



City of Palo Alto

City Council Staff Report

(ID # 7286)

Report Type: Action Items

Meeting Date: 10/4/2016

Summary Title: Retail Urgency Ordinance Amendment

Title: PUBLIC HEARING: Adoption of an Urgency Ordinance Amending the Urgency Interim Ordinance (Ordinance 5325 extended by Ordinance 5330) Preserving Ground Floor Retail Uses on a Citywide Basis to Allow Educational Uses on the Ground Floor of Parcels Zoned RT-35 along Alma Street and Finding the Amendment Exempt from Review Under the California Environmental Quality Act (CEQA) Pursuant to State CEQA Guidelines Section 15061(b)(3)

From: City Manager

Lead Department: Planning and Community Environment

Recommendation

Staff recommends that the City Council conduct a public hearing and adopt the proposed ordinance amending interim protections for ground floor retail uses to provide a limited exception permitting conversion to private educational facility, and finding the amendments exempt from review under the California Environmental Quality Act.

Executive Summary

The proposed ordinance would amend temporary restrictions that protect ground floor retail and “retail like” uses from being converted to office space or other uses. Specifically, the amendment would allow educational uses on a limited number of parcels zoned RT-35 along the Alma Street corridor south of Homer Avenue in the South of Forest Area (SOFA).

The proposed ordinance would not extend the duration of the temporary restrictions enacted by Ordinance Number 5325 and 5330, which are set to expire on April 30, 2017. The City still intends to enact additional, permanent retail protections prior to this date.

Background

The City’s land use data shows that there was a loss of approximately 70,000 square feet of retail-type uses in the period from 2008 until early-2015. The loss of retail-type uses coincided with an increase in commercial office rents, such that property owners had an economic

incentive to convert ground floor retail spaces to office use where this was permitted by the City's zoning regulations.

For this reason, the City of Palo Alto enacted Urgency Interim Ordinance 5325 on May 11, 2015 to prevent the conversion of ground floor space to office or other non-retail uses, which was a trend in the City's commercial districts. This urgency interim ordinance was extended through adoption of Ordinance 5330 on June 15, 2015, and is set to expire on April 30, 2017, before which time, the City intends to adopt permanent retail protections.

Since the urgency interim ordinance was adopted, the City has adopted permanent retail protections for the California Avenue business district, and has adopted an ordinance closing a loophole in PAMC Section 18.16.050 that was allowing the loss of retail space along El Camino Real. Permanent zoning restrictions are still being developed for the balance of the City as discussed at a City Council meeting on August 22, 2016.

At the same meeting, the City Council heard from property owners who own properties outside of traditional retail areas and who view the preservation of existing retail spaces as a hardship. The City Council considered the specific circumstances of four of these property owners and found that their hardship did not rise to the level of a constitutional taking, and that no waiver was warranted under the terms of the urgency interim ordinance.

The owners were encouraged to participate in the public process to develop permanent retail protections, which the City Council indicated should include a path for them to request approval for conversions or retail spaces to other uses without proving there is an economic hardship rising to the level of a constitutional taking.

Nonetheless, in response to the property owner requests, the City Council indicated their desire to provide more flexibility for property owners in the RT-35 zoning district during the term of the urgency interim ordinance. The RT-35 zoning district allows private educational facilities as a principally permitted use, and along Alma Street in this district, the City Council would like to allow these uses as an exception to the prohibition on conversion of ground floor retail to office or other uses.

At Council's direction this amendment is being brought forward as an urgency ordinance. Accordingly, the ordinance makes the requisite health and safety findings, is exempt from Planning and Transportations review, and goes into effect immediately upon adoption. An urgency ordinance requires a 4/5 (i.e. 8 members) vote.

Policy Implications:

The proposed ordinance would amend ground floor retail protections that are consistent with the City's Comprehensive Plan, which contains a focus on walkable neighborhoods and vital retail environments, as evidenced by the following goals and policies:

- Goal L-3: Safe Attractive Residential Neighborhoods, each with its own distinct character and within walking distance of shopping, services, schools, and/or other public gathering places.
- Goal L-4: Inviting, Pedestrian-scale Centers the Office a Variety of Retail and Commercial Services and Provide Focal Points and community gathering places for the city's residential neighborhoods and employment districts.
- Policy B-6: Maintain distinct neighborhood shopping areas that are attractive, accessible, and convenient to nearby residents.
- Policy B-20: Support and enhance the University Avenue/Downtown area as a vital mixed use area containing retail, personal service, office, restaurant, and entertainment uses. Recognize the importance of an appropriate retail mix, including small local businesses, to the continued vitality of Downtown.

These issues are also addressed in the South of Forest Area (SOFA) Coordinated Area Plan, which includes POLICY L-6: Enhance the vitality and livability of the South of Forest Area by allowing a mixture of residential and neighborhood serving commercial land uses.

Resource Impact

The proposed ordinance would affect a limited number of parcels, allowing ground floor spaces to convert from retail to educational uses. Likely impacts on sales tax revenues would be negligible.

Environmental Review

The proposed ordinance would affect a limited number of parcels, allowing them to be used in a manner that is consistent with the City's land use regulations during the term of the urgency ordinance. Resulting individual development proposals, if any, would be subject to separate environmental review during the planning entitlement phase. For these reasons, it can be seen with certainty that the proposed ordinance could not have a significant effect on the environment, and is excluded from review under the California Environmental Quality Act (CEQA) consistent with State CEQA Guidelines Section 15061(b)(3), the "General Rule."

Attachments:

- Attachment A: Ordinance Amending Retail Preservation to Allow School Use (PDF)

NOT YET APPROVED

Ordinance No. _____

Urgency Interim Ordinance of the Council of the City of Palo Alto Amending Interim Ordinance Nos. 5325 and 5330 to Provide a Limited Exception to the Citywide Limitation on the Conversion of Ground Floor Retail and "Retail Like" Uses

FINDINGS

A. The City of Palo Alto has long been considered the birth place of Silicon Valley. With its proximity to Stanford University, its international reputation, its deep ties to technology firms, its highly rated public school system and its ample public parks, open space and community centers, Palo Alto continues to serve as a hub for technology based business.

B. Palo Alto is considered one of Silicon Valley's most desirable office markets. According to one study Class A office rates have climbed 49 percent since the start of 2010. The same study reported Class B office space increasing by 114.4 % since 2010.

C. In particular, average commercial rental rates have gone up significantly from 2013 to 2015. In 2013 the average monthly rental rate citywide for office was \$4.57 per square foot. That rate increased to \$5.12 in 2015. While retail rents have also increased during this period, retail rents are considerably lower than office rents. The average monthly rental rate for retail in 2013 was \$4.21 and in 2015 was \$4.88.

D. Price increases have been even more significant in the downtown area. In 2013 the average downtown monthly office rent was \$6.37. In 2015 the rate increased to \$7.33.

E. At the end of 2014, Palo Alto's downtown vacancy rate was a low 2.83 percent, according to a report prepared by Newmark Cornish & Carey.

F. These record high monthly rental rates for office and low vacancy rates have created financial incentives to replace current retail use with office use where such conversions are permitted by the City's zoning ordinance. These economic pressures are more severe in the downtown and California Avenue commercial areas but exist throughout the City.

G. The data submitted by the City to support the Valley Transportation Authority's Congestion Management Plan (CMP) each fiscal year suggests that there has been a loss of approximately 70,000 square feet of retail-type uses in the period from 2008 to the present. The CMP data is broad in the sense that it includes uses like automotive services in the "retail" category even though they are considered separate uses in the City's zoning ordinance. However any overstatement of the trend towards less retail is likely to be offset by the data's reliance on a list of discretionary applications processed by the City, since there have also been recent conversions of retail space to office space that did not require discretionary approvals and are not included in the 70,000 square foot number.

H. City residents have seen this occurring in the City's commercial districts as the City's Architectural Review Board has considered projects like those affecting Spagos restaurant

at 265 Lytton, Inhabiture at 240 Hamilton Ave, Palo Alto Bowl at 4301 El Camino Real, and Club Illusions Restaurant at 260 California Avenue. In addition, familiar retail businesses like the Zibibbo restaurant have closed and their spaces have been acquired and occupied by non-retailers. Likewise the old location for Fraiche Yogurt, which moved from Emerson Street to Hamilton Avenue, was immediately re-purposed as office space.

I. Based on these trends, on March 2, 2015, the Palo Alto City Council asked staff to consider whether zoning-based protections for ground floor retail uses need to be strengthened where they currently exist and expanded to areas of the City where they do not.

J. This direction is consistent with the City's existing Comprehensive Plan, which identifies the desirability of neighborhood serving retail (Policy L-16) and envisions inviting, pedestrian-scale "centers" with a mix of uses as focal points for neighborhoods (Goal L-4). Policy L-20 suggests that the City "encourage street frontages that contribute to retail vitality..." and Policy B-5 calls on the City to "maintain distinct business districts within Palo Alto as a means of retaining local services and diversifying the City's economic base."

K. The City of Palo Alto enacted Urgency Interim Ordinance 5325 on May 11, 2015 to prevent the conversion of ground floor space to office or other non-retail uses, which was a trend in the City's commercial districts. The ordinance was adopted as an interim ordinance to give the City time to further study the issue and adopt permanent protections if warranted.

L. The urgency interim ordinance was extended through adoption of Ordinance 5330 on June 15, 2015, and is set to expire on April 30, 2017, before which time, the City Council desires to adopt permanent retail protections.

M. The City's land use data shows that there was a loss of approximately 70,000 square feet of retail-type uses in the period from 2008 until the urgency interim ordinance was adopted. This loss of retail-type uses coincided with an increase in commercial office rents, such that property owners had an economic incentive to convert ground floor retail spaces to office use where this was permitted by the City's zoning regulations.

N. The economic conditions that favor conversion of retail space to office space remain in place because office rents remain higher than retail rents.

O. Since the urgency interim ordinance was adopted, the City has adopted permanent retail protections for the California Avenue business district, and has adopted an ordinance closing a loophole in PAMC Section 18.16.050 that was allowing the loss of retail space along El Camino Real. Permanent zoning restrictions are still being developed for the balance of the City.

P. In the same period, the City was approached by property owners who own properties outside of traditional retail areas and who view the preservation of existing retail spaces as a hardship. The City Council considered the specific circumstances of four of these property owners on August 22, 2016, and found that their hardship did not rise to the level of a constitutional taking, and that no waiver was warranted under the terms of the urgency interim

ordinance. The owners were encouraged to participate in the public process to develop permanent retail protections, which the City Council indicated should include a path for them to request approval for conversions or retail spaces to other uses without proving there is an economic hardship rising to the level of a constitutional taking.

Q. Nonetheless, in response to the property owner requests, the City Council indicated their desire to provide more flexibility for property owners in the RT-35 zoning district during the term of the urgency interim ordinance to prevent properties from remaining vacant and potentially blighting the immediate area. The RT-35 zoning district allows private educational facilities as a principally permitted use, and along Alma Street in this district, the City Council would like to allow these uses as an exception to the prohibition on conversion of ground floor retail to office or other uses.

R. The public's health, safety and welfare are currently and immediately detrimentally affected as neighborhood-serving retail service and related uses are priced-out by rising rents and replaced by uses that do not provide similar services or activate the street frontage by creating pedestrian activity and visual interest (i.e. shop windows and doors). These changes affect neighborhood quality of life, and mean that local residents have to drive to similar retail destinations in other locations, diminishing the public health benefit when residents can walk to needed services and increasing traffic congestion, vehicle miles traveled and greenhouse gas emissions. In addition, the public's health, safety and welfare are negatively impacted if properties subject to the moratorium are unable to find retail tenants to occupy the ground floor during the limited period of the moratorium. The proposed amendment strikes a balance between these two competing health, safety and welfare goals.

S. Unless abated, the City's actions to approve conversion of ground floor spaces from retail to other uses will exacerbate the reduction of retail and changes described above, resulting in the need for the proposed interim ordinance.

T. The City Council desires on an interim basis to temporarily suspend conversions of retail and retail like uses to office throughout the City as such conversions may be in conflict with the City's Comprehensive Plan and zoning proposal that the legislative body, planning commission or the planning department is considering or studying or intends to study within a reasonable time.

U. This urgency interim ordinance is adopted in accordance with the requirements of Government Code Section 65858 and Palo Alto Municipal Code Section 2.04.270 and is based on the need to protect the public safety, health and welfare as set forth in the above findings. A 4/5 vote is required for adoption.

The Council of the City of Palo Alto does ORDAIN as follows:

SECTION 1. Section 18.85.103 of Chapter 18.85 of Title 18 of the Palo Alto Municipal Code is hereby amended to read as follows:

18.85.103 Exemptions. The following shall be exempt from this Ordinance:

(a) Pipeline Projects. Any project where a discretionary permit or entitlement application to convert ground floor Retail use to a non-Retail use was submitted to the City on or before March 2, 2015 and is currently pending. For purposes of this Ordinance a "Use and Occupancy" Permit Application shall not constitute a discretionary permit.

(b) Vested Rights. Any project for which an applicant has received a valid building permit from the City prior to March 2, 2015 and performed substantial work and incurred substantial liabilities in good faith reliance on such permit as of the date of this Ordinance.

(c) RT-35 Zoned Parcels on Alma: Parcels located in the RT-35 zoning district on Alma south of Channing Avenue, shall be allowed to convert to a private educational facility provided they comply with the development standards governing such use in the RT-35 district.

SECTION 2. This Ordinance supersedes Ordinance Nos. 5325 and 5330 and any provision of the Palo Alto Municipal Code inconsistent with the provisions of this Ordinance.

SECTION 3. Severability. If any provision, clause, sentence or paragraph of this ordinance, or the application to any person or circumstances, shall be held invalid, such invalidity shall not affect the other provisions of this Ordinance which can be given effect without the invalid provision or application and, to this end, the provisions of this Ordinance are hereby declared to be severable.

SECTION 4. Effective Date. This ordinance shall be effective immediately and shall expire on April 30, 2017.

SECTION 5. CEQA. The City Council finds that this Ordinance falls under the California Environmental Quality Act (CEQA) exemption found in Title 14 California Code of Regulations Section 15061(b)(3) and 15301 because private educational facilities are a permitted use in the RT-35 zone.

INTRODUCED:

PASSED:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

ATTEST:

APPROVED:

City Clerk

Mayor

APPROVED AS TO FORM:

Senior Assistant City Attorney

City Manager

Director of Planning and
Community Environment