan (Attachment B).

DISCUSSION
This CMR has been developed jointly by the City Attorney and the Director of Planning and Community Environment. An attached memorandum from the City Attorney addresses legal constraints and opportunities in greater specificity.
Objectives
Based on Council’s direction, staff suggests the following set of objectives to develop and evaluate options for limiting conversion of either existing or planned commercial uses:

- Preserve revenue-generating commercial uses.
- Provide local services for residential areas.
- Assure compliance with the Housing Element (particularly the Housing Sites Inventory) and State housing law.
- Ensure consistency with Comprehensive Plan policies to provide for a mix of uses in areas near transit and commercial centers.

Retaining Commercial Uses in Residential (Multi-Family) Zones
Staff has identified six residential sites in the City with existing commercial uses that are designated and zoned for multi-family use. These sites are listed in Attachment C. Inquiries to the Planning Department from the development community regarding the potential redevelopment of two of the sites, the Mayflower Motel and the Palo Alto Bowling Alley, indicate there is redevelopment pressure on these properties. The current uses on all six properties are considered non-conforming uses and would not be allowed to continue when the sites are redeveloped. Staff has evaluated a variety of options to ensure retention of nonresidential use on the sites, including zoning ordinance and/or rezoning changes, a moratorium on redevelopment of these sites, and adoption of a growth control ordinance. The City Attorney’s memorandum outlines several constraints that preclude most of these options, and focuses on one realistic near-term alternative, rezoning the sites to commercial zoning (CN, CS, CC, etc.), prohibiting “stand alone” housing, but allowing for mixed use (residential/nonresidential) development. This option would allow residential development in conjunction with retail or other commercial uses on the ground floor street frontage. This approach would be consistent with Comprehensive Plan designations and Housing Element policies. Housing would still be allowed but densities and development would be restricted to enable the provision of urban services and amenities. The rezoning would not apply to any site that is listed on the Housing Opportunity Site Inventory of the City’s Housing Element.

Other approaches are either inconsistent with housing law and/or with the Comprehensive Plan, may entail revision of the Housing Element through the State’s Department of Housing and Community Development (HCD), and/or would require extensive CEQA review. The City could also consider removing amortization obstacles for existing commercial uses in the Zoning Ordinance. This would not, however, preclude conversion to residential if the property owner desired.

Limiting Residential Development in Commercial Zones
Chapters 18.41 (Neighborhood Commercial), 18.43 (Community Commercial), 18.45 (Service Commercial), and 18.49 (Commercial Downtown) of the City’s Zoning Ordinance specify allowable (permitted and conditional) uses in the commercial districts (see Attachment D). All of the City’s commercial districts currently allow single-family uses, two-family uses, and multiple-family uses as permitted uses, except that all residential use is prohibited in the Charleston Shopping Center and Midtown Shopping
District. The zones similarly all allow mixed residential/nonresidential use on any site (again excluding the Charleston and Midtown areas), subject to FAR limitations.

Virtually all of the commercial districts have requirements that restrict the ground floor to use for retail, personal services, eating or drinking establishments, or other commercial use, other than offices. Offices are only allowed in limited circumstances, generally where the ground floor area has been in office or housing use or vacant since March 19, 2001.

To address concerns about residential uses that would replace or preclude commercial use in these districts, staff and the City Attorney’s office have again evaluated several approaches to limit conversions of existing nonresidential uses to residential use. These approaches included 1) prohibition of housing in these zones, 2) requiring conditional use permits for housing, 3) allowing only mixed nonresidential-residential uses, and 4) a moratorium on new housing. The City Attorney’s memorandum outlines several constraints that preclude most of these options, and focuses on two possible near term alternatives:

- Prohibiting residential uses (except for designated Housing Inventory Sites) in all commercial zones: This option would preclude all residential uses in the commercial districts, including mixed use. This approach would, however, require revisions to the Comprehensive Plan to be consistent with land use designations (that allow residential uses in commercial zones) and with multiple policies that emphasize housing over commercial uses.

- Allowing only mixed residential/nonresidential uses (except for designated Housing Inventory Sites) with non-residential uses on the ground floor and residential on the upper floor(s) or behind street frontage commercial: This option would preclude “stand-alone” housing projects, but would continue to allow for residential use as part of a mixed use project, so long as retail or other commercial uses occupy the ground floor street frontage (or the entire ground floor). Entrance, lobby or reception areas for the upper floor uses, including residential, would also be allowed on the ground floor, consistent with the Ground Floor (GF) regulations of the Zoning Ordinance. The City Attorney has indicated that this approach is acceptable in that it allows for continued residential use in commercial zones without further discretionary permits.

Both options would continue to allow residential uses for sites designated on the Housing Sites Inventory, consistent with the Housing Element. The City anticipates amending the Housing Sites Inventory list with HCD prior to the end of this year to reflect residential approvals on sites that are not currently on the list (e.g., Trumark, Classic Communities). If the update indicates that the City will then comply with its housing obligations for all income categories, the City may at that time also consider an option requiring a conditional use permit for housing in commercial zones.
RESOURCE IMPACT
Potential strategies for restricting conversion of commercial sites to residential use are intended to preserve and/or enhance revenue sources for the City. Some additional staff time will be required to prepare and process recommended ordinance revisions, but much of this time may be reduced by incorporating the changes into the Zoning Ordinance Update (ZOU) revisions to the commercial zoning districts.

POLICY IMPLICATIONS
Potential strategies for restricting conversion of commercial sites to residential use are intended to further Council goals to preserve and/or enhance revenue generating land uses. The various approaches may, however, also require modifications to the Housing Element or other policies and programs in the Comprehensive Plan.

ENVIRONMENTAL REVIEW
Any proposed ordinance revisions or other commercial retention strategies are likely to be subject to the environmental review provisions of the California Environmental Quality Act (CEQA). The type of environmental review will depend on the extent of deviation from current City codes and Comprehensive Plan designations, especially those included in the Housing Element. The timeframe for environmental review typically ranges from 30 days (exempt project) to 60-90 days (Negative Declaration) to one year or longer (Environmental Impact Report).

ATTACHMENTS
Attachment A: Memorandum from City Attorney
Attachment B: Housing Element Housing Inventory Sites
Attachment C: Existing Commercial Uses in Residential Zones
Attachment D: Commercial Zone Districts Tables of Allowable Uses (Re-Formatted)

COURTESY COPIES
Planning and Transportation Commission
Architectural Review Board
California Avenue Area Development Association
Chamber of Commerce

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