



## CITY OF PALO ALTO OFFICE OF THE PLANNING AND COMMUNITY ENVIRONMENT

March 21, 2016

The Honorable City Council  
Palo Alto, California

**SECOND READING: Adoption of an Ordinance Amending the Palo Alto Municipal Code Regulations Related to Hazardous Materials use, Storage and Handling in the Office, Research and Manufacturing Zoning Districts and Nonconforming Uses and Facilities (FIRST READING: February 28, 2016 PASSED: 9-0); SECOND READING: Adoption of an Ordinance Regarding Amortization of Nonconforming Uses at Communications & Power Industries LLC (CPI) Located at 607-811 Hansen Way (FIRST READING: February 28, 2016 PASSED: 9-0); and Related Terms of Agreement Between the City and CPI.**

### **Recommendation**

Staff recommends that the City Council adopt the two ordinances in Attachment A and Attachment B on second reading, and authorize the City Manager to execute a settlement agreement with Communication & Power Industries, LLC (CPI) with terms substantially similar to those in Attachment C.

[NOTE: This staff report and attachments were not available for transmittal on March 10, 2016 and are being provided as a late packet for the meeting of March 21, 2016.]

### **Background**

On February 29, 2016, the City Council considered and adopted (first reading) an ordinance amending sections of the Zoning Code regulating the City's industrial districts, and making conforming amendments to the Fire Code. The ordinance:

- Defines three "tiers" of hazardous materials users;
- Defines a list of "sensitive receptors;"
- Prohibits Tier 3 Hazardous Materials Uses;
- Establishes a minimum distance between Tier 2 Hazardous Materials Uses and sensitive receptors; and
- Modifies provisions related to the time necessary to amortize non-conforming uses, providing for the use of site-specific amortization studies.

At the same time, the City Council considered and adopted (first reading) an ordinance amending Section 18.70.070 of the Zoning Code to provide for amortization of Tier 2 Hazardous Materials Uses at CPI based on two amortization studies prepared in 2011/12. The ordinance:

- Requires the plating shop use at CPI to be relocated at least 300 feet from sensitive receptors by December 31, 2026;
- Provides CPI with an incentive of five additional years (to December 31, 2031) if they agree to terminate the plating shop use rather than relocating it on site, provided that CPI and the City enter into an enforceable agreement; and
- Requires other Tier 2 Hazardous Materials Uses at CPI to terminate or move 300 feet from sensitive receptors by December 31, 2052.

In their prior discussions and in considering adoption of the second ordinance, the City Council encouraged staff to work with representatives of CPI and Barron Park neighbors to see if a settlement agreement could be reached to avoid litigation and provide a measure of certainty to all concerned. Since February 29, 2016, staff has continued to meet with those involved, and believes there is general agreement on the terms included as Attachment C.

If adopted by the City Council, the City Manager and City Attorney would be authorized to execute a standard form settlement agreement that includes a broad agreement not to initiate or maintain litigation over either ordinance or any matter arising from or related to the ordinances. The settlement terms at Attachment C would be a part of that agreement.

### **Timeline**

Both ordinances proposed for adoption (on second reading) would become effective on the 31<sup>st</sup> day following their adoption. The ordinance included as Attachment B includes a provision that would only be operable if the City and CPI enter into an enforceable agreement before the effective date of the ordinance.

### **Environmental Review**

The proposed ordinances and agreement are categorically exempt from review under Section 15308 (Class 8, Actions for Protection of the Environment) of the State Guidelines for the California Environmental Quality Act (CEQA). The agreement is also covered by the general rule in CEQA Guidelines Section 15061(b)3 that CEQA only applies where there is the potential for causing a significant effect on the environment.

### **ATTACHMENTS:**

- Attachment A: Hazardous Materials Ordinance (PDF)
- Attachment B: Amortization Ordinance (PDF)
- Attachment C: Terms of Agreement (DOCX)

Department Head: Hillary Gitelman, Director



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Ordinance No. \_\_\_\_\_  
Ordinance of the Council of the City of Palo Alto  
Amending Zoning Regulations related to Hazardous Materials Use, Storage, and  
Handling in the Office, Research, and Manufacturing Zoning Districts

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

SECTION 1. Findings and Declarations. The City Council finds and declares as follows:

A. The City of Palo Alto is committed to ensuring the quality of life, including public health, safety, and welfare, of its residential neighborhoods, as evidenced by Goal L-3 of the City's Comprehensive Plan, which calls for the protection and enhancement of safe, attractive residential neighborhoods.

B. There are businesses within the City that because of the types and quantities of hazardous materials used, handled, and/or stored onsite may pose offsite health, safety, and welfare effects.

C. In 2007, the City Council amended the Palo Alto Municipal Code to prohibit uses that have acutely hazardous materials above thresholds identified in Title 19 of the California Code of Regulations within 300 feet of residential zoned properties or existing residential properties within a non-residential zone. There are currently no such uses within Palo Alto, however the City is concerned that new such uses could present a risk regardless of their distance from residential uses.

D. The City is also concerned that there may be uses within the City, both at this time and potentially in the future, which involve hazardous materials that do not exceed thresholds identified in Title 19, but that nonetheless may present a risk of offsite health, safety and welfare effects, particularly if they are located within proximity to land uses such as residences, schools, daycare centers, elder care facilities and similar uses whose occupants may be more susceptible than the general population to the adverse effects of exposure to toxic chemicals and other pollutants.

E. On October 6, 2014, the City Council discussed issues associated with Communication & Power Industries, LLC (CPI), which is located in the Stanford Research Park but is immediately adjacent to a residential neighborhood. The Council directed staff to prepare an ordinance that would identify appropriate hazardous materials thresholds, considering the spectrum of businesses, facilities, and buildings in the City, and possibly establish tiers for the facilities covered that take into account the quantities and types of hazardous materials used, handled, and/or stored onsite and their proximity to land uses that could experience health effects if an accidental release of hazardous materials were to occur and travel off site.

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F. The California Health and Safety Code at Division 20, Chapter 6.95 identifies threshold quantities of hazardous materials (referred to as “CUPA thresholds”) above which businesses are required to prepare Hazardous Materials Business Plans. Hazardous Materials Business Plans, among other things, must include an inventory of hazardous materials onsite and an emergency response plan that identifies the steps, actions, and communications to be performed in the event of an accidental release. The State Legislature recognizes that “the information provided by business and area plans is necessary in order to prevent or mitigate the damage to the health and safety of persons and the environment from the release or threatened release of hazardous materials into the workplace and environment.”

G. A subset of the uses subject to the requirements of Health and Safety Code Division 20, Chapter 6.95 are considered to involve acutely hazardous materials that may result in health effects upon an accidental release. These include those defined as toxic or highly toxic by the California Fire Code Chapter 2.

H. Establishing a minimum distance between these hazardous materials users in the City’s industrial zoning districts and sensitive receptors will be protective of public health, safety and welfare by preventing new uses of this type from locating within proximity of existing sensitive receptors, and by preventing new sensitive receptors within industrial zoning districts, when they would be within proximity of these hazardous materials uses.

I. Similarly, preventing establishment of new uses using these hazardous materials above thresholds defined in Title 19 of the California Code of Regulations will be protective of public health, safety and welfare by eliminating the risk of exposure due to accidental releases from these uses.

J. Existing uses and sensitive receptors within industrial zoning districts that do not comply with this ordinance would become legal and non-conforming uses. Those uses would be prevented from expanding or intensifying and could be subject to termination through amortization.

SECTION 2. Section 18.04.030 (Definitions) of Chapter 18.04 (Definitions) of the Palo Alto Municipal Code is hereby amended to read as follows:

(a)

...

(66) Hazardous Materials.

(A) “Hazardous Materials Tier” means a manufacturing or processing use that utilizes, handles, and/or stores particular types and quantities of hazardous materials as follows:

(i) “Tier 1” means uses with quantities of hazardous materials that are not defined as Toxic or Highly Toxic hazardous materials and that are both above

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the threshold quantities in Health and Safety Code Division 20, Chapter 6.95 and below the Title 19 thresholds of the California Code of Regulations.

- (ii) “Tier 2” means uses with quantities of Toxic or Highly Toxic hazardous materials that are both above the threshold quantities in Health and Safety Code Division 20, Chapter 6.95 and below the Title 19 thresholds of the California Code of Regulations.
- (iii) “Tier 3” means uses with quantities of hazardous materials above the Title 19 thresholds of the California Code of Regulations.

(B) “Toxic and Highly Toxic hazardous materials” means substances defined in the California Fire Code Chapter 2, as amended, and as adopted and amended by Title 17 of the City Municipal Code, and subject to requirements of ‘High-hazard Group H-4’ of the State Building Code, as buildings that use, handle, or store hazardous materials that are considered health hazards.

...

(127.7) “Sensitive Receptors” means land uses such as residences, schools, daycare centers and homes, homes for the elderly, convalescent homes and similar uses whose occupants may be more susceptible than the general population to the adverse effects of exposure to toxic chemicals and other pollutants.

...

**SECTION 3.** Section 18.20.030 (Land Uses), Table 1 (Industrial/Manufacturing District Land Uses) of Chapter 18.20 (Office, Research, and Manufacturing [MOR, ROLM, RP and GM] Districts) of the Palo Alto Municipal Code is hereby amended to read as follows:

- (a) Permitted and Conditionally Permitted Land Uses

Table 1 lists the land uses permitted or conditionally permitted in the industrial and manufacturing districts.

**Table 1**  
**Industrial/Manufacturing District Land Uses**  
 [P = Permitted Use CUP = Conditional Use Permit Required]

	MOR	ROLM ROLM(E)	RP RP(5)	GM	Subject to regulations in Chapter:
<b>ACCESSORY AND SUPPORT USES</b>					
Accessory facilities and	P	P	P	P	Chs. 18.40, 18.42

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activities customarily associated with or essential to permitted uses, and operated incidental to the principal use.					
Automatic Teller Machines	P	P	P	P	18.20.030(d)
Home Occupations, when accessory to permitted residential uses.	P	P	P	P	Chs. 18.40, 18.42
<b>EDUCATIONAL, RELIGIOUS, AND ASSEMBLY USES</b>					
Business and Trade Schools				P	
Religious Institutions		P	P	P	
Colleges and Universities	P	P	P		
Private Clubs, Lodges, or Fraternal Organizations	CUP	CUP	CUP	CUP	
Private Schools (K-12)	CUP	CUP	CUP	CUP	
<b>HEALTH CARE SERVICES</b>					
Ambulance Services	CUP				
Convalescent Facilities	CUP	<u>CUP</u>	<u>CUP</u>	CUP	<u>18.23.100(B)</u>
Medical Office	P	CUP	CUP		
Medical Research	P	P	P		18.20.030(c)
Medical Support Retail	P				18.20.030(b)
Medical Support Services	P				18.20.030(b)
<b>MANUFACTURING AND PROCESSING USES</b>					
Manufacturing		P	P	P	<u>18.23.100(B)</u>
Recycling Centers		CUP	CUP	CUP	
Research and Development	CUP	P	P	P	<u>18.23.100(B)</u>
Warehousing and		P	P	P	



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Distribution					
<b>OFFICE USES</b>					
Administrative Office Services		P	P	CUP	
Financial Services		CUP	CUP		
Professional and General Business Office		P	P		
<b>PUBLIC/QUASI-PUBLIC USES</b>					
Service and Equipment Yards				P	
Utility Facilities				CUP	
Utility Facilities essential to provision of utility services but excluding construction/storage yards, maintenance facilities, or corporation yards	CUP	CUP	CUP		
<b>RECREATION USES</b>					
Commercial Recreation		CUP	CUP	CUP	
Neighborhood Recreational Centers	CUP				
<b>RESIDENTIAL USES</b>					
Single-Family	Not permitted				18.20.040(b)
Two-Family	Not permitted				
Multiple-Family	CUP	CUP	CUP		
Residential Care Homes	P	<u>CUP P</u>	<u>CUP P</u>	CUP	<u>18.23.100(B)</u>
<b>RETAIL USES</b>					
Eating and Drinking Services, excluding drive-in and take-out services		CUP	CUP	CUP	
Retail Services		CUP	CUP	CUP	
<b>SERVICE USES</b>					
Animal Care, excluding				P	

**NOT YET APPROVED**

boarding and kennels					
Boarding and Kennels				CUP	
Day Care Centers	P	<u>CUP P</u>	<u>CUP P</u>	CUP	<u>18.23.100(B)</u>
Emergency Shelters for the Homeless		P (ROLM(E))			18.20.030(d)
Family Day Care Homes					
Small Family Day Care	P	<u>CUP P</u>	<u>CUP P</u>	<u>CUP P</u>	<u>18.23.100(B)</u>
Large Family Day Care	P	<u>CUP P</u>	<u>CUP P</u>	<u>CUP P</u>	<u>18.23.100(B)</u>
General Business Services				P	
Lodging					
Hotels providing not more than 10% of rooms with kitchens	CUP				
Mortuaries and Funeral Homes				P	
Personal Services		CUP	CUP	CUP	
Vehicle Services					
Automobile Service Stations, subject to site and design review in accord with the provisions of Chapter 18.30(G)		CUP	CUP		
Automotive Services				CUP	
Off-site new vehicle storage for auto dealerships located in Palo Alto		CUP		CUP	
<b>TEMPORARY USES</b>					
Temporary Parking Facilities, provided that such facilities shall remain no more than five years	CUP	CUP	CUP	CUP	

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TRANSPORTATION USES					
Passenger Transportation Terminals				CUP	

SECTION 4. Subsections (b) and (c) of Section 18.20.040 (Site Development Standards) of Chapter 18.20 (Office, Research, and Manufacturing [MOR, ROLM, RP and GM] Districts) of the Palo Alto Municipal Code is hereby amended to read as follows:

...

(b) Development Standards for Exclusively Residential Uses

Residential uses shall be permitted in the MOR, RP, RP(5), ROLM, ROLM(E), ~~and GM~~ zoning districts, subject to the following criteria.

(1) It is the intent of these provisions that a compatible transition be provided from lower density residential zones to higher density residential or non-residential zones. The Village Residential development type should be evaluated for use in transition areas and will provide the greatest flexibility to provide a mix of residence types compatible with adjacent neighborhoods.

(2) No new single-family or two-family residential development is permitted in any of the office, research and manufacturing districts, and no new residential development is permitted within 300 feet of an existing Hazardous Materials Tier 2 use. Existing single-family and two-family uses and existing residential development within 300 feet of an existing Hazardous Materials Tier 2 use shall be permitted to remain, consistent with the provisions of Chapter 18.70 (Nonconforming Uses and Noncomplying Facilities).

(3) MOR District. All multi-family development in the MOR zoning district shall be permitted subject to approval of a conditional use permit and compliance with the development standards prescribed for the RM-30 zoning district.

(4) RP and RP(5) Districts. All multi-family development in the RP, and RP(5) zoning districts that is located within 150 feet of an R-E, R-1, R-2, RMD, or similar density residential PC zone shall be permitted subject to the provisions above in 18.20.040(b)(2), approval of a conditional use permit, and compliance with the development standards prescribed for the RM-15 zoning district, including Village Residential development types. Multi-family development in the MOR, RP, and RP(5) zoning districts that is located greater than 150 feet from an R-E, R-1, R-2, RMD, or low density residential PC shall be permitted subject to the provisions above in 18.20.040(b)(2), approval of a conditional use permit, and compliance with the development standards prescribed for the RM-30 zoning district.

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(5) ROLM (E) District. All multi-family development in the ROLM(E) zoning district shall be permitted subject to the provisions above in 18.20.040(b)(2), approval of a conditional use permit, and compliance with the development standards prescribed for the RM-15 zoning district.

(6) ROLM District. All multi-family development in the ROLM zoning district shall be permitted subject to the provisions above in 18.20.040(b)(2), approval of a conditional use permit, and compliance with the development standards prescribed for the RM-30 zoning district.

(7) GM District. All residential development is prohibited in the GM zoning district.

(c) Development Standards for Mixed (Residential and Nonresidential) Uses in the MOR, ROLM, ROLM(E), RP, and RP(5) and GM zoning Districts

Mixed (residential and nonresidential) uses shall be permitted in the MOR, ROLM, ROLM(E), RP, and RP(5) and GM zoning districts, subject to the following criteria:

(1) It is the intent of these provisions that a compatible transition be provided from lower density residential zones to higher density residential, non-residential, or mixed use zones. The Village Residential development type should be evaluated for use in transition areas and will provide the greatest flexibility to provide a mix of residence types compatible with adjacent neighborhoods.

(2) New sensitive receptor land uses shall not be permitted within 300 feet of a Hazardous Materials Tier 2 or Tier 3 use. Existing sensitive receptors shall be permitted to remain, consistent with the provisions of Chapter 18.70 (Nonconforming Uses and Noncomplying Facilities).

(3)(2) ROLM(E) District. Mixed (residential and nonresidential) development in the ROLM(E) zoning district shall be permitted, subject to the provisions above in 18.20.040(c)(2), approval of a conditional use permit, determination that the nonresidential use is allowable in the district and that the residential component of the development complies with the development standards prescribed for the RM-15 zoning district. The maximum floor area ratio (FAR) for mixed use development is 0.3 to 1.

(4)(3) ROLM District. Mixed (residential and nonresidential) development in the ROLM zoning district shall be permitted, subject to the provisions above in 18.20.040(c)(2), approval of a conditional use permit, determination that the nonresidential use is allowable in the district and that the residential component of the development complies with the development standards prescribed for the RM-30 zoning district. The maximum floor area ratio (FAR) for mixed use development is 0.4 to 1.

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~~(5)(4)~~ GM District. Mixed use (residential and nonresidential) development is prohibited in the GM zoning district.

In computing residential densities for mixed (residential and nonresidential) uses, the density calculation for the residential use shall be based on the entire site, including the nonresidential portion of the site.

**SECTION 5.** Section 18.20.050 (Performance Criteria) of Chapter 18.20 (Office, Research, and Manufacturing [MOR, ROLM, RP and GM] Districts) of the Palo Alto Municipal Code is hereby amended to read as follows:

All development in the Office/Research/Manufacturing zoning districts shall comply with the requirements and guidelines outlined in Chapter 18.23. Such requirements and guidelines are intended to reduce the impacts of these non-residential uses on surrounding residential districts and other sensitive receptors.

**SECTION 6.** Subsection (B) of Section 18.23.100 (Hazardous Materials) of Chapter 18.23 (Performance Criteria for Multiple Family, Commercial, Manufacturing and Planned Community Districts) of the Palo Alto Municipal Code is hereby amended to read as follows:

(B) Requirements

(i) The project shall be designed to comply with all safety, fire and building codes for the storage, use and handling of the hazardous materials involved.

(ii) Any new structure that is designated an "H" occupancy (storage, use and handling of specified types and quantities of hazardous materials), or any existing structure that is converted to an "H" occupancy, as specified by the California Building Code, shall be designed in accordance with the currently adopted California Building Code and Fire Code.

(iii) Where a use or building or area used for supporting such storage, use and/or handling is located within 150 feet of a sensitive receptor, residential zoning district or parcel with existing residential uses located within nonresidential zones ~~residential zoning district or of properties with existing residential uses located within nonresidential zones (residential properties)~~, the business owner shall provide a report to the fire department addressing the adequacy of the emergency contingency plan, which addresses safety of the nearby sensitive receptor or residential zones ~~residential area~~, including but not limited to, procedures for accidental releases or other emergencies, and other protective measures as required by Health and Safety Code Division 20, Chapter 6.95, upon:

(a) A change in the types of hazardous materials stored, used or handled on the site resulting in quantities above the reporting threshold established in California Health and Safety Code Division 20, Chapter 6.95; ~~and/or~~

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(b) A 100% or greater increase in the quantities of a previously disclosed hazardous material stored, used or handled on the site at buildings or areas already above the reporting threshold established in California Health and Safety Code Division 20, Chapter 6.95; and/or

(c) Release/threatened release incidents.

(iv) For any such use or facility outlined in (iii) above, upon application for any building permit for improvements that would result in a change in the types of hazardous materials stored, used or handled on the site or an increase in the quantities of hazardous materials stored, used or handled on the site, the city shall provide written notice to the owners, ~~and operators, and occupants of residents of~~ all sensitive receptors and residentially zoned parcels/residential property within 150 feet from the property line, not later than ten days after issuance of the building permit. The notice shall inform the ~~property~~ the sensitive receptor or residentially zoned property owners, operators, and occupants that an application has been received, the nature of the request (such as the type of materials), that the fire department and building department have determined the project to be in compliance with relevant hazardous materials regulations, and that the application and details are on file with the fire department and/or building department.

(v) New Hazardous Materials Tier 1 manufacturing uses and new facilities (buildings or areas) or modifications to existing facilities accommodating such uses shall be permitted subject to compliance with the development standards prescribed for the relevant industrial/manufacturing zoning district and the reporting and noticing requirements identified above in Section 18.23.100(B)(iii).

(vi) New Hazardous Materials Tier 2 manufacturing uses and new facilities (buildings or areas), or modifications to existing facilities accommodating these uses shall be permitted subject to compliance with the development standards prescribed for the relevant industrial/manufacturing zoning district and the reporting and noticing requirements identified above in Section 18.23.100(B)iii, provided:

(a) approval by the fire chief of an emergency response plan that specifically addresses toxic and highly toxic hazardous materials that exceed the quantities specified in Section 17.16.025 of the Municipal Code shall be required;

(b) approval of a conditional use permit shall be required together with notification by the City to owners, operators, and occupants of sensitive receptors or residentially zoned land within 600 feet; and

(c) notwithstanding the provisions above, in no event shall such use, facility, or improvement be allowed in the MOR zoning district or be allowed closer than 300 feet

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to a sensitive receptor or residentially zoned land if such facility or improvement is located in a ROLM, ROLM(E), RP, RP(5), or GM district.

(vii) No Hazardous Materials Tier 3 uses shall be permitted in the City of Palo Alto.

~~(viii)~~ No facility proposing the use of BioSafety Level 4 etiological agents shall be permitted in the city of Palo Alto.

**SECTION 7.** Section 18.70.020 through Section 18.70.100 (regarding changes to nonconforming uses and noncomplying facilities) of Chapter 18.70 (Nonconforming Uses and Noncomplying Facilities) of the Palo Alto Municipal Code is hereby amended as follows:

### **18.70.020 Nonconforming use - Expansion.**

(a) A nonconforming use shall not be altered, enlarged, expanded, or extended, except as provided in subsection (b) this prohibition shall include any moving, enlargement, extension, expansion or alteration of a nonconforming use which:

- (1) Increases the site area or floor area occupied by such use on the same or any additional site;
- (2) Increases the number of structures or the size of any structure housing such nonconforming use or portion thereof.

(b) A nonconforming use which occupies a portion of a building may be expanded to include additional floor area within the same building; provided that:

(1) Without substantial remodeling or reconstruction, the portion of building into which expansion is proposed is not reasonably susceptible to use or occupancy by a conforming use. The determination of whether a portion of a building is reasonably susceptible to use or occupancy by a conforming use shall be made by the building official and shall take into consideration, but not be limited to, the following:

- (A) Whether any required remodeling or reconstruction would involve structural alterations;
- (B) Whether the building was designed and constructed for the nonconforming use occupying the building or portion thereof, or uses of similar intensity or classification;

(C) The degree of privacy, separation, and protection afforded the portion of the building into which expansion is proposed from intrusion, interference, noise, and similar effects resulting from or generated by the nonconforming use;

(D) Availability of access to the portion of the building into which expansion is proposed.

(2) Such expansion within the building does not create, cause, or increase any additional nonconformance or noncompliance with the requirements of this title.

(3) Nothing contained in this section authorizes a change in the nature of a nonconforming use contrary to the provision of Section 18.70.030.

### **18.70.030 Nonconforming use - Change.**

(a) Except as provided in subsection (b), a nonconforming use shall not be changed to or replaced by any use except a conforming use.

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(b) A nonconforming use may be changed to or replaced by another nonconforming use which would have been permitted under the most recent zoning classification of the property under which the nonconforming use was a conforming use and which is of no higher occupancy rating than the existing nonconforming use as defined by Title 16 subject to the following limitations:

(1) The change or replacement shall not increase the extent of the nonconformity, or the nature of the activity, or the site area or floor area occupied by the nonconforming use on the site, except as may be provided by Section 18.70.020(b).

(2) Any period of temporary vacancy or discontinuance associated with such change or replacement shall not exceed the limitations established by Section 18.70.040.

(3) Such change or replacement of nonconforming use to or by another nonconforming use shall be permitted only if the building, or portion of a building, presently occupied by the nonconforming use is not reasonably capable of conversion to accommodate use and occupancy by a conforming use, without substantial reconstruction or remodeling. The building official shall determine whether the building, or portion of a building, is reasonably capable of such conversion. Said determination shall take into consideration, but not be limited to, the following:

(A) Whether changes in the nature of the building or a portion of the building would be required by Title 16 or similar regulations in order to convert the use of the building, or portion of the building, to a conforming use;

(B) Whether any reconstruction or remodeling necessary to convert the use and occupancy of the building, or a portion of the building, involves structural alterations;

(C) Whether the building, or portion of the building, was originally designed and constructed for the particular existing nonconforming use or uses of similar character.

(c) A nonconforming use 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 nonconforming to a conforming use, shall not thereafter be used except to accommodate a conforming use.

### **18.70.040 Nonconforming use - Discontinuance.**

(a) On any site having facilities thereon valued at less than one thousand dollars, any nonconforming use, other than a residential use, which is discontinued or abandoned or otherwise ceases operation and use of the site for a period of six months or longer shall not be resumed, reestablished, or continued, and all subsequent use of such site and facilities thereon shall conform to this title.

(b) On any site not subject to subsection (a), a nonconforming use of facilities designed and constructed for nonresidential purposes which is discontinued or abandoned or otherwise ceases operation and use of the site for a period of one year or more shall not be resumed, and all subsequent use of such site and facilities thereon shall conform to this title.

(c) Notwithstanding the provisions of Section 18.70.030, or the provisions of subsections (a) and (b) of this section, in any residential district, a nonresidential, nonconforming use occupying facilities originally designed and constructed for residential use which is discontinued or abandoned or otherwise ceases operation and



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use of the site for a period of ninety days or greater shall not be continued or recommenced, and any subsequent use of the site and facilities shall conform to this title. This provision shall not be construed to prevent a change of ownership or management of such nonconforming use; provided, that any cessation of operation of the use is solely in connection with the transfer of ownership or management to a specifically designated person or entity and is solely for the purpose of accomplishing any transfer of title, equipment, operational control, or similar purpose.

### **18.70.050 Nonconforming use - Maintenance and repair of facility.**

Facilities occupied or used by a nonconforming use permitted by this chapter shall be subject to the following provisions governing maintenance, repairs, alterations, or replacement:

- (a) Normal and routine maintenance of any structure for the purpose of preserving its existing condition, retarding or eliminating wear and tear or physical depreciation, or complying with the requirements of law, shall be permitted.
- (b) Incidental alteration shall be permitted, provided the value of the incidental alterations in any one-year period shall not exceed twenty percent of the value of the facility prior to such alterations.
- (c) Structural alterations or enlargement of the facility shall be permitted only to accommodate a conforming use, or when made to comply with the requirements of law.

### **18.70.060 Nonconforming use - Replacement of facility.**

A facility, used or occupied wholly or partly by one or more nonconforming uses, which is damaged or destroyed by any means except ordinary wear and tear and depreciation, may be reconstructed or replaced only for occupancy or use by a conforming use, except in the following instances:

- (a) Where none of the nonconforming uses is subject to termination as provided by Section 18.70.070, reconstruction or replacement for continued occupancy or use by such nonconforming use shall be permitted only in accord with the following limitations:
  - (1) The extent of nonconformity, or the intensity of activity, or the site area or floor area occupied by the nonconforming use subsequent to reconstruction or replacement of the facility shall not exceed that existing prior to reconstruction or replacement.
  - (2) Reconstruction or replacement shall be subject to all applicable laws, regulations, and procedures otherwise governing construction on the site.
- (b) When one or more of the nonconforming uses is subject to termination as provided by Section 18.70.070, reconstruction or replacement for continued occupancy or use by such nonconforming use shall be permitted only in accord with the following limitations:
  - (1) During the first one-third of the applicable termination period of such use, the facility may be reconstructed or replaced; provided the value of such reconstruction or replacement shall not exceed seventy-five percent of the value of the facility prior to damage or destruction.

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(2) During the second one-third of the applicable termination period of such use, the facility may be reconstructed or replaced; provided the value of such reconstruction or replacement shall not exceed fifty percent of the value of the facility prior to damage or destruction.

(3) During the last one-third of the applicable termination period of such use, the facility may be reconstructed or replaced; provided the value of such reconstruction or replacement shall not exceed twenty-five percent of the value of the facility prior to damage or destruction.

(4) Any reconstruction or replacement permitted in this chapter shall not extend or otherwise modify the required termination date established by Section 18.70.070 and applied to the nonconforming use prior to such reconstruction or replacement. Said termination date shall apply to all portions of the site or structure, including those portions reconstructed or replaced.

### **18.70.070 Nonconforming use - Required termination.**

(a) In any district, a nonconforming, nonresidential use occupying a site having facilities thereon valued at less than one thousand dollars, shall be terminated within five years from the effective date of this section, or within five years from the date such use becomes nonconforming, whichever date is later, and within such time the improvements shall either be removed, or converted or modified to accommodate a conforming use.

(b) In any district, a nonconforming, nonresidential use of a site not subject to subsection (a) of this section shall be terminated in accord with the following provisions and schedules:

(1) When occupying or using facilities designed and built for residential use, the nonconforming use shall be terminated within ten years from July 20, 1978, or within ten years from the date such use becomes nonconforming, whichever date is later, and within such time the improvements shall either be removed, or converted or modified to accommodate a conforming use.

(2) When occupying or using facilities designed or built for nonresidential use, the nonconforming use shall be terminated, and the facilities shall be converted or modified to accommodate a conforming use, or shall be removed at or before the time limit prescribed in subdivision (3) of this subsection; provided, however, that unless a site-specific amortization study is prepared, no such termination, removal, or conversion shall be required within fifteen years from July 30, 1978, or within fifteen years from the date such use became nonconforming, whichever date is later; provided, however, that uses which were made non-conforming as a result of the 1974 Fire Zone 1 Study, by Ordinance No. 2777, adopted March 25, 1974, shall terminate on November 23, 1990; and provided, further, that any use made nonconforming by said Ordinance No. 2777, the primary purpose of which is to prepare and deliver food to senior citizens, shut-ins and others with limited mobility may remain and shall not be subject to termination pursuant to this section. Such uses shall be permitted to remodel, improve or replace site improvements in accordance with applicable site development regulations,

## **NOT YET APPROVED**

provided that any such remodeling, improvement or replacement shall not result in any increased floor area.

Notwithstanding the dates of termination of uses required by this subsection (b)(2), the required termination dates of the following uses shall be as hereinafter set forth:

(A) The nonconforming use(s) of the property at 440-460 Page Mill Road for nonprofit orthomolecular and molecular medical research functions shall terminate on or before July 20, 1998.

(B) The nonconforming use of the property at 464 Colorado Avenue for a dance studio and associated parking shall terminate on or before July 20, 2003.

(C) The nonconforming use of the property at 440 Pepper Street for an art studio specializing exclusively in the medium of monotype printmaking and associated instructional uses shall terminate on or before July 20, 2018. Nothing in this ordinance shall be construed to create a vested right for the nonconforming uses to remain after July 20, 2003.

(D) The nonconforming use of the property at 4277 Miranda for a geropsychiatric skilled nursing facility shall terminate on or before January 20, 1994.

(E) The nonconforming uses of the property at 3200 Park Boulevard/340 Portage Avenue/Olive Avenue for retail, research and development, warehouse, and storage uses are permitted in approximately the same ratio of uses existing as of October 16, 2006, subject to the following limitations: (1) retail uses shall not exceed 60,000 square feet, and (2) truck deliveries and other noisy outdoor activities shall be limited to the hours of 8:00 a.m. to 9:00 p.m. weekdays and 9:00 a.m. to 9:00 p.m. weekends.

(F) The nonconforming use of the property at 2011 El Camino Real for tire sales and installation shall terminate on or before April 26, 2009.

Such uses shall be permitted to remodel, improve or replace site improvements in accordance with applicable site development regulations, provided that any such remodeling, improvement or replacement shall not result in any increased floor area or increase in intensity of the use, nor any loss of parking.

(3) The following schedule shall govern the period of time for termination of nonconforming uses specified in subdivision (2) of this subsection unless a site-specific amortization study is prepared:

Type of Construction Defined by Building Code	Age of Structure Computed From Date of Construction
Type I – Totally noncombustible	35 years
Type II – Fire resistive	35 years
Type III – Noncombustible exterior, combustible interior	30 years
Type IV – Heavy timber	30 years
Type II – Nonrated	25 years
Type V – Wood frame	20 years

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(4) Nothing contained in this subsection shall extend or otherwise modify any termination date provided by any previously existing ordinance for any use which became nonconforming under such ordinance prior to the effective date of this section. Such termination dates for such previously existing nonconforming uses are incorporated in this section and shall remain in effect.

(c) The director of planning and community environment shall determine those properties the use of which were lawfully existing uses permitted or conditionally permitted, in the districts in which they were located immediately prior to July 20, 1978, and which uses were rendered nonconforming by reason of the adoption of this title on July 20, 1978, and those properties which, prior to July 20, 1978, were located in an R-1 district which was imposed by reason of annexation of the property to the city without benefit of rezoning, the uses of which were lawfully existing uses permitted or conditionally permitted operating subject to a conditional use permit prior to the date of annexation. Written notice of such nonconformance shall be mailed to the owner of record of each such property and to the occupant of the property. Within two years of the date of mailing of such notice, any owner of such property, lessee of such property with the written consent of owners, or purchaser of such property when acting pursuant to a contract of sale in writing duly executed and acknowledged by both the buyer and the owner of record, may apply to have such property excepted from the termination provisions of this section. Said application may be made to the director of planning and community environment in such form as may be prescribed by the director of planning and community environment. Said application shall include, but not be limited to, a statement of the location and size of the property, the nature of its use on July 20, 1978, a statement of reasons establishing that the use is compatible with and will not be detrimental to the uses designated in the Comprehensive Plan for the surrounding area and properties, a map of the subject property indicating the location of all parcels of real property within a distance of three hundred feet from the exterior boundary of the subject property, a list as shown in the last equalized assessment roll, of the name and address of the owner of record of each such parcel, and such other information as may be required by the director of planning and community environment.

(1) Such application shall be accompanied by such fee as is prescribed in the municipal fee schedule.

(2) Upon receipt of such application, the director of planning and community environment shall so inform the chairperson of the planning commission who shall set a date for a public hearing on the application which shall be held within a reasonable time from the date of filing of the application. Notice of the hearing shall be given by publication once in a local newspaper at least twelve days prior to the hearing and by mail to owners and occupants of real property within 300 feet of the subject property.

(3) Upon the date set for hearing, the planning commission shall conduct a public hearing thereon, unless, for cause, the commission shall on that date continue the matter. Upon conclusion of the hearing, the commission shall determine whether the use of the property on July 20, 1978, is compatible and not detrimental to the land uses designated in the Comprehensive Plan for the surrounding areas of properties. In the event the commission so finds, it shall recommend to the city council that the use shall

## **NOT YET APPROVED**

be exempted from the termination provisions of this section. The commission may recommend such conditions as it may find necessary to insure compatibility including, but not limited to, required improvement of or modifications to existing improvements on the property, limitations on hours of operation, limitation on the nature of operations, and a specified term of years for which the exception shall be granted.

(4) Upon receipt of the recommendation of the planning commission, the city council shall consider the application within a reasonable time. The council may, at its option, conduct a public hearing on the matter.

In the event the council finds the use of the subject property to be compatible with and not detrimental to those land uses designated in the Comprehensive Plan for the surrounding area and properties, it shall, by motion, except said use from the termination provisions of this section. In granting such exception, the council may include such conditions as are deemed necessary to insure such compatibility, including, but not limited to, the conditions set out in subsection (c)(3) of this section.

(5) Any use which is excepted from the termination provisions of this section, and which is changed pursuant to Section 18.70.030 shall be subject to the termination provisions of this section as though no exception had been granted.

(6) Any use excepted from the termination provisions of this section shall be permitted to remodel, improve, or replace site improvements on the same site, without the necessity to comply with site development regulations, for continual use and occupancy by the same use; provided, that any such remodeling, improvement, or replacement shall not result in increased floor area, number of dwelling units, height, length, or any other increase in the size of the improvement.

(d) Notwithstanding the provisions of this section, any off-street parking lot which was lawfully existing and not subject to any required termination provisions of any predecessor ordinance on the effective date of this section, and which on that date was and continues to be used accessory to a lawful conforming permitted use, shall be permitted to continue in existence and use for the life of the principal use to which it is accessory, regardless of whether said parking lot and principal use are located in the same district.

### **18.70.080 Noncomplying facility - Enlargement.**

(a) Except as specifically permitted by subsections (b) and (c) hereof or by Section 18.12.050(a), no enlargement, expansion, or other addition or improvement to a noncomplying facility shall be permitted which increases the noncompliance. This section shall not be construed to prohibit enlargement or improvement of a facility, otherwise permitted by this title, which does not affect the particular degree of or manner in which the facility does not comply with one or more provisions of this title.

(b) Except in areas designated as special study areas, the director of planning and community environment may permit minor additions of floor area to noncomplying facilities in the commercial CC, CS and CN zones and in the industrial MOR, ROLM, RP and GM districts, subject to applicable site development regulations, for purposes of on-site employee amenities, resource conservation, or code compliance, upon the determination that such minor additions will not, of themselves, generate substantial

## **NOT YET APPROVED**

additional employment. Such additions may include, but not be limited to, the following:

- (1) Area designed and used solely for providing on-site services to employees of the facility, such as recreational facilities, credit unions, cafeterias and day care facilities;
- (2) Area designated for resource conservation, such as trash compactors, recycling and thermal storage facilities; and
- (3) Area designed and required for hazardous materials storage facilities, handicapped access, and seismic upgrades.

### **18.70.090 Noncomplying facility - Maintenance and repair.**

- (a) Normal and routine maintenance of a noncomplying facility shall be permitted for the purpose of preserving its existing condition, retarding or eliminating wear and tear or physical depreciation, or complying with the requirements of law.
- (b) Incidental alterations to a noncomplying facility shall be permitted, provided such alterations do not increase the degree of noncompliance, or otherwise increase the discrepancy between existing conditions and the requirements of this title.
- (c) Structural alterations to a noncomplying facility shall be permitted when necessary to comply with the requirements of law, or to accommodate a conforming use when such alterations do not increase the degree of noncompliance, or otherwise increase the discrepancy between existing conditions and requirements of this title.

### **18.70.100 Noncomplying facility - Replacement.**

A noncomplying facility which is damaged or destroyed by any means except ordinary wear and tear and depreciation may be reconstructed only as a complying facility, except as follows:

- (a) When the damage or destruction of a noncomplying facility affects only a portion of the facility that did not constitute or contribute to the noncompliance, said portion may be repaired or reconstructed to its previous configuration.
- (b) When the damage or destruction of a noncomplying facility affects a portion of the facility that constituted or contributed to the noncompliance, any replacement or reconstruction to such damaged portion shall be accomplished in such manner as not to reinstate the noncompliance or degree of noncompliance caused by the destroyed or damaged portion of the facility, and otherwise in full compliance with this title; however, if the cost to replace or reconstruct the noncomplying portion of the facility to its previous configuration does not exceed fifty percent of the total cost to replace or reconstruct the facility in conformance with this subsection, then the damaged noncomplying portion may be replaced or reconstructed to its previous configuration. In no event shall such replacement or construction create, cause, or increase any noncompliance with the requirements of this title.
- (c) Notwithstanding subsections (a) and (b) hereof, a noncomplying facility in the commercial CS, CN and CC zones and the industrial MOR, ROLM, RP and GM districts, except for those areas designated as special study areas, existing on August 1, 1989, which when built was a complying facility, shall be permitted to be remodeled, improved or replaced in accordance with applicable site development regulations other

## **NOT YET APPROVED**

than floor area ratio, provided that any such remodeling, improvement or replacement shall not result in increased floor area.

(d) Notwithstanding subsections (a), (b) and (c) hereof, a noncomplying facility housing a conforming use in the R-1 and RE zones, which when built was a complying facility, which is damaged or destroyed by non-willful means (i.e., acts of God) shall be permitted to be replaced, on the same site, and in its previous configuration, without necessity to comply with the current site development regulations, provided that any such replacement shall not result in increased floor area, height, length or any other increase in the size of the facility.

(e) Except as otherwise provided in this section with regard to replacement or reconstruction of a portion of a facility to its previous noncomplying condition, all reconstruction shall be subject to all applicable laws, regulations, and procedures otherwise governing construction on the site at the time said construction is undertaken.

**SECTION 8.** Section 17.16.010 (Hazardous Materials Management Plan) of Chapter 17.16 (Hazardous Materials Management Plan) of the Palo Alto Municipal Code is hereby amended as follows:

Each applicant for a permit, a renewed permit, or an amended permit pursuant to this title shall file a written plan, for the fire chief's approval, to be known as a hazardous materials management plan (HMMP), which shall demonstrate the suitable storage of hazardous materials. The HMMP may be amended at any time with the consent of the fire chief. The HMMP shall be a public record except as otherwise specified. Section 18.23.100 in Title 18 identifies notification requirements of the availability of the HMMP. Approval of the HMMP shall mean that the HMMP has provided adequate information for the purposes of evaluating the permit approval. Such approval shall not be understood to mean that the city has made an independent determination of the adequacy of that which is described in the HMMP.

**SECTION 9.** Section 17.16.025 (Supplemental requirements for emergency response plans) of Chapter 17.16 (Hazardous Materials Management Plan) of the Palo Alto Municipal Code is hereby amended to read as follows:

(a) In addition to the HMMP requirements set forth in this chapter, any person who handles a hazardous material or a mixture containing a hazardous material, which has a quantity at any one time during the reporting year equal to or greater than a total weight of five hundred pounds, or a total volume of fifty-five gallons, or two hundred cubic feet at standard temperature and pressure (STP) for compressed gas shall establish and implement a plan for emergency response to a release or threatened release of a hazardous material pursuant to this section. Said plan, including the hazardous materials inventory statement (the "HMIS") described in Chapter 17.20 of this title, shall comprise the "business plan" for purposes of Chapter 6.95 of Title 20 of

**NOT YET APPROVED**

the California Health and Safety Code. Section 18.23.100 in Title 18 identifies notification requirements of the availability of the business plan.

SECTION 10. Subsection (a) of Section 17.20.020 (Information required) of Chapter 17.20 (Hazardous Materials Inventory) of the Palo Alto Municipal Code is hereby amended to read as follows:

(a) Information shall be included in the HMIS for each hazardous material or mixture containing a hazardous material stored or handled in a facility (aggregated over all such materials stored in one or more storage facilities) where the aggregate quantity throughout the facility at any one time during the reporting year is equal to or greater than five hundred pounds in weight for solids, fifty-five gallons for liquids, or two hundred cubic feet at standard temperature and pressure (STP) for compressed gases. Additionally, an HMIS also shall be filed for any "acutely hazardous materials" stored on site, above threshold reporting quantities pursuant to 40 CFR Part 355, Appendix A 42 U.S.C. 11001.

...

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 15308 (Class 8, Actions for Protection of the Environment), because it is designed to assure the maintenance, enhancement, or protection of the environment and involves procedures for the protection of the environment aimed at reducing risks to sensitive receptors associated with potential accidental releases of hazardous materials.

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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:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Mayor

APPROVED:

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
Director of Planning and Community  
Environment

\_\_\_\_\_  
Director of Administrative Services

# **NOT YET APPROVED**

Ordinance No. \_\_\_\_\_  
Ordinance of the Council of the City of Palo Alto  
Amending Zoning Regulations to Amortize Non-Conforming Hazardous Materials  
Uses at Communications & Power Industries LLC, Located 607-811 Hansen Way

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

SECTION 1. Findings and Declarations. The City Council finds and declares as follows:

A. The City of Palo Alto is committed to ensuring the quality of life, including public health, safety, and welfare, of its residential neighborhoods, as evidenced by Goal L-3 of the City's Comprehensive Plan, which calls for the protection and enhancement of safe, attractive residential neighborhoods.

B. There are facilities within the City that because of the types and quantities of hazardous materials used, handled, and/or stored may pose offsite health, safety, and welfare effects. One such facility is Communications & Power Industries LLC (CPI), 607-811 Hansen Way. CPI is located within the Stanford Research Park and is also immediately adjacent to a residential neighborhood.

C. In 2007, the City Council amended the Palo Alto Municipal Code to prohibit new businesses that have acutely hazardous materials above thresholds identified in Title 19 of the California Code of Regulations within 300 feet of residential zoned properties or existing residential properties within a non-residential zone. In 2007, CPI used and stored acutely hazardous materials above the Title 19 thresholds. Subsequently, CPI reduced its use and storage of hazardous materials.

D. In February 2016, the Council amended the Municipal Code to further address potential risks presented by uses that involve hazardous materials that do not exceed thresholds identified in Title 19, but that nonetheless may present a risk of offsite health, safety and welfare effects, particularly if they are located within proximity to land uses such as residences, schools, daycare centers, elder care facilities and similar uses whose occupants may be more susceptible than the general population to the adverse effects of exposure to toxic chemicals and other pollutants.

E. The Council established a minimum distance between users of acutely hazardous materials that are defined as toxic or highly toxic by the California Fire Code Chapter 2 in the City's industrial zoning districts, and sensitive receptors, defined as residences, schools, daycare centers, elder care facilities and similar uses.

F. The uses in buildings 1A, 1B and 2 at CPI are subject to this regulation and are legal and non-conforming under its terms. Under the Municipal Code, CPI may not expand or intensify the non-conforming uses. In addition, the Council wishes to establish a schedule to phase out the non-conforming uses through amortization.

## **NOT YET APPROVED**

G. In 2011, the City retained the real estate economics firm CB Richard Ellis to prepare a study to determine when CPI's plating shop use could be terminated. The study concluded that 20 years from the date of the studied investments, or 2026 would provide a reasonable amortization period.

H. CPI subsequently retained another consultant to provide a separate study of this issue, concluding that the plating shop could not be separated from the rest of the facility, and that approximately 40 years would provide a reasonable amortization period for the entire facility.

I. The City retained an additional consultant, AECOM Inc., to assist the City with various tasks related to hazardous materials regulation, including conducting a peer review of the prior amortization studies. AECOM found the methods and conclusions of both studies to be generally valid, subject to several assumptions and clarifications.

J. In the interest of promoting the health, safety and welfare of residents, the City desires to encourage CPI to terminate or relocate the non-conforming hazardous materials uses associated with the plating shop out of Palo Alto at the earliest feasible date.

SECTION 2. Section 18.70.070 (Nonconforming use – Required termination) of Chapter 18.70 (Nonconforming Uses and Noncomplying Facilities) of the Palo Alto Municipal Code is hereby amended to add Subsection (b)(2)(G) as follows:

(G)

- 1) The non-conforming hazardous materials uses located within the plating shop in Building 2 and the associated chemical storage area at 811 Hansen Way shall terminate or be relocated greater than 300 feet from sensitive receptors and residentially zoned parcels on or before December 31, 2026. The non-conforming hazardous materials uses located within Buildings 1A and 1B at 607 Hansen Way shall terminate or be relocated greater than 300 feet from sensitive receptors and residentially zoned parcels on or before December 31, 2052.
- 2) As an incentive for the owner of the facilities at 811 Hansen Way to pursue new technologies and terminate the non-conforming hazardous materials uses in the plating shop in Building 2 and the associated chemical storage area rather than relocating them on site to a location greater than 300 feet from sensitive receptors and residentially zoned parcels, the owner may elect in writing, no later than December 31, 2021, to terminate the non-conforming hazardous materials uses in the plating shop in Building 2 and the associated chemical storage area rather than relocating them on the site. The election shall be irrevocable. If the owner makes the election above, the termination date shall be extended to and the termination shall occur no later than December 31, 2031. The City may enforce the termination of the uses effective December 31, 2031 by injunctive relief or other lawful means. This subsection 18.70.070(b)(2)(G)(2) is contingent on the City and the owner entering

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into a binding implementation agreement no later than the effective date of this ordinance.

SECTION 3. 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 4. 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 15308 (Class 8, Actions for Protection of the Environment), because it is designed to assure the maintenance, enhancement, or protection of the environment and involves procedures for the protection of the environment aimed at reducing risks to sensitive receptors associated with potential accidental releases of hazardous materials.

SECTION 5. 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

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

APPROVED:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
Director of Planning and Community Environment

\_\_\_\_\_  
Director of Administrative Services

March 16, 2016

**SETTLEMENT TERMS**  
**between the City of Palo Alto (“City”) and Communications & Power Industries LLC (“CPI”)**

1. This Agreement implements section 18.70.070(b)(2)(G) of the Palo Alto Municipal Code, which provides a schedule for amortizing non-conforming hazardous materials uses at Communications & Power Industries LLC (“CPI”).
2. Amortization Option 2 – Section 18.70.070(b)(2)(G)(2)
  - a. Section 18.70.070(b)(2)(G)(2) was adopted as an incentive for CPI to pursue new technologies and business processes and terminate the non-conforming hazardous materials uses in Building 2 and the associated chemical storage area at 811 Hansen Way rather than relocating them on the site as provided in section 18.70.070(b)(2)(G)(1). Accordingly, CPI may make the election provided for in Section 18.70.070(b)(2)(G)(2). The City and CPI agree that if CPI makes this election, the termination date for the non-conforming hazardous materials uses in Building 2 and the associated chemical storage area at 811 Hansen Way shall be extended from December 31, 2026 to December 31, 2031, and CPI shall not relocate these non-conforming hazardous materials uses anywhere within the City of Palo Alto.
  - b. To make the election provided for in Palo Alto Municipal Code section 18.70.070(b)(2)(G)(2), CPI shall send the City a letter, on or before December 31, 2021, stating its agreement to terminate the non-conforming hazardous materials uses in Building 2 and the associated chemical storage area at 811 Hansen Way. The letter shall be addressed to the City Manager, signed by a CPI authorized officer, and personally served on the City Clerk. It shall be irrevocable upon receipt by the City Clerk.
3. Amortization Option 1 – Section 18.70.070(b)(2)(G)(1)
  - a. If CPI does not make the election provided for in Palo Alto Municipal Code section 18.70.070(b)(2)(G)(2) and decides to relocate its non-conforming hazardous materials uses in Building 2 and the associated chemical storage area to an area greater than 300 feet from sensitive receptors (either on the existing site or elsewhere in Palo Alto), the City agrees to make a good faith effort to timely process the required permits for the relocation, and CPI agrees to timely submit and process its application. The parties acknowledge the need for ample time given that applications for new hazardous materials facilities can take significant time to process and involve delays that are outside of the City and CPI’s control.

4. CPI agrees to conform to the amortization schedules in Section 18.70.070(b)(2)(G). CPI agrees that this paragraph is enforceable by immediate entry of an injunction against it to effectuate compliance with the amortization schedules in Section 18.70.070(b)(2)(G). The City agrees it will first provide CPI with a 60 day notice and opportunity to cure.
5. Beginning on the effective date of this Agreement, the City agrees that, except to the extent required by state or federal law, or judicial order (not sought by the City), the City will not apply any new or additional local hazardous materials zoning requirements that it may adopt (whether by new ordinance, amendment, regulation or otherwise) to the plating shop at CPI. Notwithstanding the above, the City may apply to the CPI plating shop all of the following: (a) local provisions implementing state-adopted amendments to the Uniform Fire Code, Building Code and other model codes adopted by the California Building Standards Commission, (b) changes to the state Health and Safety Code provisions that the City administers, and (c) other regulations adopted by the state that apply generally to categories of hazardous materials users throughout the state.
6. Nothing in this Agreement will waive CPI's obligation to comply with state and local law regarding hazardous materials storage and use, including obtaining all required permits and inspections associated with physical changes to its buildings and changes in the hazardous materials used on site; and, if applicable, the City agrees to process such permits as provided in paragraph 3a.
7. The City reserves the right to pursue all remedies available in state and local law to abate any nuisance and safeguard public health and safety, including but not limited to actions under Civil Code section 3490, et seq. for public nuisance. Nothing in this Agreement will impair the City's right, in accordance with applicable law, to take immediate action in the event of a release of hazardous materials that violates existing laws or regulations or that requires immediate reporting to the State Office of Emergency Services (OES) under state law or regulations. Notwithstanding any other term of this Agreement, the City will lawfully and vigorously pursue all available and appropriate remedies to address and resolve any actual threat to community health and safety. The City agrees to contact CPI directly, and before taking legal action regarding any such matter addressed in this paragraph 7, to seek an amicable resolution without legal action.
8. CPI agrees to use reasonable efforts to perpetuate "good neighbor" practices, including neighborhood communication, maintenance of an emergency phone number, and scheduling non-emergency large truck deliveries not earlier than 8:00 am or later than 6:00 pm. If requested by CPI or the Barron Park Neighborhood Association, the City agrees to participate in and facilitate such practices.
9. Nothing in this Agreement shall waive CPI's obligation under applicable law to report and certify hazardous materials used on an annual basis and to prepare a hazardous

materials management plan under Palo Alto Municipal Code, Title 17 (Hazardous Materials Storage), Chapter 17.20 (Hazardous Materials Inventory); and Chapter 17.16 (Hazardous Materials Management Plan), the contents of which shall include but not be limited to emergency response plans and procedures, as required by applicable law. To the extent information is public under state and federal law, and subject to Fire Department approval, the City will make that information available for public inspection, in accordance with applicable law, during regular business hours at the Palo Alto Fire Department offices, 250 Hamilton Avenue, Palo Alto.

10. Nothing in this Agreement shall waive the City's rights to conduct inspections, in accordance with applicable law, for the purpose of ascertaining compliance with Palo Alto Municipal Code, Title 17 (Hazardous Materials Storage) and causing to be corrected any conditions which constitute a violation of the Palo Alto Municipal Code Title 17 or with any other statute, code, rule or regulation within the City's jurisdiction affecting the storage of hazardous materials. It is the City's intention to conduct at least one unannounced inspection of CPI's hazardous materials uses per year, and to increase the frequency of inspections of Building 2 and the associated chemical storage area at 811 Hansen Way within the last five years of the applicable amortization provided for in Palo Alto Municipal Code section 18.70.070(b)(2)(G).
11. The City will, in accordance with applicable law and in good faith, investigate hazardous materials incidents and any potential violation of law or this Agreement. As part of its investigation, the City will notify CPI in order to obtain CPI's explanation of the matter. The City may retain outside experts as it determines appropriate. CPI will cooperate with reasonable inquiries from the City. Following any such investigation, the City will send the record of determination of the investigation results to CPI and will make the record available to the public, including any responses from CPI.