



City of Palo Alto

City Council Staff Report

(ID # 5727)

Report Type: Action Items

Meeting Date: 5/11/2015

Summary Title: Interim Ordinance for Retail Preservation

Title: PUBLIC HEARING: Adoption of an Urgency Interim Ordinance of the Council of the City of Palo Alto Amending Title 18 (Zoning) of the Palo Alto Municipal Code to Prohibit Conversion of Existing Ground Floor Retail and Retail-Like Uses to Office or Other Uses on a Citywide Basis Effective Immediately.

From: City Manager

Lead Department: Planning and Community Environment

Recommendation

Staff recommends that the City Council conduct a public hearing and adopt the proposed urgency interim ordinance included as Attachment A to prevent the conversion of ground floor retail and retail-like uses to other uses citywide (requires eight votes).

Executive Summary

With adoption of the proposed interim ordinance, existing ground floor retail and “retail-like” uses (which are defined in the ordinance) would be prevented from converting to office or other uses. The interim ordinance would apply citywide and consistent with State law, would be effective immediately and remain in effect for 45 days, at which time it could be extended if desired.

The City Council has expressed its intent to maintain a citywide prohibition on conversions of ground floor retail and retail-like uses until permanent adjustments to the City’s zoning standards can be developed and adopted. Those adjustments would be intended to add ground floor retail protections where there are currently none and strengthen protections that currently exist.

Background

On March 2, 2015, the City Council identified the loss of ground floor retail and services as one impact of increased office rents and office development in the City and directed staff to return with an urgency ordinance and subsequent zoning amendments to address this issue. On April 6, 2015, the City Council gave staff specific direction on parameters of the interim ordinance as

well as direction to prepare an identical backstop ordinance¹ and to proceed with community outreach, data collection, and analysis necessary to develop permanent zoning amendments. A copy of the Council's motions is provided as Attachment B.

State law authorizes interim urgency ordinances prohibiting any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the Council is or intends to study within a reasonable time. The City's Municipal Code has a similar provision. In an urgency ordinance, the Council would need to include findings that there is a current and immediate threat to the public health, safety, or welfare and that the approval of additional retail conversions would result in that threat to public health, safety, or welfare. The attached ordinance includes these findings as well as findings that the urgency ordinance would not have a material effect on the development of projects with a significant component of multifamily housing. See the Discussion section below for the basis of these findings.

Existing Retail and related uses are permitted in commercial and mixed-use areas of the City and there are a variety of mechanisms used to preserve or promote ground floor retail in some areas. More detail can be provided regarding any of these areas:

Downtown

Retail use is permitted in all areas of the Downtown Commercial (CD) District and *required* in the core where the ground floor (GF) overlay or combining district regulations apply (PAMC Section 18.30(c)). Ordinance 4098 enacted controls on ground floor uses in the CD and GF overlay district in 1992. These controls were most recently amended with Ordinance 5065 in 2009.

The purpose of these regulations is to allow only the following uses on the ground floor: (1) Eating and drinking; (2) Hotels; (3) Personal services;² (4) Retail services;³ (5) Theaters; (6) Travel agencies; and (7) Entrance, lobby or reception areas serving non-ground floor uses.

¹ The term "backstop ordinance" is used here to suggest an ordinance identical to the interim ordinance which would be adopted through the standard procedures for a zoning ordinance, with a hearing at the Planning and Transportation Commission, two readings, and a thirty day period before taking effect. The intention of the ordinance would be to provide a backup plan or "backstop" in case the interim ordinance fails to secure eight votes or is challenged in court based on its urgency findings.

² "Personal services" are defined to include "beauty shops, nail salons, day spas, and barber shops" as well as laundries, print shops, "internet and consumer electronics services," film shops, art or dance studios (18.040.030(114)). The term "internet and consumer electronic services" was added in 2001 with the intent of permitting "cyber cafes." Staff has interpreted "internet and consumer electronics services" to include such uses as "Hana Haus," but has not permitted internet office startups under this definition.

³ "Retail Services" are defined as uses "engaged in providing retail sale, rental, service, processing, or repair of items primarily intended for consumer or household use, including but not limited to the following: groceries, meat, vegetables, dairy products, baked goods, candy, and other food products; liquor and bottled goods, household cleaning and maintenance products; drugs, cards, and stationery, notions, books, tobacco products, cosmetics, and specialty items; flowers, plants, hobby materials, toys, household pets and supplies, and handcrafted items; apparel, jewelry, fabrics, and like items; cameras, photography services, household electronic equipment, records, sporting equipment, kitchen utensils, home furnishing and appliances, art supplies and framing, arts and antiques, paint and wallpaper, carpeting and floor covering, interior decorating services, office supplies, musical instruments, hardware and homeware, and garden supplies; bicycles; mopeds and automotive parts and accessories (excluding service and installation); cookie shops, ice cream stores and delicatessens." The

The regulations also allow up to twenty-five percent of the ground floor area not fronting on a street to be occupied by another use permitted in the CD district (e.g. office), and allow property owners to obtain a conditional use permit to use a ground floor for a business or trade school, commercial recreation, day care, financial services, or general business services. These code provisions would be preempted by the proposed interim ordinance. The proposed interim ordinance would also effectively protect existing ground floor retail uses from conversion even if they are located outside the boundaries of the GF combining district.

SOFA

In the SOFA II area, retail use is allowed within the Residential Transition (RT) zones established by the SOFA Coordinated Area Plan. The goal of RT zones is the continuation of neighborhood service commercial uses, retention of some ground floor office and limited provision of new offices.

The RT zones allow office use, schools, institutions, financial services, general business services, eating and drinking services, and personal services. A use permit is needed for automotive services and service stations, warehousing and distribution uses, and commercial recreation. New office space is limited in floor area and conversions to office are limited as well.

Sites in the Homer Emerson Corridor cannot have ground floor office except under specific circumstances, and ground floor residential use outside the Homer Emerson Corridor cannot be converted to office use.

The proposed interim ordinance would effectively protect existing ground floor retail uses from conversion even if they are located outside the area where ground floor office uses are prohibited (and even if they are non-conforming with existing zoning).

California Avenue

Retail is allowed in the Community Commercial (CC) Subdistrict (2) zone and ground floor retail is specifically required in the retail combining district (R) or “overlay” zone that applies to the core of the California Avenue district (PAMC Section 18.30(A)). Ordinance 3519 enacted the controls on ground floor uses in the R district in 1984.

Within the R overlay zone, only eating and drinking, personal services, and retail services are permitted on the ground floor, and financial service uses are allowed via a conditional use permit. The allowance for new ground floor financial service uses with a use permit would be preempted by the proposed interim ordinance, which would also effectively protect existing ground floor retail spaces from converting to other uses even if they are located outside the area where ground floor office uses are prohibited (and even if they are non-conforming with existing zoning).

proposed interim ordinance would modify this definition to insert the concept that uses must be “predominantly” retail.

Other Areas

Retail use is permitted in other commercial areas (the CC2, CN, CS, and CC zones, including Midtown and Charleston Center's CN-GF-P zones, and one Middlefield property's CN-R zone), and as part of a mixed use (retail-residential) project within any site rezoned Pedestrian and Transit Oriented Development (PTOD). Retail use is conditionally permitted in the Research Office and Limited Manufacturing (ROLM), Research Park (RP), and General Manufacturing (GM) zone districts.

Section 18.16.050 of the Municipal Code restricts the presence of Medical, Professional, and Business offices on the ground floor except in certain circumstances. These controls were first adopted by Ordinance 4730 in 2001 following a comprehensive review of ground floor retail issues. A series of urgency ordinances were adopted in early 2001 regarding uses allowed in the Midtown Shopping District and the Charleston Center, and lead to adoption of Ordinances 4786 and 4787 in April 2003, establishing permitted and conditional uses in those areas. These provisions are currently found in Municipal Code Section 18.16.040(c), (d), and (e).

The proposed interim ordinance would effectively limit new ground floor uses in these commercial districts to those uses listed in the ordinance. Use permits could no longer be obtained for new ground floor medical, professional, or business offices.

Discussion

The proposed ordinance is intended to address the Council's desire to prevent existing retail and service uses from converting to other uses Citywide. The ordinance would prohibit existing retail service uses and other uses categorized as "retail like" use in all areas of the City from converting to office use or any other non-retail use. Under the terms of the ordinance, the protections would apply to "retail services" as well as the following "retail-like" uses:

- eating and drinking uses,
- personal services,
- hotels,
- theatres,
- travel agencies,
- commercial nurseries,
- commercial recreation, and
- automobile dealerships

This list varies from the list of ground floor uses permitted in the GF combining district because it includes commercial nurseries, commercial recreation, and automobile dealerships. **Staff would appreciate the City Council's attention to this list, and to the question whether it should also include automotive services and service stations, private schools, day care facilities, financial services, or any other uses that could be considered "retail-like" and worthy of protection.** (If a use is included on the list, the existing ground floor space it inhabits

could only be reused for another use on the list. Spaces occupied by other retail uses could also be reused for any other use on the list.)

The adoption of this list would effectively nullify the potential to introduce other ground floor uses that are currently permitted or permitted with a conditional use permit under various sections of the zoning ordinance until the interim ordinance expires or is replaced by permanent controls.

The proposed interim ordinance would allow a property owner to appeal to the City Council in the event of financial hardship. When a property is redeveloped, it would also prevent property owners from reducing the square footage of ground floor space devoted to retail (including accessory storage and administrative office uses) unless that reduction was the minimum needed to provide access to any new upper floors and/or lower level parking.

The proposed interim ordinance would not affect the ability to change from one of the protected existing uses to another (e.g. from retail to personal service), and would not alter requirements of site-specific Planned Community zoning ordinances or adopted conditions of approval.

The proposed interim ordinance contains required findings that (1) there is a current and immediate threat to the public health, safety, or welfare and (2) the approval of additional ministerial or discretionary applications which are required to effectuate a the conversion of ground floor retail uses to other uses would result in that threat to the public health, safety, or welfare.

The first finding is based on evidence that the City has lost approximately 70,000 square feet of retail-type uses in the period from 2008 to the present (see CMR #5587) and increases in office rents that have effectively created an incentive for conversion of ground floor retail to office use where this is permitted by the City's zoning ordinance. (See Table 1 below for a summary of rising rents.)

Table 1. Recent Changes in Monthly Rental Rates (per square foot)

		2013	2014	2015
Retail	Total Avg	\$4.21	\$4.41	\$4.88
	Dwntn Avg	\$4.64	\$4.75	\$6.48
Office	Total Avg	\$4.57	\$5.14	\$5.12
	Dwntn Avg	\$6.37	\$6.92	\$7.33

***Source: Costar, based on Q1 Reports for each year.**

The figure of 70,000 square feet derives from data submitted to the Valley Transportation Authority (VTA) by the City pursuant to the VTA's Congestion Management Plan (CMA). 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.

City residents have seen the loss of retail space occurring in the City's commercial districts as the City's Architectural Review Board has considered discretionary 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. Residents have also seen the loss of retail space requiring no discretionary approvals, with the recent departure of long-time retail tenants and spaces Downtown such as the Zabibo restaurant.

The resulting changes to the City's commercial districts have been noticeable and run contrary to the City's Comprehensive Plan, which is cited in the Policy Implications section below. The public's welfare is detrimentally affected when 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.

The second finding recognizes that the City's actions to approve conversion of ground floor spaces from retail to other uses is exacerbating the changes described above, resulting in the need for the proposed interim ordinance.

A third finding – that the proposed interim ordinance would not have a material effect on the development of projects with a significant component of multifamily housing – would be required if the proposed ordinance is extended beyond the first 45 days. Given this likelihood, staff has included an exception in the ordinance for multifamily housing projects. This would allow mixed-use projects in commercial districts to proceed even if the size of an existing retail or retail-like use or space is reduced, provided the City Council approves a request for an exemption.

Other exemptions in the ordinance are provided for "pipeline" applications for discretionary approvals received prior to March 2, 2015 and for ministerial retail conversions that have "vested" prior to the effective date of the ordinance. The "pipeline" exemption would potentially apply to three pending projects: 425-29 University (which would arguably comply with the ordinance anyway, since retail space would be reduced to allow access to upper floor uses and below grade parking), 3877 El Camino Real, which would result in a loss of about 2,500

square feet of retail use, and 3045 Park Boulevard, which would result in a loss of about 17,750 square feet of an auto service use that is categorized as “retail” in the CPM data set.

The reference to “vested” projects means that any application for a Use and Occupancy Permit (a ministerial permit akin to a Certificate of Occupancy) that has been approved since March 2, 2015 will permit conversion of retail space only if building permits have been issued and acted upon to effectuate the conversion.

Timeline

The interim ordinance would be effective from the date of adoption by the City Council except that it would not apply to three sites for which a discretionary application involving a change of use was submitted prior to March 2, 2015. Also any projects with “vested right” status would be exempt.

The interim regulations would be effective for an initial 45 days with an option to extend for an additional 10 months and 15 days if the urgency continues, with the potential for another year extension if a permanent ordinance(s) has not been adopted by the end of the first year.

Staff is also preparing an interim backstop ordinance in the event the City’s urgency findings are legally challenged or in the event this ordinance does not receive the required eight votes. It is envisioned that this interim ordinance would apply for a short period of time to prevent continuing loss of retail during the time that a permanent ordinance is being developed.

Permanent revisions to the City’s zoning ordinance will take considerably more time, involving City Council input and direction, discussions with residents, property owners, merchants, and other stakeholders. The City Council has prioritized the California Avenue Area, and then Downtown for particular attention. The Council has also requested that staff examine whether non-conforming ground floor office uses can be discontinued upon a change in tenancy, rather than a change in use.

Resource Impact

The proposed interim ordinance would effectively freeze in place existing conditions (i.e. ground floor retail and “retail-like” uses) for 45 days, and possibly up to two years (if extended). While there may still be changes in tenants and ground floor vacancies while spaces are offered for lease, the ordinance would largely perpetuate the status quo and is not expected to noticeably affect tax revenues.

Staff time will be needed to prepare an extension of the interim ordinance, if desired, as well as an identical “backstop” ordinance, and will also be needed to develop permanent adjustments to the City’s zoning regulations. These endeavors may reduce staff resources available for other priorities.

Policy Implications

The City's Comprehensive Plan 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."

Environmental Review

Adoption of the proposed interim ordinance is categorically exempt from review under Section 15301 (Class One - Existing Facilities) of the California Environmental Quality Act (CEQA) Guidelines since it will temporarily perpetuate existing environmental conditions.

Attachments:

- A: Urgency Interim Ordinance (PDF)
- B: City Council Excerpt Action Minutes of April 6, 2015 (PDF)

Ordinance No. _____
Urgency Interim Ordinance of the Council of the City of Palo Alto
Adopting a Temporary Moratorium on the Conversion of Ground Floor
Retail and “Retail Like” Uses to Other Uses Citywide

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.

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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. On April 6, 2015, the City Council discussed these issues in detail and directed staff to prepare an urgency ordinance that would preserve existing ground floor retail and retail-like uses until permanent zoning revisions can be prepared.

K. 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."

L. Palo Alto is in the process of updating its Comprehensive Plan, and it is expected that the updated Comprehensive Plan will contain additional policies and programs designed to preserve existing retail uses in the City.

M. 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.

N. 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.

O. 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.

P. The possible extension of this interim ordinance beyond 45 days would not have a material effect on the development of projects with a significant component of multifamily housing because a specific exemption has been included to address this requirement of State law.

Q. 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. Findings. The findings listed above are hereby incorporated.

SECTION 2. The following Section 18.85.100 (Retail Preservation) is added to a new Chapter 18.85 entitled "Interim Zoning Ordinances" to the Palo Alto Municipal Code to read as follows:

"18.85.100 Retail Preservation

18.85.101 Definitions. For the purposes of this Ordinance, the term "Retail" shall include a modified definition of "Retail Service" as well as the "Retail Like" uses defined below:

(a) Retail Service: A use predominantly engaged in providing retail sale, rental, service, processing, or repair of items primarily intended for consumer or household use, including but not limited to the following: groceries, meat, vegetables, dairy products, baked goods, candy, and other food products; liquor and bottled goods, household cleaning and maintenance products; drugs, cards, and stationery, notions, books, tobacco products, cosmetics, and specialty items; flowers, plants, hobby materials, toys, household pets and supplies, and handcrafted items; apparel, jewelry, fabrics, and like items; cameras, photography services, household electronic equipment, records, sporting equipment, kitchen utensils, home furnishing and appliances, art supplies and framing, arts and antiques, paint and wallpaper, carpeting and floor covering, interior decorating services, office supplies, musical instruments, hardware and homeware, and garden supplies; bicycles; mopeds and automotive parts and accessories (excluding service and installation); cookie shops, ice cream stores and delicatessens.

(b) Retail Like Uses including but not limited to:

- (1) Eating and drinking service as defined in Section 18.04 (47);
- (2) Hotels as defined in Section 18.04 (73);
- (3) Personal services as defined in Section 18.04.030 (115);
- (4) Theaters;
- (5) Travel agencies;
- (6) Commercial recreation;

- (7) Commercial nurseries;
- (8) Auto dealerships defined in Section 18.040.030(a)(12.5).

18.85.102 Moratorium on Retail Conversions. The City Council hereby enacts this Urgency Interim Ordinance establishing a moratorium on the conversion of any ground floor Retail use operating as of March 2, 2015 to any other non-Retail use anywhere in the City.

(a) 25% Exemption Suspended. During the pendency of this Ordinance, Section 18.30(C).020 permitting not more than twenty-five percent of the ground floor area not fronting on a street to be occupied by a non-retail service use otherwise permitted in the applicable underlying CD district shall be suspended.

(b) Conditionally Permitted Uses Suspended. During the pendency of this Ordinance, no ground floor Retail use operating as of March 2, 2015 may be replaced by any other non-Retail use, including uses for which Conditional Use Permits are currently allowed.

(c) Legal Nonconforming Uses. During the pendency of this Ordinance legal nonconforming Retail use shall remain as a grandfathered use and shall not be subject to the change, discontinuance, or termination provisions of Chapter 18.70.

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

(a) Pipeline Projects. Any Retail use where a discretionary permit or entitlement application to convert such 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 Retail use for which an applicant has received a valid building permit from the City and performed substantial work and incurred substantial liabilities in good faith reliance on such permit as of the date of this Ordinance.

18.85.104 Waivers and Adjustments. The following shall be grounds for a request for waiver or adjustment of this Ordinance:

(a) Economic Hardship. An applicant may request that the requirements of this Ordinance be adjusted or waived based on a showing that applying the requirements of this Ordinance would effectuate an unconstitutional taking of property or otherwise have an unconstitutional application to the property.

(b) Multi-family uses. Any project which (i) contains four or more housing units, (ii) the multi-family housing component constitutes at least one-third or more of the total square footage of the project and (iii) otherwise complies with all sections of the Zoning Code may apply for a waiver or modification from this Ordinance upon a finding that this Ordinance would have a material effect on the multi-family component of such project.

(c) Documentation. The applicant shall bear the burden of presenting substantial evidence to support a waiver or modification request under this Section and shall set forth in detail the factual and legal basis for the claim, including all supporting technical documentation.

Any such request under this section shall be submitted to the Planning and Community Development Director together with an economic analysis or other supporting documentation and shall be acted upon by the City Council.

18.85.104 Reconstruction. Any ground floor Retail use existing as of March 2, 2015 may be demolished and rebuilt provided that the portion of square footage used as Retail use as of March 2, 2015 is not reduced except that Retail square footage may be reduced by the minimum amount needed to provide access to any new upper floor and/or lower level parking.

18.85.105 Applicability to Current Requirements. Nothing in this ordinance shall alter requirements of site-specific Planned Community zoning ordinances or adopted conditions of approval. Nothing in the ordinance shall be construed to waive the requirement for a conditional use permit or other entitlement where such requirements currently exist.”

SECTION 3. Study. The City Council directs the Department of Planning & Community Environment to consider and study possible amendments to the Comprehensive Plan and zoning ordinance to preserve existing Retail uses.

SECTION 4. Written Report. At least ten (10) days before this Urgency Ordinance or any extension expires, the City Council shall issue a written report describing the measures taken to alleviate the condition which led to the adoption of this Urgency Interim Ordinance.

SECTION 5. 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 6. Effective Period. This Urgency Ordinance shall take full force and effect immediately upon adoption. In accordance with Government Code Section 65856, this Ordinance shall be in full force and effect for a period of forty-five (45) days from adoption. This Ordinance shall expire on June 25, 2015 unless this period is extended by the City Council as provided in Government Code Section 65858.

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SECTION 7. 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) because it is designed to preserve the status quo.

INTRODUCED AND PASSED:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

ATTEST:

APPROVED:

City Clerk

Mayor

APPROVED AS TO FORM:

City Manager

Sr. Assistant City Attorney

Director of Planning and
Community Environment



CITY OF PALO ALTO CITY COUNCIL ACTION MINUTES

Regular Meeting
April 6, 2015

The City Council of the City of Palo Alto met on this date in the Council Chambers at 6:06 P.M.

Present: Berman, Burt, Filseth, Holman, Kniss arrived at 7:14 P.M.,
Scharff, Schmid, Wolbach

Absent: DuBois

18. City Council Direction Regarding: (1) Parameters of an Interim Ordinance to Prohibit Conversion of Ground Floor Retail and Services to Other Uses, and (2) Subsequent Steps to Establish Zoning Regulations to Preserve and Promote Active Ground Floor Uses in the City's Commercial Areas.

MOTION: Council Member Scharff moved, seconded by Council Member Burt to direct Staff to prepare and return to Council with an urgency ordinance, including at a minimum the following:

1. A Citywide prohibition on converting existing ground floor retail uses to other uses until existing retail protections can be reviewed and revised as needed. Extend the same protections to eating and drinking uses, personal services, hotels, theatres, and travel agencies (permitted ground floor uses in the Downtown GF combining district); and

ACTION MINUTES

2. Apply the prohibition to those retail services operating as of March 2, 2015 and for which no discretionary application involving a change of use has been submitted to the City by March 2, 2015; and
3. Include within the ordinance an appeal to the City Council in cases of financial hardship or showing that the facility is unsuited for successful retail use; and
4. Allow existing retail service facilities to be demolished and rebuilt provided that the retail square footage is only reduced by the minimum amount needed to provide access to any new upper floors and/or lower level parking; and
5. Retail services that are grandfathered in as legal non-conforming shall not be protected or required to remain; and
6. The Municipal Code's definition of retail services and the other uses cited above shall be continued; and
7. The ordinance will be effective for an initial 45 days with an option to extend if the urgency continues. Staff is also directed to prepare a traditional ordinance for consideration by the Planning and Transportation Commission and the City Council as a "backstop" to extend the interim measures until existing retail protections can be reviewed and revised as needed; and
8. Nothing in the ordinance shall alter requirements of site-specific Planned Community zoning ordinances or adopted conditions of approval. Also, nothing in the ordinance shall affect the need for a conditional use permit for certain allowed uses where such requirements currently exist, although use permit requirements and affected uses could be adjusted in the permanent ordinance that follows.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER that conditional uses for ground floor retail areas are not permitted in retail districts while the interim ordinance is in effect.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to delete Number 5- Retail services that are grandfathered in as legal non-conforming shall not be protected or required to remain in the Motion.

ACTION MINUTES

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER modify first sentence of Municipal Code Section 18.04.030 (125) to begin "Retail service" means a use predominantly engaged in providing...

Council Member Kniss left the meeting at 10:00 PM

MOTION AS AMENDED PASSED: 7-0 DuBois, Kniss absent

MOTION: Council Member Scharff moved, seconded by Mayor Holman to direct Staff that once the interim Ordinance is in place:

1. To bring forward the interim Ordinance as a regular Ordinance for Council adoption; and
2. Subsequently, to prioritize consideration of permanent retail protections starting with retail uses allowed on California Avenue and boundaries of the Retail (R) combining district. Also prioritize an analysis of retail trends and desired adjustments to the Ground Floor (GF) combining district in Downtown, followed by consideration of other commercial zones within the City.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to direct Staff to prepare an Ordinance to extend the boundaries of the (R) combining district to Cambridge Avenue.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER that projects in the pipeline that do not have applications for planning entitlements on file on March 2, 2015 would be subject to the Ordinance.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER that both instances of "interim" in the first sentence of the Motion be changed to "urgency."

MOTION AS AMENDED PASSED: 7-0 DuBois, Kniss absent

Council Member Questions, Comments and Announcements

Council Member Scharff inquired if Council Members should keep the Packet Books for Agenda Item Number 18- City Council Direction Regarding: (1) Parameters of an Interim Ordinance to Prohibit Conversion of Ground Floor Retail and Services to Other Uses, and (2) Subsequent Steps to Establish Zoning Regulations to Preserve and Promote Active Ground Floor Uses in the City's Commercial Areas.

Hillary Gitelman, Director of Planning and Community Environment responded yes.

Adjournment: The meeting was adjourned at 12:23 A.M.