

From: [Jeff Levinsky](#)
To: [Council, City](#)
Subject: Council Review Tonight of Changes to Height Transitions
Date: Monday, January 24, 2022 6:00:23 AM

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Dear City Councilmembers:

Please do not approve the proposed ordinance regarding height transitions tonight. It is the opposite of what you voted for on November 8 and would substantially reduce privacy and protections for R-1 and all other residential zones around the city.

Table 3 on page 4 of the proposed ordinance amending 18.16.060(a) demonstrates many of these problems. Here is its proposed rule for when CC, CC(2) and CS properties must lower their height to 35 feet:

Within 150 ft. of an <u>abutting</u> residential district (other than an RM-40 or PC zone) <u>(9)</u> abutting or located within 50 feet of the site
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1. **The new “abutting” requirement would harm R-1 and other residential zones:** Our current law generally requires lowered heights on various properties within 50 feet of certain residential zones. The proposed ordinance deletes that language and only lowers heights on properties that abut, which is defined by our code as sharing a property line. This means buildings separated by a 20 foot alley or 10 foot walkway from residences would no longer need to lower their height - in some cases they could now be 50 feet tall. The same would apply when parcels only touch at their corners, since they too do not “abut” under our laws, allowing 50 foot commercial buildings just a few feet from a residence.

The Council never asked for this. Instead, clause C(ii) of your motion called for “stronger protections for elevated floors looking into neighboring lots.” The proposed ordinance weakens protections.

2. **Decisions by Planning Director would enable further harm to R-1 and other residential zones:** The new footnote 9 says the 150 ft extent of lowered height can be reduced to just 50 ft by the Planning Director. This is not an objective standard and it further weakens existing protections. Again, it is not what the Council asked for. In fact, clause I of your motion asked staff to “evaluate whether ‘decision by director’ option[s] throughout objective standards puts those at risk” and should be changed or removed. The staff

report offers no such evaluation and instead compounds the problem by adding new director options to the objective standards, thus making them more subjective.

3. **Not all residents are being protected:** Clause C(ii) of your motion asked staff to “provide standards for privacy and other protections for all residents, regardless of their zones.” Yet the proposed ordinance continues to treat residents in RM-40, PCs, and mixed-used buildings in commercial zones worse than other residents.
4. **No public meetings were held:** Clause E of your motion requires “at least two meetings on the proposed changes before the next Council session for free-form discussion by the general public.” No such meetings have been held. No residents and owners of residential properties (including R-1) throughout Palo Alto have been given notice of these changes as far as I can tell, and no effort has been made to identify which properties will lose protections due to the new “abutting” rule.

Other problems in the staff report include:

5. **PCs can be taller, reducing resident rights:** The proposed changes to 18.38.150(b) on page 10 that allow for taller PCs create at least four problems:
 - a. The proposal again introduces the “abutting” requirement that adversely affect residents, including those in R-1, for when PCs don’t abut their properties.
 - b. The current code protects RMD parcels, whereas the proposed ordinance would not.
 - c. RM-30 and RM-40 are clearly protected by the current code when PCs are less than 60% residential but are not by the proposed ordinance.
 - d. Regarding the exception for when PCs are at least 60% residential, staff may believe that the code’s references to RM-4 and RM-5 meant RM-30 and RM-40, but it has been about four decades since RM-4 and RM-5 were used and staff never corrected the code during all these years. It is unreasonable to claim that those who purchased homes in RM-30 and RM-40 since the 1980s should have known that they were getting less protection when our code didn’t say that. In other cases where the Municipal Code doesn’t match what staff intends, staff has agreed to follow the text of the code. Based on those precedents, the City should not now adopt lower protections for RM-30 and RM-40, especially given Council intent to instead provide all residents with more equal protection.
6. **Ambiguity between 50 and 150 foot for lowered heights doesn’t exist:** Page 11 of the staff report claims that our current code is ambiguous regarding whether lowered heights in CN, CC, CS, and CC(2) extend for 50 or 150 feet. There is no ambiguity and no one has demonstrated any ambiguity. Every example offered by staff of where it claims the City interpreted the rule as 50 feet has been proven false while many staff reports exist that

used 150 feet. The one example (4216 El Camino) where it appears the 150 foot law was not followed after it was adopted had no staff report that cited the law nor mentioned the adjacent property that would have triggered the 150 foot rule. It thus is not a precedent. The City should correct the error in the current staff report and not create a false record that could be detrimental to the City in some legal matter.

To sum up, please do not spend your time trying to fix the many problems in the proposed ordinance but instead direct staff to correct the above problems per the guidelines you already set last year and to hold the required public meetings before you consider the matter more.

Thank you,

Jeff Levinsky