



# City of Palo Alto

## City Council Staff Report

(ID # 10263)

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**Report Type: Consent Calendar**

**Meeting Date: 5/13/2019**

**Summary Title: Second Reading: Rooftop Access and Deck Ordinance**

**Title: SECOND READING: Adoption of an Ordinance to Amend Title 18 of the Palo Alto Municipal Code to Allow for Minor Increases in Height and Floor Area to Provide Access to Rooftop Decks on Existing Structures in the Commercial Downtown (Community) CD-C Subdistrict. Environmental Assessment: Exempt per Sections 15301 and 15305 of the California Environmental Quality Act (CEQA) Guidelines. Zone District: CD-C(GF)(P). (FIRST READING: February 25, 2019 PASSED 5-2, Dubois, Kou no)**

**From: City Manager**

**Lead Department: Planning and Community Environment**

**Recommendation:**

Staff recommends that Council conduct a second reading and adopt the attached rooftop access ordinance (Attachment A)

**Background:**

On February 25, 2019, the City Council reviewed and held a first reading on a draft ordinance amending Title 18 (Zoning) of the Municipal Code to allow for minor increases in height and floor area associated with rooftop access for existing, noncomplying buildings in the Downtown Commercial (Community) Zoning District. The ordinance was accompanied by the approval of a Record of Land Use Action for architectural review and a conditional use permit to allow a roof deck on an existing building at 285 Hamilton Avenue.

The motion below passed, moved by Council Member Kniss and seconded by Vice Mayor Fine, with a 5-2 vote (DuBois and Kou voting no).

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

- B. Introduce for first reading and adopt an Ordinance and approve the proposed Record of Land Use Action approving architectural review and conditional use permit applications;
- C. Amend the Ordinance to state “buildings located in the CD-C subdistrict that are noncomplying for height or gross floor area...”;
- D. Amend the Ordinance to provide the Director discretion to initiate a Director’s review of any CUP that is the subject of multiple complaints regarding noise;
- E. Amend the Ordinance to state “For the height limit exceptions, all fixtures and structures shall not intersect a plane measured at a forty-five-degree angle from the edge of the building starting at the rooftop deck surface sloping upward and inward toward the center of the property;”
- F. Amend the Record of Land Use Action Section 5. 4. to state “...8:00 A.M. to 9:00 P.M. daily;”
- G. Amend the Record of Land Use Action Section 5. 5., Amplified Music, to state “the use of sound amplifying equipment shall be prohibited;” and
- H. Direct Staff to return to Council in 2019 and outline options for the Ordinance to be extended to other areas in the City.

The Ordinance has been modified to incorporate the changes cited in the Council’s motion above, with minor adjustments in phrasing for clarity. The summary of the Action Minutes are available online at the following link: <https://www.cityofpaloalto.org/civicax/filebank/blobdload.aspx?t=53384.24&BlobID=69868> for additional details.

Since the February 25, 2019 hearing, the Council adopted an ordinance (Ordinance No 5462) to amend Section 18.18.120 to authorize changes of use in grandfathered facilities in the CD district. Because this ordinance does not take effect until May 23, 2019, these changes to Section 18.18.120 are not reflected in the attached ordinance. In the event both ordinances take effect, the code will be updated to incorporate all changes to Section 18.18.120.

**Attachments:**

**Attachment A: Rooftop Access Ordinance (DOCX)**

Ordinance No. \_\_\_\_\_

Ordinance of the Council of the City of Palo Alto Amending Chapter 18.18 of Title 18 (Zoning) of the Palo Alto Municipal Code to Add a New Floor Area Exemption for Rooftop Access and Allowing Changes to Noncomplying Facilities to Allow for Such Rooftop Access Bonuses

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

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

**18.18.060 Development Standards**

...

(e) Exemptions

- (1) When an existing building is being expanded, square footage which, in the judgement of the chief building official, does not increase the usable floor area, and is either necessary to conform the building to Title 24 of the California Code of Regulations, regarding disability related access, or is necessary to implement the historic rehabilitation of the building, shall not be counted as floor area. For the purposes of this section disability related upgrades are limited to the incremental square footage necessary to accommodate disability access and shall be subject to the Director's approval not to exceed 500 square feet per site. Disability related upgrades shall only apply to remodels of existing buildings and shall not qualify for grandfathered floor area in the event the building is later replaced or otherwise redeveloped.
- (2) Buildings located in the CD-C subdistrict that are noncomplying for height ~~or~~ and gross floor area shall be permitted to increase height and expand floor area to the minimum degree necessary to provide rooftop access and related amenities. Such access and amenities may include features such as stairs, elevators, trellises, outdoor furniture, railings, lighting, and other similar features. For the purposes of this section rooftop access floor area shall not be counted as gross floor area. Rooftop access-related features may be located only on portions of buildings located at least 150 feet from a residential zone which, for the purposes of this section, includes the R-1, R-2, RMD, RM-15, RM-30, RM-40, and SOFA districts or Planned Community (PC) districts that permit residential uses. Any request for a rooftop access exception under this section shall be subject to a conditional use permit. The Planning Director may initiate a formal review pursuant to Chapter 18.77 (Processing of Permits and Approvals) of any conditional use permit granted under this section if the site is the subject of multiple complaints in violation of Chapter 9.10 (Noise). For buildings requesting increased height, all fixtures and structures shall remain below a plane measured at a forty-five degree angle beginning from the edges of the building, nearest the rooftop deck surface, and sloping upward and inward toward the center of the building.

...

**SECTION 2.** Section 18.18.120 (Grandfathered Uses and Facilities) of Chapter 18.18 (Downtown Commercial District) of Title 18 (Zoning) of the Palo Alto Municipal Code is hereby amended to read as follows:

**18.18.120 Grandfathered Uses and Facilities**

(a) Grandfathered Uses

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

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

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

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

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

(A) shall not result in increased floor area;

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

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

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

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

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

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

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

(b) Grandfathered Facilities

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

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

(A) shall not result in increased floor area;

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

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

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

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

**SECTION 3.** If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the Ordinance would be subsequently declared invalid or unconstitutional. The adoption of this Ordinance shall not impact the effectiveness of and shall be cumulative with Ordinance 5462, which also amends Section 18.18.120.

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

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

PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

APPROVED:

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

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