



City of Palo Alto

City Council Staff Report

(ID # 6214)

Report Type: Consent Calendar

Meeting Date: 10/26/2015

Summary Title: SECOND READING - Cal Ave Retail Preservation Ordinance

Title: SECOND READING - Adoption of an Ordinance of the Council of the City of Palo Alto Amending Chapters 18.04, 18.08 and 18.30 of the Palo Alto Municipal Code to Amend Retail Zoning Regulations for the (CC2) California Avenue District (FIRST READING: September 12, 2015 PASSED: 9-0)

From: City Manager

Lead Department: Planning and Community Environment

Recommendation

Staff recommends that Council adopt the subject ordinance (second reading).

Executive Summary

On September 21, 2015, the City Council conducted a public hearing to consider an ordinance that defines formula retail, establishes a regulatory review process to evaluate those uses when located in the R-Combining district on California Avenue, and to extend the R-Combining district to Cambridge Avenue, certain side streets between Cambridge and California Avenues, along portions of El Camino Real and Park Boulevard. The motion to adopt the ordinance was approved 9-0.

In their motion, the Council directed the following changes to the draft ordinance attached to CMR # 6119, which have been incorporated in the version before the Council this evening:

- Clarify the definition of formula retail to apply to a business that has ten (10) total business locations in the United States;
- Extend the R-Combining district to include PTOD and PF zoned property within the proposed expansion area and modify the boundary near Park Boulevard to exclude residential properties;
- Remove the opportunity to apply for a Design Enhancement Exception when a property within the R-Combining district has a legal nonconforming use;
- Grant existing legal conforming status to land uses on California Avenue that would be considered formula retail as a result of this ordinance, so that they will not be considered legal nonconforming;

- Include a provision to review the ordinance in two years from the effective date of the ordinance; and
- Include language to clarify the meaning of 'primary structural elements' and methodology for determining 50% removal of exterior walls when demolishing a structure with grandfathered rights in the R-Combining district

All of the changes directed by Council have been addressed in the attached ordinance and constitute minor revisions within the general scope of policy changes discussed by the Planning and Transportation Commission (PTC) at their public hearing on August 26, 2015. The change in boundaries requested by the Council has the effect of excluding multifamily properties between Grant and California Avenues and between Park Boulevard and the Caltrain right of way. Owners of these parcels received notice of the PTC and City Council hearings. None of the changes are deemed sufficiently substantive to require another first reading or additional notice.

Attachments:

- Attachment A: Revised Ordinance (PDF)

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Ordinance No. _____

Ordinance of the Council of the City of Palo Alto Amending Chapters 18.04, 18.08 and 18.30 of the Palo Alto Municipal Code to Amend Retail Zoning Regulations for the (CC2) California Avenue District.

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

SECTION 1. 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. 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 districts but exist throughout the City. In addition, these trends place particular pressure on small and medium-sized businesses.

E. While Palo Alto has several commercial areas which currently house large scale formula retail businesses, the City of Palo Alto desires to retain and foster an eclectic, vibrant and diverse collection of retail and personal services establishments in the California Avenue area in particular.

F. Small- and medium-sized businesses tend to be non-traditional or unique and better scaled to be consistent with the City's neighborhood- and pedestrian-centered character.

G. Comprehensive Plan Policy L-5 directs the City to: "Maintain the scale and character of the City. Avoid land uses that are overwhelming and unacceptable due to their size and scale."

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H. Comprehensive Plan Policy L-31 directs the City to: “Develop the Cal-Ventura area as a well-designed mixed use district with diverse land uses, two- to three-story buildings, and a network of pedestrian-oriented streets providing links to California Avenue.”

I. 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.

J. Notwithstanding the economic viability of a formula retail business, the standardized architecture, color schemes, decor and signage of many formula retail businesses can detract from the distinctive character and aesthetics of many Palo Alto neighborhoods.

K. The unregulated establishment of formula retail businesses in Palo Alto may hamper the City’s General Plan policies seeking to maintain the character of the City and promote diverse, pedestrian-oriented land uses.

L. Money earned by independent businesses is more likely to circulate within the local neighborhood and City economy than the money earned by formula retail businesses which often have corporate offices and vendors located outside of Palo Alto.

M. The public’s health, safety and welfare can be detrimentally affected as non-traditional or unique, neighborhood-serving retail service and related uses are priced-out by rising rents and replaced by uses that do not provide similar services or that fail to activate the street frontage by creating pedestrian activity and visual interest (i.e. non-traditional or unique 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. These impacts are evident in neighboring communities that have permitted large scale retail businesses to displace smaller locally owned businesses.

N. On May 18, 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, and regulate the proliferation of formula retail businesses in the California Avenue district. These measures are taken at this juncture in order to prevent the over-proliferation of formula retail in the California Avenue area.

O. On July 8, 2015 and August 26, 2015, the Planning and Transportation Commission conducted public hearings on this ordinance and recommended approval to the Council. On _____, the City Council conducted a public hearing on this ordinance.

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SECTION 2. Section 18.04.030 (Definitions) of Chapter 18.04 (Definitions) of the Palo Alto Municipal Code is hereby amended to add definition 57.6 and amend definition 125 as follows:

(57.6) “Formula retail business” means a retail, personal, or eating and drinking service that is one of ten (10) or more business locations in the United States required by contractual or other arrangement to maintain any of the following standardized characteristics: merchandise, menu, services, decor, uniforms, architecture, façade, color scheme, signs, trademark, or servicemark. For purposes of this definition:

- (A) Standardized merchandise, menu and/or services means 50% or more of in-stock merchandise from a single distributor bearing the same or similar markings; 50% or more of menu items identical in name and presentation with other locations; or 50% or more of services offered identical in name or presentation with other locations.
- (B) Decor means the style of interior furnishings, which may include but is not limited to, style of furniture, wall coverings or permanent fixtures.
- (C) Color Scheme means the selection of colors used throughout, such as on the furnishings, permanent fixtures, and wall coverings, or as used on the façade.
- (D) Uniforms mean standardized items of clothing including but not limited to standardized aprons, pants, shirts, smocks or dresses, hats, and pins (other than name tags) as well as standardized colors of clothing.
- (E) Façade means the face or front of a building, including awnings, looking onto a street or an open space.
- (F) Trademark means a word, phrase, symbol or design, or a combination of words, phrases, symbols or designs that identifies and distinguishes the source of the goods from one party from those of others.
- (G) Servicemark means a word, phrase, symbol or design, or a combination of words, phrases, symbols or designs that identifies and distinguishes the source of a service from one party from those of others.

(125) “Retail service” means a use generally open to the public and predominantly engaged in providing retail sale, rental, service, processing, or repair of items primarily intended for consumer or household use, including but

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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.

- (A) "Extensive retail service," as used with respect to parking requirements, means a retail sales use having more than seventy-five percent of the gross floor area used for display, sales, and related storage of bulky commodities, including household furniture and appliances, lumber and building materials, carpeting and floor covering, air conditioning and heating equipment, and similar goods, which uses have demonstrably low parking demand generation per square foot of gross floor area.
- (B) "Intensive retail service" as used with respect to parking requirements, means any retail service use not defined as extensive retail service.

SECTION 3. Section 18.08.040 (Zoning Map and District Boundaries) of Chapter 18.08 (Designation and Establishment of Districts) of the Palo Alto Municipal Code is hereby amended as follows:

The Retail Shopping (R) combining district currently applicable to property on California Avenue between El Camino Real and Park Boulevard shall be extended to additionally include: (1) property on both sides of Cambridge Avenue between El Camino Real and Park Boulevard; (2) property on Mimosa Lane, Nogal Lane, and New Mayfield Lane; (3) property on Birch Street between California Avenue and Cambridge Avenue; and (4) property abutting the east side of Park Boulevard between Jacaranda Lane and Grant Avenue. The Retail Shopping (R) combining district shall not be applied to property within these boundaries subject to the following zoning: "CC(2)(P) Community Commercial Subdistrict (2) with Pedestrian Combining District" as described in Ordinance No. 4848; and "PC Planned Community" as described in Ordinance No. 4127. The subject properties, as rezoned by this ordinance, are shown on the map labeled Exhibit "A," attached hereto and incorporated herein by reference.

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SECTION 4. Section 18.30(A).040 (Permitted Uses) of Chapter 18.30(A) (Retail Shopping (R) Combining District Regulations) of the Palo Alto Municipal Code is hereby amended to read as follows:

Except to the extent a conditional use permit is required pursuant to Section 18.30(A).050, the following uses shall be permitted in an R district:

- (a) Eating and drinking services, except drive-in and take-out services.
- (b) Personal services, not including beauty shops, nail salons, and barbershops on California Avenue.
- (c) Retail services.
- (d) All other uses permitted in the underlying commercial district, provided they are not located on a ground floor.

SECTION 5. Section 18.30(A).050 (Conditional Uses) of Chapter 18.30(A) (Retail Shopping (R) Combining District Regulations) of the Palo Alto Municipal Code is hereby amended to read as follows:

The following uses may be conditionally permitted in an R district, subject to the issuance of a conditional use permit in accord with Chapter 18.76 (Permits and Approvals):

- (a) Financial services, except drive-in services, on a ground floor.
- (b) All other conditional uses allowed in the underlying commercial district provided they are not located on a ground floor.
- (c) Formula retail businesses on California Avenue.
- (d) Beauty shops, nail salons, and barbershops on California Avenue.

SECTION 6. Section 18.30(A).060 (Special Requirements) of Chapter 18.30(A) (Retail Shopping (R) Combining District Regulations) of the Palo Alto Municipal Code is hereby amended to read as follows:

The following special requirements shall apply in the R retail shopping combining district:

Lawful conforming permitted uses or conditional uses operating pursuant to a conditional use permit which were existing on April 26, 1984 may remain as grandfathered uses and shall not require a conditional use permit or be subject to the provisions of Chapter 18.70. Such uses shall be permitted to remodel, ~~improve, or replace~~ site improvements on the same site for continual use and occupancy by the same use; provided, that any such remodeling, ~~improvement or replacement~~ shall not result in increased floor area, ~~nor shall such remodeling, improvement or replacement result in~~ shifting of building footprint or building envelope, or increased height, length, ~~building envelope~~, or any other increase in the size of the improvement, or any increase in the existing degree of

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noncompliance, ~~except through the granting of a design enhancement exception, pursuant to Chapter 18.76 (Permits and Approvals).~~ The intentional destruction or demolition of more than fifty percent (50%) of the exterior walls by horizontal linear feet at the ground floor, or, for structures not principally supported by exterior bearing walls, fifty percent (50%) of primary structural elements of an improvement (including columns, and structural frames) shall terminate any right to a grandfathered use or conditional use pursuant to this section, even if the reconstructed improvement does not alter the building footprint, height, length, envelope, size, or degree of noncompliance. If a use deemed grandfathered pursuant to this section ceases and thereafter remains discontinued for twelve consecutive months, it shall be considered abandoned and may be replaced only by a conforming use.

A use deemed grandfathered pursuant to this section 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.

SECTION 7. Section 18.30(A).070 (Waivers and Adjustments) of Chapter 18.30(A) (Retail Shopping (R) Combining District Regulations) of the Palo Alto Municipal Code is hereby added as follows:

18.30(A).070 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 only upon 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) 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 request under this section shall be submitted to the Planning and Community Environment Director together with the fee specified in the municipal fee schedule and an economic analysis or other supporting documentation. A request under this section shall be acted upon by the City Council.

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SECTION 8. Section 18.76.015 (Additional findings for specified retail uses) of Chapter 18.76 (Permits and Approvals) of the Palo Alto Municipal Code is hereby added as follows:

18.76.015 Additional findings for specified retail uses.

A conditional use permit shall not be granted in a R-Combining district for a formula retail business, or a beauty shop, nail salon, barbershop, or financial services use, unless it is found, in addition to the findings required by section 18.76.010, that:

- (1) The retail or personal service business will offer merchandise and/or services that meet the underserved needs of the City's residents and visitors.
- (2) The type of retail or personal service business will enhance the balance and diversity of businesses in the district and in the City as a whole.
- (3) The retail or personal service business will enhance the economic vitality of the district where the business is proposed to be located and of the City as a whole. In considering this finding, the director or city council may consider existing retail vacancy rates within the district and in the City as a whole.
- (4) The retail or personal service business is consistent with the character of the district where the business is proposed to be located.
- (5) The design of the retail or personal service business will be compatible with the architectural and aesthetic character of the district where the business is proposed to be located.

SECTION 9. Formula retail businesses on California existing on the effective date of this Ordinance shall be considered legal, conforming uses notwithstanding the lack of a conditional use permit.

SECTION 10. The Director of Planning and Community Environment shall report to the City Council on the impact of this Ordinance approximately two years after its adoption.

SECTION 11. If any section, subsection, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portion or sections of the Ordinance. The Council hereby declares that it would have adopted the Ordinance and each section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be held invalid.

SECTION 12. 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 and therefore does not have the potential to significantly impact the environment, and Section 15305, because it is designed to assure the maintenance, enhancement, or protection of the environment and involves procedures for the protection of the environment.

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SECTION 13. This ordinance shall be effective on the commencement of the thirty-first day after the date of its adoption.

INTRODUCED:

PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:

City Clerk

APPROVED AS TO FORM:

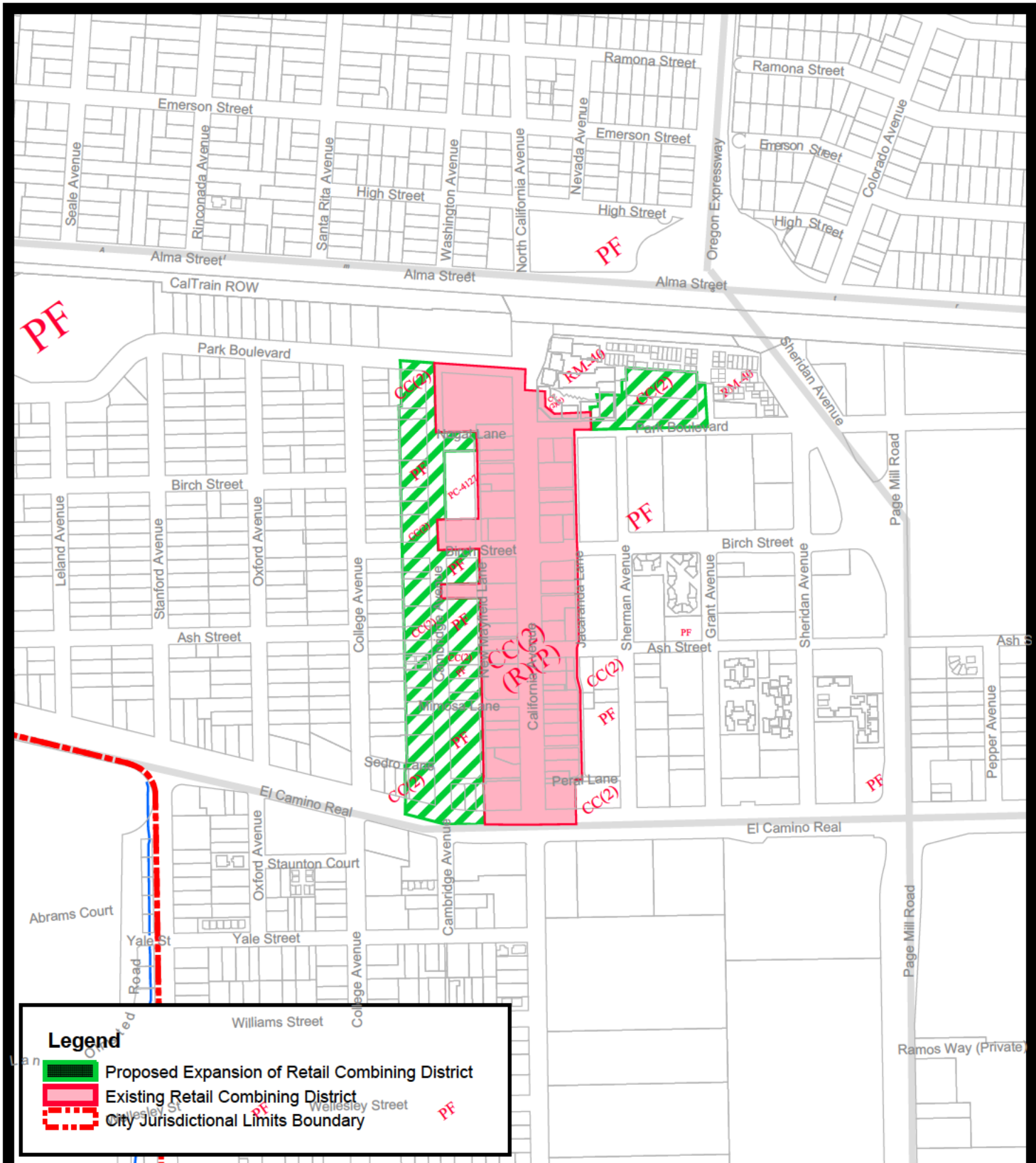
Deputy City Attorney

Mayor




APPROVED:

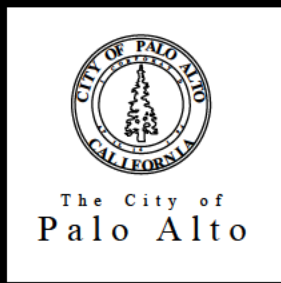
City Manager

Director of Planning and Community
Environment



Legend

-  Proposed Expansion of Retail Combining District
-  Existing Retail Combining District
-  City Jurisdictional Limits Boundary



California Avenue
Existing and Proposed Expansion
of the
Retail Combining District
v101315

This map is a product of the
City of Palo Alto GIS

