Summary of and Staff Response to Applicant’s January 12, 2022 Letter

The following is staff’s response to the applicant’s letter contesting the validity of the proposed text amendment on various grounds enumerated below. In summary, staff disagrees with the applicant’s claims and finds the arguments inconsistent with the administrative record and confuses what is permissible by local ordinance today from what would be permissible (and beneficial) to the project if ultimately adopted by Council.

1. The City Council did not direct staff to prepare a text amendment.
   a. Staff disagrees and finds this factually inaccurate. The Council’s March 15, 2021 motion clearly directs staff to return to Council with alternative text changes dealing with the underground garage. The March 29, 2021 motion provides additional detail regarding previous direction to prepare an amendment that would “partially count” floor area.
   b. The nature of the Council’s March 29 motion also requires a text amendment. There is no possible basis in the current code for a rule that would allow only 50 percent of the required on-site parking to be below grade without counting against the project floor area. The applicant also argues, incorrectly, that the existing code does not count Castilleja’s proposed parking facility as GFA; under their reasoning, the percentage of required on-site parking placed underground would be irrelevant. Since the Council directed that a 50 percent threshold be created for the purposes of GFA, a text amendment is required no matter what position one takes on the current code.

2. Any text amendment initiated by Council would have needed to return to Council within 180 days, and the PTC therefore lacks jurisdiction to consider a text amendment.
   a. This 180 day timeline is technically required by the Palo Alto Municipal Code, though it is rarely, if ever, observed. It is also unclear what remedy would lie for violation of this requirement. Nonetheless, in an abundance of caution, staff will seek an extension of this timeframe from the City Council.

3. The text amendment is inconsistent with the Comprehensive Plan.
   a. This argument is predicated on the incorrect belief that the text amendment represents a restriction on the provision of underground parking. As explained below, the text amendment provides greater flexibility for underground parking than the current code.

4. The text amendment is unnecessary because underground parking facilities for non-residential do not count as gross floor area under the existing code.
   a. This is incorrect. Leading up to the March 2021 Council hearings, staff suggested an interpretation of the PAMC that would exempt underground parking facilities for nonresidential uses from GFA by treating them as “basements.” This approach would have harmonized the code with a prior project approval for the Congregation Kol

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1 The applicant’s January 12, 2022 letter was transmitted to the PTC as part of the correspondence material transmitted to the commission for that meeting. The letter is available for viewing online: https://www.cityofpaloalto.org/files/assets/public/agendas-minutes-reports/agendas-minutes/planning-and-transportation-commission/2022/ptc-01.19.2022-castilleja-public-comments_redacted.pdf#page=32.
Emeth. At its March 15, 2021 meeting, the City Council unequivocally rejected staff’s interpretation, directing staff to “treat the underground parking facility as an underground garage, not as a basement.” Therefore, staff’s failure to count the garage for Congregation Kol Emeth towards GFA was in error.

b. If an underground parking facility is not a “basement,” as clarified by the City Council, then it must count towards GFA. Although below-grade parking facilities are not listed among the GFA “inclusions” in PAMC 18.04.030(65)(C), this list is not exhaustive. The PAMC defines GFA in the R-1 district to mean “the total covered area of all . . . accessory structures greater than one hundred and twenty square feet in area, . . . including the following . . . .” By contrast, the list of items excluded from GFA is closed-ended. Only the seven items listed in PAMC 18.04.030(65)(D) are excluded from GFA in the R-1 district. Of those seven items, only basements could possibly have possibly applied to an underground garage.

5. The project application must be judged against existing rules, which do not include the text amendment.
   a. The applicant’s letter overstates the limits on the City’s ability to consider and apply legislation while a project application is pending. At a more basic level, however, this argument misconstrues the purpose of the text amendment. Because the existing code counts the entire underground parking facility as GFA, the text amendment would only increase the proposed project’s consistency with the zoning code. If the application were considered in the absence of the text amendment, as the letter suggests, it would likely be considerably more difficult to make findings for approval.

6. The text amendment is arbitrary and violates constitutional guarantees of due process and equal protection.
   a. These arguments are similarly predicated on the incorrect belief that the text amendment is a restriction on underground parking.