Summary Title: 285 Hamilton Avenue: Roof Deck

Title: PUBLIC HEARING/QUASI-JUDICIAL: 285 Hamilton Avenue [18PLN-00006]: Recommendation on Applicant's Request for a Text Amendment to Title 18 of the Palo Alto Municipal Code to Allow for Minor Increases in Height and Floor Area to Provide Access to Roof-top Decks on Existing Structures in the Commercial Downtown (Community) CD-C Subdistrict, as well as a Conditional Use Permit and Architectural Review for a 2,600 Square Foot Roof-top Deck on the Roof of the Existing Commercial Building at 285 Hamilton Avenue. The Planning and Transportation Commission Reviewed and Recommended Approval (4-2) of the Text Amendment and Conditional Use Permit at a Public Hearing on October 10, 2018. Environmental Assessment: Exempt per Sections 15301 and 15305 of the California Environmental Quality Act (CEQA) Guidelines. Zone District: CD-C(GF)(P)

From: City Manager

Lead Department: Planning and Community Environment

Recommendation
Staff recommends that Council take the following actions:

1. Find the proposed text amendment and architectural review and conditional use permit applications exempt from the California Environmental Quality Act (CEQA) per Guidelines Sections 15301 and 15305.

2. Introduce for first reading and adopt the attached ordinance and approve the proposed record of land use action approving architectural review and conditional use permit applications.

Executive Summary
The applicant requests a text amendment to Title 18 of the Palo Alto Municipal Code (Zoning Code) to exempt minor increases to the height and gross floor area of existing buildings that are
considered legally noncomplying in the CD-C Downtown Commercial Zoning District to allow for features providing access to rooftop decks and gardens, such as elevators, elevator vestibules, and covered staircases. The applicant also requests architectural review and a conditional use permit to allow an outdoor activity area over 2,000 square feet in size on the roof at 285 Hamilton Avenue, which encompasses the area associated with the proposed roof deck. Pursuant to PAMC section 18.40.170, the Planning Director has referred the decision on architectural review and conditional use permit applications to the City Council for decision concurrent with the Council’s consideration of the text amendment.

This item was originally scheduled for the November 19, 2018 Council hearing. At this hearing the City Council voted to postpone the item to a date uncertain given the late hour of the meeting. Since that time, staff has updated the Draft Record of Land Use Action to clarify that floor area associated with roof deck access is considered an amenity and exempt from Gross Floor Area, and that access is restricted to employees and guests.

**Background**

**Prior City Reviews & Action**

| City Council: | The Council conducted a prescreening for the proposed text amendment and roof deck on November 27, 2017. |
| Staff Report: | [https://www.cityofpaloalto.org/civicax/filebank/documents/62190](https://www.cityofpaloalto.org/civicax/filebank/documents/62190) |
| Transcript: | [https://www.cityofpaloalto.org/civicax/filebank/documents/64102](https://www.cityofpaloalto.org/civicax/filebank/documents/64102) |

On November 19, 2018, Council postponed the item to a date uncertain

| Video: | [https://midpenmedia.org/city-council-152-11192018/](https://midpenmedia.org/city-council-152-11192018/) |

| PTC: | The PTC reviewed the text amendment and CUP request on October 10, 2018. |
| Staff Report: | [https://www.cityofpaloalto.org/civicax/filebank/documents/67133](https://www.cityofpaloalto.org/civicax/filebank/documents/67133) |

| HRB: | None |
| ARB: | None |

The applicant proposes a text amendment that would exempt minor additions in floor area necessary to provide access to roof decks and patios on existing buildings that exceed the 50 foot height limit in the Downtown. Roof decks, patios, and gardens are already permitted facilities that may be incorporated into a permitted or conditionally permitted use. The text amendment would modify Section 18.18 of the Zoning Code to allow for an increase in the degree of height and building envelope noncompliance for “grandfathered” facilities in the CD-
C District, and to exempt related building square footage from gross floor area. A summary of the relevant existing code sections is provided below, and is followed by a Discussion section describing the proposed changes to those sections. Attachment D of this report includes the text of the amendments in strike-out/underline format, indicating sections to be removed and added respectively.

Downtown Commercial CD District
Section 18.18 of the Municipal Code provides the allowable land uses and development standard regulations that pertain to the Downtown Commercial District (CD). The CD-C subdistrict is the largest of three subdistricts and encompasses much of the downtown core, including most of University Avenue from Alma Street to Webster Street. The subject ordinance only addresses properties located in the CD-C district. The CD-C district has a height limit of 50-feet and a 2.0:1 maximum floor area ratio. The code currently authorizes floor area exemptions and bonuses above the maximum FAR in a number of circumstances, including when a project is providing disability-related access or a seismic or historic rehabilitation. For projects requesting a floor area bonus that are not associated with historic or seismic rehabilitations, the code currently provides for a 200 square feet of bonus, not to exceed a 3:1 FAR, in the CD-C subdistrict, subject to restrictions. The building at 285 Hamilton Avenue has a FAR of nearly 4:1, and is therefore not eligible for this existing floor area bonus.

Grandfathered Uses and Facilities in CD District
In addition to providing the standards for new uses and development, Section 18.18 also includes provisions for the treatment of “grandfathered” uses and facilities. Generally, “grandfathered” uses, also called “nonconforming uses”, are uses that were permitted at the time that they were established but, through subsequent legislative action, have lost their status as a permitted or conditionally permitted use. Likewise, “grandfathered facilities,” also called “noncomplying facilities,” are facilities that were legally established but, through subsequent legislative action, are no longer in compliance with one or more site development regulations (height, bulk, setbacks, etc.). A noncomplying facility may or may not house a nonconforming use, and vice versa. Citywide, such grandfathered uses and facilities are regulated by Section 18.70 of the Municipal Code; however, Section 18.18.120 provides specific regulations for grandfathered uses and facilities in the CD district that were legally established prior to August 1, 1986. The building at 285 Hamilton Avenue was constructed in the 1970s, and is considered a noncomplying facility due to its height and gross floor area.

Discussion
The proposed text amendment would alter Section 18.18 in two discrete ways. The first change would provide for a “Rooftop Access” floor area exemption for existing buildings that exceed the CD-C subdistrict’s maximum 2.0:1 floor area ratio to allow for stairways and elevators that are otherwise needed to access a rooftop area for building occupants, as well as to permit
related rooftop features, such as railings, trellises, furniture, and lighting. Such a provision would exempt, in the case of 285 Hamilton Avenue, a relatively minor (159 square feet proposed) floor area associated with an elevator and stair enclosure that would otherwise increase the degree of noncompliance of the site’s FAR. The new floor area enabled by the Rooftop Access floor area exemption would not require additional parking. The Rooftop Access exemption would only be permitted on portions of CD-C zoned sites which contain buildings at least 150 feet from a residential zone, and would require a conditional use permit. Activities associated with roof decks and gardens would need to be associated with a permitted or conditionally permitted use, and would be required to be in compliance with all other existing provisions of the code, including the noise ordinance and Building and Fire regulations. These provisions, as well as the restriction of the text amendment to existing buildings on CD-C-zoned sites more than 150 feet from residential districts, limits the application of the text amendment to relatively few sites (See Attachment B for a map of potentially applicable sites).

The second change would amend PAMC Section 18.18.120 to allow alteration to a noncomplying facility that allows for an increase in the building envelope and height of a facility if necessary to provide access to an uncovered, unenclosed roof area. In the case of 285 Hamilton Avenue, this would allow for the elevator and stairway enclosures to increase the building envelope adjacent to the existing penthouse. The 285 Hamilton Avenue proposal to add an elevator enclosure does not increase the overall height of the building above the existing 82 feet above grade to the top of penthouse roof, however, as noted earlier, it does increase the facility’s building envelope.

**Conditional Use Permit – Outdoor Activity**

PAMC Section 18.18.060(h)(1) provides additional development standards for the CD-C subdistrict, and requires a conditional use permit for any outdoor activity in excess of 2,000 square feet. The proposed roof deck is 2,660 square feet and would provide an area for outdoor activities on an ongoing basis, and therefore a CUP is required for the use of the deck. The findings to approve a Conditional Use Permit are included below, as well as in the draft Record of Land Use Action for the project in Attachment E. The project description from the applicant indicates that the deck would be an amenity to be used exclusively by office tenants, and that the public would not have access to the deck. Given this, the deck is not expected to generate additional trips. To ensure that the deck does not produce noise above the permitted standard, staff has included a condition prohibiting amplified sound that is audible from adjacent properties, or the public right of way. The proposed 42” high hand railings are setback 3 feet from the parapet edge, which limits the view of the railings and deck from the public right of way on Hamilton Avenue and the Ramona Alleyway frontages. The railing setback also adds a measure of safety and pushes the rooftop activity toward the center of the building. The applicant has provided a photometric plan and lighting fixture cutsheets, which indicate that lighting levels on the roof deck are minimal and that fixtures are oriented inwards in order to prevent glare as viewed from the street below. Given these design elements, as well as the lack
of residential structures in the area that could potentially be impacted from a privacy standpoint, staff believes that the findings for approval of a CUP for the outdoor activity area can be made in the affirmative.

Architectural Review
The proposed roof deck at 285 Hamilton Avenue is considered a minor change to an existing building involving an incremental addition of floor area, and as such does not required review by the Architectural Review Board. The project would cover less than half of the roof surface with new decking, railings, tables, chairs, planters, a sink and cabinets, and a trellis. The area enclosing the elevator shaft necessary to access the roof would be at the same height as the existing penthouse, and would be painted to match the color of the building. Line-of-sight drawings indicating that ground level views of the building’s roof deck features would be minimal. Included in Record of Land Use Action (Attachment E) is approval of the minor architectural review application. If Council has concerns or comments with the proposed rooftop design, those can be addressed at the hearing, or if necessary, sent to the Architectural Review Board.

Planning and Transportation Commission
The PTC, while recommending approval of the ordinance 4-2 (Summa and Lauing against; Riggs absent), did not articulate strong support for the legislative changes. Some commissioners supporting the motion expressed an interest in learning more about other properties potentially impacted by the change; sought other existing application processes to advance the subject request, such as a variance or design enhancement exception; and, considered the application ill-timed relative to other office-related policy interests supported by some in the community. Dissenting commissioners reflected a sentiment that this represented a fair amount of work for the benefit of only seven properties and appeared to be spot zoning. In response, staff noted that the text amendment was privately initiated and going through the review process, as opposed to a Council-initiated request.

While the ordinance has limited applicability, more properties could be included if Council decides to modify the siting criteria. For example, the ordinance as currently drafted restricts the application of the rooftop access exemption to CD-C zoned buildings, located at least 150 feet from a residential zone, that are both over 50 feet in height and over the applicable Floor Area Ratio (2.0 for mixed use, 1.0:1 for commercial-only). Attachment B (Eligible Buildings Map) shows these seven specific sites. This map was provided to and considered by the Commission.

In response to the Commission’s concerns about the limited applicability of the ordinance, staff has explored a more flexible construction that might expand the siting criteria to include all buildings that are over the applicable Floor Area Ratio, regardless of height. The eligible sites for such a scenario are shown in Attachment C. If there is Council support for this approach, it would require only slight changes to the ordinance. In any event, in response to Commission
comments noted above, the subject ordinance is not spot zoning and, importantly, spot zoning is not illegal if the Council finds the proposed ordinance in the interest of the general welfare.

The applicant, as well as some members of the PTC, questioned the need for an explicit prohibition on amplified music on the roof deck, and favored striking a condition staff imposed prohibiting amplified sound on the roof deck. The applicant argued that this would be unnecessarily restrictive and some commissioners agreed making a motion to remove the condition, however, this motion failed with a 3-3 vote. Since the Commission’s review, staff has modified the condition to allow amplified music, but imposed criteria that it not be audible beyond the site boundaries. This addresses staff’s principal concern regarding enforcement challenges and achieves the desired project objectives without impacting those beyond the site.

Lastly, the Commission expressed a desire for more green landscaping at the roof deck to enhance the visual quality of the project from the street level. For the proposed project at 285 Hamilton Avenue, while some artificial landscaping is already proposed in the form of planters on the roof, staff has incorporated a new condition to require regionally indigenous, drought-tolerant vegetation at the building periphery.

**Summary of Key Issues**

**Comprehensive Plan and Downtown Urban Design Guidelines**

The Comprehensive Plan does not contain policies or programs related to the treatment of noncomplying facilities or statements in support of or discouragement of rooftop decks and patios. Policy 2.11 provides encouragement of greenery associated with new development, which would be implemented with the architectural review of the associated 285 Hamilton roof deck application:

*Policy L-2.11: Encourage new development and redevelopment to incorporate greenery and natural features such as green rooftops, pocket parks, plazas and rain gardens.*

While the Comprehensive Plan is silent on policy and design considerations related to the subject text amendment, the Downtown Urban Design Guidelines, which are applicable generally to the Downtown area and more specifically to areas regulated by the CD-C zoning district, do encourage the active use of roof space:

*Page 58, Architecture Guidelines, Roofs/Parapets: Encourage roof gardens and use of roof space, where feasible, so that they are attractive when viewed from above and below, and provide added outdoor use opportunities and amenities.*

**Application to Conforming vs. Non-Conforming Buildings.**

As described above and as illustrated in the Eligible Buildings map (Attachment B), there are
few buildings in the CD-C subdistrict that are nonconforming for height, and as a result, few buildings would be eligible to take advantage of the exemption provided by the text amendment as currently drafted. One point of discussion at the PTC hearing on the item was the possibility of extending the exemption to include new or otherwise conforming buildings. Echoing this point, some in the public considered it unfair to provide additional floor area to noncomplying buildings only, whereas new buildings constructed to today’s development standards would not be eligible for the exemption.

**Policy Implications**

The Municipal Code does not preclude roofdecks on buildings that conform to applicable development standards. Through the architectural review process, the aesthetics of roof decks are reviewed and noise is generally regulated by the city’s noise ordinance. Enforcement is complaint driven. Noise related complaints generally occur at night and calls for service are placed with the police department, which prioritizes such complaints to other activities that require a more immediate police response.

Not many new buildings construct roof decks in part because the guardrails, stairs and elevators (except mechanical equipment) must be at or below the height limit, which impacts the quality of the interior floor space.

The subject ordinance allows buildings that exceed height and floor area to construct or expand stairways, elevators, and guardrails beyond the height limit to accommodate a roof deck. This enhances the quality of the work space for employees working in the building and can provide a meaningful amenity. Because the subject ordinance conveys the ability for owners to have roof decks on noncomplying facilities, distance limitations from residually zoned properties are recommended. New or expanded stairways or elevators may create additional building mass, which would be reviewed on a case by case basis through a discretionary review process. Operational concerns would be evaluated through a discretionary, conditional use process.

On January 28, 2019 the Council reviewed and adopted on first reading an ordinance to allow residential/mixed use projects in the downtown to meet usable open space requirements via roof decks. The ordinance also included an provision to allow elevators and stairs to exceed the height limit as necessary to comply with accessibility requirements, as well as performance standards to address potential impacts from noise and lighting associated with the use of such spaces. The ordinance adopted on January 28, 2019 did not address commercial-only projects.

**Environmental Review**

The subject project has been assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the City. Specifically, the ordinance is exempt per Section 15305
of the CEQA Guidelines (Minor Alterations in Land Use Limitations) as the text amendment would allow for negligible additions of floor area associated with rooftop access. The text amendment would also provide for a minor height increase associated with rooftop access and amenities only when, located on portions of buildings at least 150 feet from a residential zone, and otherwise in compliance with existing, universally applicable development standards and Guidelines pertaining to potential issues such as noise, aesthetics, and privacy. Additionally, the project is furthermore exempt per Section 15301 of the CEQA Guidelines (Existing Facilities) as the conditional use permit and architectural review application would allow minor alteration and use of an existing structure.

Attachments:

Attachment A: Location Map (PDF)
Attachment B: Eligible Buildings (PDF)
Attachment C: Eligible Buildings - Scenario B (PDF)
Attachment D: Draft Ordinance for Roof Access (DOCX)
Attachment E: Record of Land Use Action for 285 Hamilton Avenue (DOCX)
Attachment F: Zoning Comparison Table (DOCX)
Attachment G: Project Plans (DOCX)
Attachment H: Councilmember Dubois Questions of November 19, 2018 and Staff Answers (DOCX)
The Council of the City of Palo Alto does ORDAIN as follows:

SECTION 1. Section 18.18.060 (Development Standards) of Chapter 18.18 (Downtown Commercial District) of Title 18 (Zoning) of the Palo Alto Municipal Code is hereby amended to read as follows:

18.18.060 Development Standards
...
(e) Exemptions

(1) When an existing building is being expanded, square footage which, in the judgement of the chief building official, does not increase the usable floor area, and is either necessary to conform the building to Title 24 of the California Code of Regulations, regarding disability related access, or is necessary to implement the historic rehabilitation of the building, shall not be counted as floor area. For the purposes of this section disability related upgrades are limited to the incremental square footage necessary to accommodate disability access and shall be subject to the Director’s approval not to exceed 500 square feet per site. Disability related upgrades shall only apply to remodels of existing buildings and shall not qualify for grandfathered floor area in the event the building is later replaced or otherwise redeveloped.

(2) Buildings located in the CD-C subdistrict that are noncomplying for height and gross floor area shall be permitted to increase height and expand floor area to the minimum degree necessary to provide rooftop access and related amenities. Such access and amenities may include features such as stairs, elevators, trellises, outdoor furniture, railings, lighting, and other similar features. For the purposes of this section rooftop access floor area shall not be counted as gross floor area. Rooftop access-related features may be located only on portions of buildings located at least 150 feet from a residential zone which, for the purposes of this section, includes the R-1, R-2, RMD, RM-15, RM-30, RM-40, and SOFA districts or Planned Community (PC) districts that permit residential uses. Any request for a rooftop access exception under this section shall be subject to a conditional use permit.

...
18.18.120 Grandfathered Uses and Facilities

(a) Grandfathered Uses

(1) The following uses and facilities may remain as grandfathered uses, and shall not require a conditional use permit or be subject to the provisions of Chapter 18.70:

(A) Any use which was being conducted on August 28, 1986; or

(B) A use not being conducted on August 28, 1986, if the use was temporarily discontinued due to a vacancy of 6 months or less before August 28, 1986; or

(C) Any office use existing on April 16, 1990 on a property zoned CD and GF combining, which also existed as a lawful conforming use prior to August 28, 1986, notwithstanding any intervening conforming use.

(2) The grandfathered uses in subsection (1) shall be permitted to remodel, improve, or replace site improvements on the same site, for continual use and occupancy by the same use, provided such remodeling, improvement, or replacement complies with all of the following:

(A) shall not result in increased floor area;

(B) shall not relocate below grade floor area to above grade portions of the building;

(C) shall not result in an increase of the height, length, building envelope, building footprint or any other increase in the size of the improvement. For purposes of this section, “building envelope” shall mean the three dimensional shape and size occupied by an existing building. It is not the maximum, buildable potential of the site;

(D) shall not increase the degree of noncompliance, except pursuant to the exceptions to floor area ratio regulations set forth in Section 18.18.070; or

(E) in the case of medical, professional, general business or administrative office uses of a size exceeding 5,000 square feet in the CD-S or CD-N district that are deemed grandfathered pursuant to subsection (1), such remodeling, improvement, or replacement shall not result in increased floor area devoted to such office uses.

(F) The Director may approve minor changes to the building’s footprint, height, length, and the building envelope through Architectural Review of minor aesthetic architectural improvements and to improve pedestrian-orientation provided there is no increase to the degree of any non-complying feature.

(3) If a grandfathered use deemed existing pursuant to subsection (1) ceases and thereafter remains discontinued for 12 consecutive months, it shall be considered abandoned and may be replaced only by a conforming use.

(4) A use deemed grandfathered pursuant to subsection (1) which is changed to or replaced by a conforming use shall not be reestablished, and any portion of a site or any portion of a building, the use of which changes from a grandfathered use to a conforming use, shall not thereafter be used except to accommodate a conforming use.
(b) Grandfathered Facilities

(1) Any noncomplying facility existing on August 28, 1986 and which, when built, was a complying facility, may remain as a grandfathered facility and shall not be subject to the provisions of Chapter 18.70.

(2) The grandfathered facilities in subsection (1) shall be permitted to remodel, improve, or replace site improvements on the same site for continual use and occupancy, by the same use, provided such remodeling, improvement, or replacement complies with all of the following:

(A) shall not result in increased floor area;

(B) shall not relocate below grade floor area to above grade portions of the building;

(C) shall not result in an increase of the height, length, building envelope, building footprint, or any other increase in the size of the improvement;

(D) shall not increase the degree of noncompliance, except pursuant to the exceptions to floor area ratio regulations set forth in Section 18.18.070;

(E) The Director may approve minor changes to the building’s footprint, height, length, and the building envelope through Architectural Review of minor aesthetic architectural improvements and to improve pedestrian-orientation provided there is no increase to the degree of any non-complying feature, except as provided for rooftop access and amenities in Section 18.18.060(e).

SECTION 3. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the Ordinance would be subsequently declared invalid or unconstitutional.

SECTION 4. The Council finds that this Ordinance is exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15305 because it involves minor alterations of land use regulations.

SECTION 5. This Ordinance shall be effective on the thirty-first date after the date of its adoption.

PASSED:

AYES:
On February __, 2019, the Council of the City of Palo Alto, after considering all of the evidence presented, approved the Conditional Use Permit and Architectural Review application for an 2,660 square foot outdoor activity area (roof deck) in the CD-C(GF)(P) district, making the following findings, determination and declarations:

SECTION 1. Background.

A. An application for a conditional use permit (CUP) to allow a 2,600 square foot roof deck for use by building employees as an amenity was submitted on January 8, 2018.

B. Planning Staff referred the application to the Planning and Transportation Commission (Commission) for a recommendation to the City Council.

C. The Planning and Transportation Commission held a duly noticed public hearing, at which evidence was presented and all persons were afforded an opportunity to be heard, and recommended approval of the Project on October 10, 2018. The Commission’s recommendations are contained in CMR #____ and the associated attachments.

D. On November __, 2018, the City Council, after reviewing the evidence presented, adopted the recommendation of the Planning and Transportation Commission and approved the subject CUP application.

SECTION 2. Environmental Review. The proposed project has been determined to be Categorically Exempt per Section 15301 (Existing Facilities) and 15305 (Minor Alterations in Land Use Limitations) of the California Environmental Quality Act Guidelines.

SECTION 3. Conditional Use Permit Findings. Conditional Use Permit approval is based on the findings indicated under PAMC Section 18.76.010:

1. The proposed use, 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.

The CUP would allow for a 2,600 square foot outdoor activity area on the roof of the building at 285 Hamilton Avenue. The roof deck would be used by building occupants and guests, and would include a safety railing setback three feet from the existing roof parapet. The roof deck would be located over 150 feet from surrounding residential uses. The railing and setback would help prevent occupants from throwing objects from the roof to the ground. Lighting would be low-profile and directed downward on the deck in order to minimize light spillage and glare. The roof deck would be minimally visible from the street level and, as conditioned, any amplified music would not be audible from the property boundaries. Given these project elements and conditions, the use will meet Finding #1.
2. The proposed use will be located and conducted in a manner in accord with the Palo Alto Comprehensive Plan and the purposes of the Zoning Ordinance.

The CUP would support Policy L-2.11 of the Comprehensive Plan by incorporating greenery on the rooftop of the building at 285 Hamilton Avenue. Additionally, the use of the roof space would be consistent with the Downtown Urban Design Guidelines by providing outdoor use opportunities and amenities. With the proposed text amendment, the use would be consistent with the Zoning Ordinance and the use will meet Finding #2.

SECTION 4. Architectural Review Findings. Architectural Review approval is based on the findings indicated under PAMC Section 18.76.020:

Finding #1: The design is consistent with applicable provisions of the Palo Alto Comprehensive Plan, Zoning Code, coordinated area plans (including compatibility requirements), and any relevant design guides.

With the proposed text amendment, the project will be consistent with the applicable provisions of the Zoning Code. The project will include high quality design compatible with surrounding development. The Comprehensive Plan does not contain policies or programs related to rooftop spaces, however the Downtown Urban Design Guidelines, which are applicable to the subject site, encourage the active use of rooftops.

Finding #2: The project has a unified and coherent design, that:

a. creates an internal sense of order and desirable environment for occupants, visitors, and the general community,
b. preserves, respects and integrates existing natural features that contribute positively to the site and the historic character including historic resources of the area when relevant,
c. is consistent with the context-based design criteria of the applicable zone district,
d. provides harmonious transitions in scale, mass and character to adjacent land uses and land use designations,
e. enhances living conditions on the site (if it includes residential uses) and in adjacent residential areas.

The project provides a desired amenity for current and future building occupants. The site is not considered an historic resource, and would not impact the adjacent Ramona Street Historic District. The project is consistent with the Downtown Urban Design Guidelines, which encourage the active use of rooftops. The project involves a negligible increase in the mass of the existing building, and with the proposed setbacks of the rooftop features would not impact the scale of the building as viewed from surrounding streets.
Finding #3: The design is of high aesthetic quality, using high quality, integrated materials and appropriate construction techniques, and incorporating textures, colors, and other details that are compatible with and enhance the surrounding area.

The project includes a mix of contemporary materials on the roof, including a plaster-cladded stair enclosure, aluminum trellis, and glass guardrails. These materials would complement the textures and colors of the existing building, and would be compatible with the eclectic mix of structures in the surrounding area.

Finding #4: The design is functional, allowing for ease and safety of pedestrian and bicycle traffic and providing for elements that support the building’s necessary operations (e.g. convenient vehicle access to property and utilities, appropriate arrangement and amount of open space and integrated signage, if applicable, etc.).

The project would provide required access to the roof for building employees, which will provide a desired amenity and rooftop open space.

Finding #5: The landscape design complements and enhances the building design and its surroundings, is appropriate to the site’s functions, and utilizes to the extent practical, regional indigenous drought resistant plant material capable of providing desirable habitat that can be appropriately maintained.

The project enhances the use of the site and would incorporate materials and details that enhance the building design. The project incorporates rooftop planters that will be maintained by the applicant. As conditioned, the planters will contain drought-resistant vegetation that is indigenous to the San Francisco Bay Area.

Finding #6: The project incorporates design principles that achieve sustainability in areas related to energy efficiency, water conservation, building materials, landscaping, and site planning.

In accordance with the City’s Green Building Regulations, the building will satisfy the requirements for CALGreen Mandatory + Tier 2. A summary of the project’s compliance is on sheet GB-1 of the plans.

SECTION 5. Conditions of Approval.

PLANNING

1. CONFORMANCE WITH PLANS. Use and development shall be conducted in substantial conformance with the approved plans entitled, "Houzz 285 Hamilton Roof Deck Improvement Application,” dated March 30, 2018 on file with the Planning Department, 250 Hamilton Avenue, Palo Alto, California except as modified by these conditions of approval.

2. BUILDING PERMIT. Apply for a building permit and meet any and all conditions of the Planning, Fire, Public Works, and Building Departments.
3. USE AUTHORIZATION. This Conditional Use Permit authorizes outdoor activity use on the roof in an unenclosed area up to 2,600 square feet as an on-site amenity for occupants and employees of the subject site. This use shall be limited to use by the building occupants and their employees and shall be subject to conditions herein.

4. PERMITTED HOURS. Use of the roof deck shall be limited to 6:00AM to 11:00PM Monday through Sunday.

5. AMPLIFIED MUSIC. Amplified music may be permitted on the roof deck, but not audible beyond the property boundaries.

6. NOISE. The use of the roof deck shall at all times be in conformance with the Noise Ordinance (PAMC Chapter 8).

7. LIGHTING. All exterior lighting associated with the roof deck shall be oriented downward and away from City rights of way and adjacent properties. Light filaments and bulbs shall not be visible at the property line in order to prevent glare.

8. PLANTERS. The proposed planters shall contain vegetation that is drought-resistant and regionally indigenous to the Bay Area. The plants shall be maintained by the applicant to the satisfaction of the Planning Director.

9. BUILDING PERMIT PLAN SET. The approval letter including all Department conditions of approval for the project shall be printed on the plans submitted for building permit.

10. PROJECT MODIFICATIONS: All modifications to the approved project shall be submitted for review and approval prior to construction. If during the Building Permit review and construction phase, the project is modified by the applicant, it is the responsibility of the applicant to contact the Planning Division/project planner directly to obtain approval of the project modification. It is the applicant’s responsibility to highlight any proposed changes to the project and to bring it to the project planner’s attention.

11. PROJECT EXPIRATION. The project approval shall automatically expire after two years from the original date of approval, if within such two year period, the proposed use of the site or the construction of buildings has not commenced pursuant to and in accordance with the provisions of the permit or approval. Application for a one year extension of this entitlement may be made prior to the expiration. (PAMC 18.77.090(a))

12. FINAL INSPECTION: A Planning Division Final inspection will be required to determine substantial compliance with the approved plans prior to the scheduling of a Building Division final. Any revisions during the building process must be approved by Planning, including but not limited to; materials, landscaping and hard surface locations. Contact your Project Planner, Graham Owen at graham.owen@cityofpaloalto.org to schedule this inspection.

13. COMPLIANCE WITH CONDITIONS OF APPROVAL. The applicant shall at all times be in compliance with the conditions of approval and documentation describing the roof deck’s operation. If operations result in unanticipated impacts that negatively impact the health, safety, convenience,
or general welfare, the Director of Planning and Community Environment may impose additional conditions to mitigate those impacts. Any changes by the Director to this approval or imposition of new or modified conditions shall be in writing and subject to the city’s appeal procedures for conditional use permits.

14. INTENSIFICATION OF USE: Any intensification of use shall require an amendment to the conditional use permit and any other entitlements as specified in the Palo Alto Municipal Code. Intensification as used herein includes, but is not limited to, allowance for use by others as specified in Condition #3, expansion of the hours of use as specified in Condition #4, and increased noise generating activities.

15. REVOCATION OR MODIFICATION OF APPROVALS: The director may issue a notice of noncompliance for any failure to comply with any condition of this permit approval, or when a use conducted pursuant to a conditional use permit is being conducted in a manner detrimental to the public health, safety and welfare.

16. INDEMNITY: To the extent permitted by law, the Applicant shall indemnify and hold harmless the City, its City Council, its officers, employees and agents (the “indemnified parties”) from and against any claim, action, or proceeding brought by a third party against the indemnified parties and the applicant to attack, set aside or void, any permit or approval authorized hereby for the Project, including (without limitation) reimbursing the City its actual attorney’s fees and costs incurred in defense of the litigation. The City may, in its sole discretion, elect to defend any such action with attorneys of its own choice.

BUILDING

17. Construction details are required on the building permit plans to show how the roof deck furniture will be built-in or permanently fixed.

18. Rooftop use is a Group A Occupancy.

PASSED:
AYES:
NOES:
ABSENT:
ABSTENTIONS:

ATTEST:

_________________________  ______________________________
City Clerk                  Mayor

APPROVED AS TO FORM:  APPROVED:

_________________________  ______________________________
Deputy City Attorney       Interim Director of Planning and Community Environment
# ATTACHMENT E

## ZONING COMPARISON TABLE

285 Hamilton Avenue, 17PLN-0006

Table 1: COMPARISON WITH CHAPTER 18.18 (CD-C DISTRICT)

Exclusively Non-Residential Development Standards

<table>
<thead>
<tr>
<th>Regulation</th>
<th>Required</th>
<th>Existing</th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Minimum Setbacks</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Front Yard</td>
<td>None Required</td>
<td>7 ft</td>
<td>No change</td>
</tr>
<tr>
<td>Rear Yard</td>
<td>None Required</td>
<td>0 ft</td>
<td>No change</td>
</tr>
<tr>
<td>Interior Side Yard</td>
<td>None Required</td>
<td>8 ft</td>
<td>No change</td>
</tr>
<tr>
<td>Street Side Yard</td>
<td>None Required</td>
<td>7 ft</td>
<td>No change</td>
</tr>
<tr>
<td><strong>Special Setbacks</strong></td>
<td>Pursuant to PAMC 20.08.</td>
<td>7 ft setback on Hamilton Avenue</td>
<td>No change</td>
</tr>
<tr>
<td>Minimum street setback for sites sharing a common block face with any abutting residential zone district</td>
<td>Note 4</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Minimum yard (ft) for lot lines abutting or opposite residential zone districts</td>
<td>10 feet (Note 1)</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td><strong>Maximum Site Coverage</strong></td>
<td>None Required</td>
<td>10,030 sf</td>
<td>No change</td>
</tr>
<tr>
<td><strong>Maximum Height</strong></td>
<td>50 ft, or 35 ft if within 150 ft of a residential zone</td>
<td>66 ft to top of parapet, 82 ft to top of penthouse</td>
<td>No change</td>
</tr>
<tr>
<td><strong>Maximum Floor Area Ratio (FAR)</strong></td>
<td>1.0:1 (10,030 sf) (Note 5)</td>
<td>47,700 sf</td>
<td>47,859 sf</td>
</tr>
<tr>
<td>(The additional 159 sf would be exempt from FAR if the proposed Ordinance is approved)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Maximum Size of New Non-Residential Construction or Expansion Projects</td>
<td>25,000 sf of gross floor area or 15,000 sf above the existing floor area, whichever is greater, provided the floor area limits set forth elsewhere in this chapter are not exceeded, and except as otherwise permitted by Section 18.18.060(e)(2)</td>
<td>47,700 sf</td>
<td>As amended, the 159 sf addition proposed with the project conforms</td>
</tr>
<tr>
<td><strong>Daylight Plane for lot lines abutting one or more residential zone districts</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Initial Height at side or rear lot line</td>
<td>(Note 2)</td>
<td>N/A</td>
<td>N/A</td>
</tr>
</tbody>
</table>
Notes
1) The yard shall be planted and maintained as a landscaped screen, excluding area required for site access.
2) The initial height and slope shall be identical to those of the residential zone abutting the site line in question.
3) The maximum height within 150 feet of any abutting residential zone district shall not exceed the height limit of the abutting residential district.
4) The minimum street setback shall be equal to the residually zoned setback for 150 feet from the abutting single-family or multiple family development.
5) FAR may be increased with transfers of development and/or bonuses for seismic and historic rehabilitation upgrades, not to exceed a total site FAR of 3.0:1 in the CD-C subdistrict or 2.0:1 in the CD-S or CD-N subdistricts and with bonuses for rooftop access as provided in 18.18.070(a)(6).

18.18.100 Performance Standards. In addition to the standards for development prescribed above, all development shall comply with the performance criteria outlined in Chapter 18.23 of the Zoning Ordinance.

18.18.110 Context-Based Design Criteria. As further described in a separate attachment, development in a commercial district shall be responsible to its context and compatible with adjacent development, and shall promote the establishment of pedestrian oriented design.

Table 2: CONFORMANCE WITH CHAPTER 18.52.040 (Off-Street Parking and Loading) for Downtown University Avenue Parking Assessment District

<table>
<thead>
<tr>
<th>Type</th>
<th>Required</th>
<th>Existing</th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vehicle Parking (within the Downtown</td>
<td>All uses except residential: 1 space per 250</td>
<td>191.4 spaces</td>
<td>No change; the 159 sf increase would not result in an additional required space (PAMC 18.52.)</td>
</tr>
<tr>
<td>Parking Assessment District) PAMC 18.52.040 Table 2</td>
<td>sf</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bicycle Parking (within the Downtown</td>
<td>All uses except residential: 1 space per 2,500</td>
<td>19 spaces</td>
<td>No change</td>
</tr>
<tr>
<td>Parking Assessment District) PAMC 18.52.040 Table 2</td>
<td>sf 40% Long Term (LT) 60% Short Term (ST)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Loading Space</td>
<td>The site is grandfathered for two on-site</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>loading spaces are required for the 159 sf</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>increase in gross floor area.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Attachment G

Project Plans

Hardcopies of project plans are provided to Commission members. These plans are available to the public online and/or by visiting the Planning and Community Environment Department on the 5th floor of City Hall at 250 Hamilton Avenue.

Directions to review Project plans online:

1. Go to: bit.ly/PAnothing projects
2. Scroll to find “285 Hamilton Avenue” and click the address link
3. On this project specific webpage you will find a link to the project plans and other important information
Houzz Roof Deck/Text Amendment

Councilmember Dubois Questions and Staff Responses:

**1. Dubois:** Can legal language be suggested for the ordinance to not incorporate the additional FAR permanently in the buildings FAR / building envelope? The concern here is that a rooftop garden is used to gain extra sq ft, the building is then remodeled (like University Arts) the new sq ft is moved elsewhere and the garden is removed. Seems to be a bit of a loop hole.

**1. Staff Response:** The ordinance as drafted and proposed addresses this concern; specifically, the red text below (from proposed subsection (e)(2) of Section 18.18.060) says the “rooftop access” area is a gross floor area exemption that applies only for this purpose, so the area cannot be absorbed somewhere else in the building. If they remove the rooftop garden, the gross floor area exemption for rooftop access as applied to this site would also go away. See wording in red under proposed Section 18.18.060 item e, sub-item 2:

“Buildings located in the CD-C sub-district that are non-complying for height and gross floor area shall be permitted to increase height and expand floor area to the minimum degree necessary to provide rooftop access and related amenities. Such access and amenities include features such as stairs, elevators, trellises, outdoor furniture, railings, lighting, and other similar features. **For the purposes of this section rooftop access floor area shall not be counted as gross floor area.** Rooftop access-related features may be located only on portions of buildings located at least 150
feet from a residential zone which, for the purposes of this chapter, includes the R-1, R-2, RMD, RM-15, RM-30, RM-40, residential SOFA districts, or residential Planned Community (PC) districts. Any request for a rooftop access exception under this section shall be subject to a conditional use permit”

2. Dubois: Could legal language be suggested for the ordinance that if the use requires more parking, it would require a rooftop to meet parking requirements and be reviewed by PTC?

2. Staff Response: Currently, the definition of “gross floor area” (GFA) in Chapter 18.04 counts areas above the ground floor if used for required access and not available to general public as GFA. The Code generally requires GFA to be parked including GFA located on the roof.

The proposed ordinance would consider roof decks an amenity for employees and exempt it from GFA. Therefore, no parking would be required. If a rooftop area on a non-complying building were no longer proposed to be used for employee amenity space (consistent with the proposed ordinance), it would be considered additional gross floor area and would not be allowed to remain.

Section 18.52.040 Table 2, Parking Assessment Districts states “1 per 250 square feet” – this is assumed to be GFA. Table 2 does not refer to gross floor area for Downtown but Table 2 does use GFA to refer to Cal Ave district. Table 2 could be changed to add “of gross floor area” after “1 per 250 square feet”.

3. Dubois: How would we prevent rooftop facilities from being closed in, creating additional FAR for general use? Similar to building a
carport and then converting it to a garage? Like to understand what real monitoring / enforcement capabilities we have.

3. Staff Response: Enclosure of non-GFA rooftop area per proposed ordinance would result in new GFA. A Planning application and Building permit(s) would be required for such a change. However, if the building were a non-complying GFA facility, the City would not allow its enclosure (with walls) since this would increase the degree of noncompliance with respect to GFA (and height).

4. Dubois: What ordinances do we have today in terms of rooftop gardens? The staff report suggests they are allowed but I think Council has been pretty negative when the issue has come up, including for complying buildings.

4. Staff Response:

The Council recently adopted performance standards for roof decks associated with residential/mixed use projects in the CD district which allowed rooftop areas to count towards the required usable open space standard. There is no requirement for usable open space associated with commercial-only projects.

5. Dubois: Can staff discuss how impacts to residents in mixed use zones will be handled? There is suggestion they will limit decks 150 feet from residential zones but nothing about impacts on residents downtown.

5. Staff Response: Due to this potential conflict, the proposed ordinance change would require roof decks to go through the Conditional Use Permit (CUP) process that includes notice mailed to neighbors/property owners within a 600 foot radius. Staff would
respond to any comments received on a specific project and would incorporate additional conditions as needed. As with all CUPs, the public may request a hearing before the Planning and Transportation Commission. At the public hearing any member of the public may weigh in on potential conflicts and approval conditions can set expectations and consequences.

6. Dubois: Can staff discuss the interplay between two maybe contradicting suggestions - the suggestion that railings be set back to not create an apparent increase in height versus the suggestion that greenery be visible from the street.

6. Staff Response: The proposed railings are made of a glass material and would not visibly increase the apparent height of the building when viewed from the public street.

7. Dubois: In the CUP, Condition #13 refers to intensification of use. What is the proposed intensity of use?

7. Staff Response: The packet page 45 describes users, and packet page 48 conditions provide limits to the use:

- hours of use to 6 AM to 11 pm daily.
- amplified music to the property boundary.
- lighting downward and away from adjacent properties.
- 2600 sq.ft. – use by building occupants and guests (doesn’t say ONLY by).

Council can certainly clarify the baseline of the permitted use = ‘outdoor activity’ is solely for on-site employees and their guests). Houzz is office use - not restaurant use for example; if building tenant
changes to restaurant, the rooftop cannot be used as additive commercial use (not for office area, not for patron service area for eating and drinking; area is only by employees as an amenity).