TO: HONORABLE CITY COUNCIL

FROM: CITY MANAGER

DEPARTMENT: PLANNING AND COMMUNITY ENVIRONMENT

DATE: OCTOBER 16, 2006

CMR: 392:06

SUBJECT: ZONING ORDINANCE UPDATE – ADOPTION OF AN ORDINANCE DELETING CHAPTERS 18.41 (NEIGHBORHOOD COMMERCIAL), 18.44 (COMMUNITY COMMERCIAL COMBINING DISTRICT), 18.45 (SERVICE COMMERCIAL), AND 18.49 (DOWNTOWN COMMERCIAL) OF THE PALO ALTO MUNICIPAL CODE, AND ADDING PORTIONS OF A NEW CHAPTER 18.16 (NEIGHBORHOOD, SERVICE, AND COMMUNITY COMMERCIAL) AND A NEW CHAPTER 18.18 (DOWNTOWN COMMERCIAL) PROVIDING FOR ALLOWABLE USES AND DEVELOPMENT STANDARDS IN THE NEIGHBORHOOD COMMERCIAL, SERVICE COMMERCIAL, COMMUNITY COMMERCIAL COMBINING, AND DOWNTOWN COMMERCIAL ZONES, INCLUDING MIXED USE CRITERIA; AND AMENDING SECTIONS 18.94.070 AND 16.20.120 TO DELETE AMORTIZATION REQUIREMENTS AND TO ALLOW ADDITIONAL SIGNAGE FOR 3200 PARK BOULEVARD/340 PORTAGE AVENUE (FRY’S ELECTRONICS).

RECOMMENDATION
Staff and the Planning and Transportation Commission (P&TC) recommend that the City Council adopt the attached ordinance to approve specific sections of the new Chapter 18.16 and the entirety of new Chapter 18.18 in the Zoning Ordinance for the Neighborhood Commercial, Service Commercial, Community Commercial Combining District, and Downtown Commercial zones, encompassing revisions to the current commercial zoning districts (Chapters 18.41, 18.44, 18.45, and 18.49) (Attachment A), particularly relative to limiting residential use in those districts, providing increased potential for hotels, specifying more realistic and flexible mixed use criteria, and requiring a conditional use permit for late night (10 p.m. to 6 a.m.) uses adjacent to residential areas. Staff and the P&TC also recommend modifications to Section 16.20.120 to allow additional off-site signage for large retail uses without frontage on an arterial roadway, specifically affecting 3200 Park Boulevard/340 Portage Avenue (Fry’s Electronics).

Additional Staff Recommendation
Staff further recommends that the Council increase the allowed signage provisions of Section 16.20.120 to allow a maximum size sign of 65 square feet (the P&TC recommended 50 square feet) and that the Council enact revisions to Section 18.94.070 to eliminate the July 16, 2019
amortization date for Fry’s Electronics (the P&TC recommended retaining the amortization date), pursuant to the language recommended in the section regarding Fry’s.

Note: Revisions to the Community Commercial district are presented in an accompanying City Manager’s Report (CMR 391:06) and ordinance, which are provided separate due to that zone district’s location partially on Stanford Lands.

BACKGROUND

Comprehensive Plan
The City of Palo Alto Comprehensive Plan Policy L-9 directs that the City:

“Enhance desirable characteristics in mixed use areas. Use the planning and zoning process to create opportunities for new mixed use development.”

Program L-10 implements the policy by directing that the City:

• “Create and apply the following four new Mixed Use zoning standards: A “Live/Work” designation that permits individuals to live on the same site where they work by allowing housing and other uses such as office, retail, and light industrial to co-exist in the same building space; and “Retail/Office,” “Residential/Retail,” and “Residential/Office” designs to permit a mix of uses on the same site or nearby sites.
• Develop design standards for all mixed use designations providing for buildings with one to three stories, rear parking or underground parking, street-facing windows and entries, and zero setback along the street, except that front gardens may be provided for ground floor residential uses.”

The Comprehensive Plan also includes several policies to address transitions in scale and density and intensity between residential and non-residential areas and between residential areas of different densities. Program L-5 specifically directs the City to:

“Establish new performance and architectural standards that minimize negative impacts where land use transitions occur.”

Mixed use development is encouraged in the Comprehensive Plan to provide opportunities to sustain and support residential and commercial uses and to reduce trips by locating residential, employment, and retail services in close proximity to each other. The revisions to the commercial zoning districts are intended to implement these policies.

Limitations on Conversion of Commercial Uses to Residential Uses
On August 7, 2006, the City Council considered options for restricting the conversion of commercial uses and/or commercially-zoned properties to residential use. The intent of this discussion was to identify ways to preserve commercial (particularly retail) uses, as well as to limit the impacts of further housing development. The Council directed that staff should include in the Zoning Ordinance Update provisions to limit residential use in commercial zones to “mixed use” only. Council also expressed a desire to adopt these changes in advance of
November 7, 2006, when Proposition 90 will be considered by California voters (Proposition 90 could have implications for a city’s ability to restrict uses or densities through rezoning).

The Council has also directed staff to review and discuss zoning and development criteria related to Fry’s Electronics to retain the business at its present site or elsewhere in Palo Alto, and to rezone three residentially-zoned sites (Palo Alto Bowl, Mayflower Motel, and Summerwinds Nursery) to commercial zoning to protect retail uses on those sites. These rezonings are in process and will be considered by the Planning and Transportation Commission in November.

Planning and Transportation Commission Review (P&TC)
On August 30 and September 13, 2006, the P&TC conducted study sessions to discuss commercial zoning and mixed use criteria. On September 27 and October 4, 2006, the P&TC reviewed the draft ordinance amendments and recommended (6-0) that the amendments be adopted. The September 27, 2006 P&TC staff report and attachments are included as Attachment C (there was no additional report for the October 4 meeting) and the Commission’s minutes of the September 27 and October 4 meetings are included as Attachment D.

The P&TC modified staff’s proposed ordinance to: 1) clarify that transition requirements (height, daylight plane, setbacks) should apply when abutting or within 50 feet of a residential district other than an RM-40 or residential PC zone; 2) limit increased FAR (from 0.9 to 1.0 FAR) for mixed use in the CN zone on El Camino Real such that the additional 0.1 FAR must be for retail use only; 3) delete allowances for rooftop gardens to count as part of required open space; 4) delete the staff proposal to eliminate the 2019 amortization date for Fry’s; and 5) reduce the allowable size for off-site signage for Fry’s from a maximum of 65 square feet to a maximum of 50 square feet. The P&TC indicated that deleting the amortization date was premature in light of upcoming efforts to analyze potential rezoning and noted that the amortization would then also apply to a future, less desirable business if Fry’s relocated.

The P&TC also had extensive discussion about: 1) the minimum retail FAR that should be required for a mixed use project; and 2) whether to delete the current code provisions allowing up to 5,000 square feet of ground floor office space in the CS zone on El Camino Real. The P&TC unanimously concurred that the minimum 0.15 FAR (0.25 in the CC(2) zone in the parking assessment district) was a reasonable level of retail to require for mixed use development, and that to require more could be detrimental to revitalizing some properties. The P&TC voted separately (4-2) to retain the CS zone ground floor office provisions. The dissenting Commissioners preferred to either limit the size of the office use (e.g., 2,500 square feet) or to restrict such use to medical offices only.

Community Outreach
In August, staff presented the proposed code changes to Palo Alto Neighborhoods (PAN) representatives and to local architects (summaries of the comments were attached to the P&TC staff report and are on the Commercial/Mixed Use website). Most substantive concerns from residents related to the proposed performance criteria, which have been deferred for further input. Concerns from the architects were addressed prior to the ordinance proceeding to the P&TC. Staff subsequently reviewed the changes with the Ventura Neighborhood Association (including the revisions affecting Fry’s Electronics) and with the Chamber of Commerce Government Affairs Committee. The Ventura Association was for the most part in support of the
signage, but was split on the amortization issue. The Chamber was in support of the amendments, though no official position was taken at that time. Community input was also part of the Commission’s study sessions and public hearings. Substantial background information and the proposed revisions regarding the commercial districts and mixed use criteria have been added to the City’s Zoning Ordinance Update website for public review as well.

**DISCUSSION**

Staff has prepared two CMR’s and ordinances that will allow the Council to address the Community Commercial (CC) zone district (which includes the Stanford Shopping Center on Stanford Lands) separate from the other zoning districts, which are not associated with Stanford Lands. After adoption, the two ordinances will be merged to create new Chapters 18.16 and 18.18 in the Zoning Ordinance.

This CMR and ordinance address the Neighborhood Commercial (CN), Service Commercial (CS), Community Commercial Combining (CC2), and Downtown Commercial (CD) zoning districts. The ordinance also includes the sign amendment related to Fry’s Electronics. The draft ordinance (Attachment A) reflects the above changes recommended by the P&TC.

**Summary of Proposed Revisions to Commercial Districts**

The commercial districts are organized into two chapters: Chapter 18.16 for the CN, CC, CC(2), and CS districts, and Chapter 18.18 for the CD district and subdistricts (Attachment A). The attached draft ordinance does not address the CC zone portion of Chapter 18.16 due to Stanford conflicts. Each chapter contains tables of allowable uses and development standards, similar to the format for residential and research/manufacturing zones adopted previously. The basic allowable uses and intensities (density and FAR) of uses, as well as parking requirements, for development in the commercial districts are not proposed for revision.

There are, however, several substantive modifications to the commercial zoning districts that respond to the Council’s desire to protect commercial (particularly retail) uses in these zones, to encourage hotel uses in commercial districts, to respond to design needs consistent with the Comprehensive Plan guidance as reflected in the El Camino Real Design Guidelines, or to better address transition impacts near low-density residential uses. Redlined versions of the two chapters were provided in Attachments F and G of the P&TC September 27, 2006 staff report. The key revisions proposed in the CN, CS, CC(2), and CD commercial districts include:

- Limiting residential uses to “mixed use” only, pursuant to the mixed use criteria outlined in the following section, except for properties designated as Housing Opportunity Sites in the City’s Housing Element.
- Increasing the floor area ratio (FAR) for hotels, generally to 2.0:1 (except in the CN zone, where hotels are not a permitted use). This provision also allows for up to 25% of the FAR and/or rooms to be used for residential condominium purposes, as further incentive for hotel use generating transient occupancy taxes for the City.
- Requiring a conditional use permit (CUP) for commercial retail (including restaurants) and service uses operating between 10:00 p.m. and 6:00 a.m. in the CN and CS districts, when adjacent to residentially zoned properties.
• Reducing the front setback along El Camino Real to allow buildings up to the property line, so long as they provide for adequate sidewalk width (generally 8-12 feet) and appropriate pedestrian streetscape design.

Other minor cleanup changes are also proposed: 1) deleting the maps from the Downtown Commercial (CD) Chapter, as they are now better shown on the City’s zoning map, and 2) clarifications in the historic rehabilitation bonus and TDR provisions of the CD-C zone, including the definition of “historic rehabilitation.” Relevant overlay and combining districts (such as Ground Floor, Retail, or Pedestrian combining districts) will still be applicable. Ground floor requirements and other limitations in the Midtown and Charleston Center areas (including prohibition of all residential development) are also retained in the updated CN district.

Proposed Mixed Use Development Standards

Mixed residential/non-residential development is currently allowed in all of the City’s commercial zoning districts. The requirements for mixed use generally apply multiple-family zoning standards (RM-40 in CD-C, RM-15 in CN, and RM-30 in other districts) to the commercial site and specify the maximum site floor-to-area ratio (FAR), including the mix of residential and non-residential FAR. This creates constraints on mixed use development where residential setbacks, daylight planes and height restrictions result in poor design and preclude achieving allowable development levels, even when there are no abutting residential uses. The ZOU urban design consultants evaluated these constraints and developed prototypes for revised standards.

The proposed mixed use development standards are intended to replace the multi-family overlay with specific development criteria. Table 4 in each Chapter (Attachment A) outline these criteria, including allowable densities, FAR, heights, setbacks and daylight planes, and open space. For the most part, the requirements mimic the multi-family requirements, particularly relative to density, height, and FAR. The key differences include:

• Setbacks and daylight planes would apply only when abutting or within 50 feet of residential zones, and would, in those cases, match the setbacks and daylight planes for the residential zone.
• Front setbacks would be determined by the ARB, but would generally be set at 5-10 feet, accommodating a sidewalk width of 8-12 feet (12 feet along El Camino Real). At least 50% of the building frontage would need to be “built to” this setback.
• Coverage/open space/landscape percentages would be retained similar to multifamily standards, but adding requirements for “usable” open space per unit (200 square feet per unit for 5 or fewer units, 150 square feet per unit for more than 5 units), a qualitative description of “usable open space,” and flexibility to divide open space between common and private open space and to locate usable open space above the ground level (e.g., balconies or above parking podiums).
• CN mixed use requirements on El Camino Real would be revised to allow a height of 40 feet (rather than 35 feet) and an FAR of 1.0 (rather than 0.9), to better reflect the relationship of height to the width of the arterial. The additional 0.1 FAR must, however, be used for added retail, not residential or office, use.
• The maximum FAR for a mixed use development in the CC(2) zone is reduced from 3.0 to 2.0, as it is not feasible to exceed 2.0 given other development standards.
- Site and Design review for mixed use projects in the CN, CS, and CC districts would not be required where 4 or fewer residential units are proposed.
- A minimum commercial FAR is required for mixed use in each zone to assure that there is a substantial commercial component for such projects. The percentage ranges from 0.15:1 FAR in the CN and CS zones to 0.25 FAR in the CC(2) zone.
- Uses involving the storage, use or handling of hazardous materials in excess of exempt amounts would not be permitted in a mixed use project.
- Mixed use development would not be permitted on a site designated with the Automobile Dealership (AD) overlay.

Context-Based Design Criteria
A context-based design criteria section is included for each chapter, but is also presented separately in Attachment B for easier viewing. This section has been folded into the text of each chapter, as was the case for the PTOD ordinance. The criteria include text and diagrams illustrating preferred transitions to residential areas, streetscape design, massing and articulation approaches, and sustainability. Many of the context-based criteria are the same or similar to those reviewed for the PTOD ordinance. Staff believes that the criteria provide appropriate guidance for all of the commercial districts and apply to entirely nonresidential projects as well as to mixed use development.

Fry’s Electronics Site
The City Council has directed staff to determine and recommend revisions to regulations that might facilitate the retention of Fry’s at its site in Palo Alto. Staff will be discussing zoning options with the business representatives for consideration at a future date. In the interim, staff identified two code changes that would provide enhanced signage for Fry’s and eliminate the amortization date by which Fry’s would need to vacate the site. The two potential amendments include:

- Amendment to the sign regulations (Chapter 16.20 of the Municipal Code) to allow for off-site signage for sites in excess of 10 acres with a minimum of 50,000 square feet of retail use and without frontage on an arterial roadway. The effect of this change appears to apply only to the Fry’s site and would allow its current off-site sign to increase from (approximately) 24-30 square feet to about 65 square feet and to a maximum height of 25 feet. The P&TC, however, limited the maximum size sign to 50 square feet, and Attachment A was revised to reflect that change.
- Amendment to Chapter 18.94 (Nonconforming Uses and Noncomplying Facilities) to delete the July 16, 2019 amortization date for the Fry’s site. All of the other restrictions of the nonconforming use would remain (limits on square footage and truck deliveries) unless and until the site is rezoned. The P&TC, however, deleted this modification so that it is not included in Attachment A. If the Council desires to include the amortization language, Section 18.94.070(b)(2)(E) would be amended to read as follows:

““The nonconforming use(s) of the property at 3200 Park Boulevard/340 Portage Avenue/Olive Avenue for commercial, warehouse, and storage uses may continue after July 16, 1999, subject to the following limitations: (1) retail uses shall not exceed 60,000 square feet, and (2) truck deliveries and other noisy outdoor activities shall be limited to the hours of 8:00 a.m. to 9:00 p.m. weekdays and 9:00 a.m. to 9:00 p.m. weekends.
Nothing in the ordinance codified in this section shall be construed to create a vesting right for the nonconforming uses to remain after July 16, 1999. Without limitation with respect to any other authority, the architectural review board shall be permitted to review, modify, and approve the treatment of the landscaping parking layout for the Park Boulevard entrance with regard to truck access issues.”

Staff believes that the proposed revisions are minimal in scope but would provide a positive and welcoming message to Fry’s from the City. A representative of Fry’s spoke in favor of both amendments at the P&TC hearing.

Performance Criteria
Performance criteria are being prepared by staff to address lighting, noise, access, and other nuisance issues, when businesses are located adjacent to residential uses, particularly low density residential uses. These criteria were separated from the ordinance package due to timing problems, but will be presented to the P&TC at its October 25, 2006 meeting. The performance standards will then be reviewed by the Council subsequent to the P&TC recommendation.

RESOURCE IMPACT
The recommendations in the proposed zoning revisions for commercial districts will have positive resource impacts on the City of Palo Alto. While estimated impacts from the recommendations are not quantifiable, as there are no specific projects at this time, they act to preserve and enhance existing businesses that generate tax revenues and to potentially promote new businesses.

The proposed changes encouraging hotel development (increased floor area allowances as well as including up to 25 percent of square footage as residential condominiums) could result in significant additional transient occupancy taxes for the City. The addition of hotel space is a relatively high value change to City revenues compared to property taxes, for example. Recommendations preserving existing retail outlets or promoting more flexibility and viability for mixed use projects also have positive impacts to the extent they encourage businesses generating sales tax or encouraging use of current businesses. Finally, efforts to maintain and enhance Fry’s Electronics retail operations are most important since it is one of the City’s top ten sales tax generators. Better signage to attract customers and termination of Fry’s amortization date may help to retain Fry’s on the current site. As indicated in the City’s Long Range Financial Plan, there is an inextricable link between revenues and services, and the loss of a major revenue source would have an impact on City programs.

At this time, the ZOU recommendations do not result in direct additional costs for the City because they deal primarily with existing businesses. As new developments are proposed, resource impacts of the specific project will be analyzed.
POLICY IMPLICATIONS
The Zoning Ordinance Update is intended to bring the Zoning Ordinance into compliance with the 1998-2010 Comprehensive Plan. Staff and the Commission believe that the proposed amendments represent a significant step to assuring the preservation of retail uses and to accommodating effective mixed use development. The zoning amendments will also be supplemented with performance criteria for commercial and industrial uses.

ENVIRONMENTAL REVIEW
The proposed modifications to the Zoning Ordinance would have, at most, minor incremental impacts on the amount of development permitted in commercial zones or for mixed use projects. Most of the draft amendments involve minor revisions and context-based criteria intended to provide design more consistent with the Comprehensive Plan and protections in transitions from low density residential to higher density and non-residential uses. The amendments are consistent with the policies and programs outlined in the Comprehensive Plan and with the Comprehensive Plan EIR. Site specific impacts will be addressed with environmental review of a proposed application.

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ATTACHMENTS
Attachment A: Draft Ordinance  
Attachment B: Context-Based Design Criteria  
Attachment C: September 27, 2006 P&TC Staff Report and Attachments  
Attachment D: September 27, 2006 and October 4, 2006 P&TC Minutes  
Attachment E: Map of Commercial Zone Districts

COURTESY COPIES
Planning and Transportation Commission  
Architectural Review Board  
Doug Moran, Barron Park Association  
Sheri Furman, Midtown Residents Association
Chamber of Commerce
Jean Snider, Stanford Management Company
Joy Ogawa
Joe Bellomo
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