June 13, 2023

VIA E-MAIL [Jonathan.Lait@CityofPaloAlto.org]

Jonathan Lait
Director, Planning and Development Services
City of Palo Alto
250 Hamilton Avenue
Palo Alto, CA 94301

Re: Castilleja School Temporary Off-Site Campus Update

Dear Director Lait:

On behalf of Castilleja, we write to provide an update of Castilleja’s 2023-24 plan for its students as it approaches the construction phase of its campus modernization project (the “Project”). While the school had hoped to find an off-site campus for all their students to attend during construction of the Project, due to unanticipated circumstances described below, in order to ensure compliance with their Conditional Use Permit (“CUP”), they will only have 365 students at the Bryant Street campus and will educate 64 students at a satellite campus by occupying space at the Palo Alto JCC, located at 3921 Fabian Way, Palo Alto (the “JCC”). As a result, Castilleja will phase their construction and hopes to complete their below-grade parking garage during the 2023-24 school year and to start construction on the building and other site improvements after completion of the garage. Castilleja requested we submit this letter to communicate how they arrived at their off-site campus plan for the 2023-24 academic year, and the various reasons it complies with their CUP.

Update Re: Temporary Offsite Campus Locations.

College of San Mateo (CSM). Soon after Castilleja obtained their entitlements from the City of Palo Alto (“City”) in June of 2022, they endeavored to locate an off-site campus to house their entire student body as a means to both reduce construction time and to keep the entire student body together on one campus, for pedagogical reasons. Early on, Castilleja considered many sites between San Mateo and Mountain View, but beginning in the Fall of 2022, Castilleja began to work closely with the staff at CSM to rent space for the entirety of Castilleja’s construction project. As time progressed, the team at CSM had confirmed everything from classrooms Castilleja could use, to community college classes its juniors and seniors could take, to dates for school theater and dance productions.

Based on the negotiations and assurances, Castilleja planned to hold all classes and to house all students at CSM for the duration of construction, commencing in August 2023. Given the language of the CUP conditions which states that the School can enroll up to 450 students before
construction is completed (with no more than 416 students on the existing Bryant Street campus), they increased their enrollment by approximately 13 students (~3.1%) to 429 for the coming school year, believing all students would be accommodated at CSM. Unfortunately, on May 24, 2022, the San Mateo County Community College District Board reversed course and decided against providing space for Castilleja students on the CSM campus. No one could anticipate this abrupt change, nor were any substantive reasons provided.

Immediately after this sudden turn of events, Castilleja resumed its efforts to explore other temporary campus locations, even if it meant keeping some students on campus, phasing the construction, and sending other students to a satellite location. While Castilleja hoped to keep the entire student body together, they also understood that if the plan includes some students on campus during construction, they must comply with the enrollment parameters of their CUP which provides that no more than 416 students can be located at the Bryant Street campus during construction.

**Palo Alto Jewish Community Center (JCC).** At the end of May, Castilleja learned that the Palo Alto JCC had a few classrooms coming available for lease which were being vacated by another small private high school that has been there for nine years. The limited space at the JCC meant that some Castilleja students could attend school at the JCC location, but a majority would need to remain at the Bryant campus. Given the timing and the ideal nature of the JCC facility for the school’s programmatic needs, Castilleja arrived at its current plan for 2023-24 to locate its 6th grade class (totaling 64 students) at the JCC campus. While having a separate facility for 6th grade was not Castilleja’s first choice—as they had initially planned to house everyone at CSM—this plan is both practically feasible and legally sound in terms of land use compliance. Private school use is a permitted use at the JCC Facility (see below), and temporarily housing some students off-site during construction ensures compliance with the CUP. This plan also provides the added benefit of reducing traffic to the Bryant Street campus because instead of housing 416 students there during the 2023-24 school year, only 365 students will be located at the Bryant Street campus. It may be noted that, historically, this is the smallest enrollment at the Bryant Street campus since 1994.

Prior to Castilleja entering into the JCC lease, zoning regulations, conditions of approval, and allowed uses were reviewed to assure that private school use is a permitted use. The JCC is located in a PC-Planned Community (Ord. 4918) zone, whereby some of the permitted uses include: day care for pre-school and school age children, private education, classrooms, adult meeting rooms, administrative offices, dance, music, photography and art studios, playing field, gymnasium and other fitness rooms, locker rooms and parking. Notably, the enumerated permitted uses allow for both day care for pre-school and school age children and private education as separate uses. Also, there is no prohibition on leasing to private parties.

Now that the school has signed the lease with the JCC, Castilleja is hard at work to ensure the satellite campus will provide tailored programs to the incoming 6th grade class and is grateful that the JCC had the available programmatic space available for their students.
Compliance with CUP and Conditions of Approval.

The plan to enroll 365 students at the Bryant Street Campus and 64 at the JCC campus (for a total enrollment of 429 students) is entirely consistent and compliant with the CUP and associated Conditions of Approval. Specifically, Condition of Approval 4b provides: “If students remain on the main campus during construction, student enrollment shall not exceed 416 students until construction is complete, at which point the School may enroll up to 450 students. If students are moved off-site during construction, the School may immediately enroll up to 450 students at the off-site location.”

The manifest purpose of this condition was to limit enrollment at the Bryant Street campus, not to exceed 416 students until Project construction is completed, so as to minimize potential disruption to the neighborhood during construction.\(^1\) It says nothing about requiring any particular number or percentage of students to be housed off-site if a satellite campus is to be used as a means of compliance—much less about requiring all students to be housed off-site.

Castilleja’s current plan is consistent with the Council’s intent as evidenced by the Council’s motion, which reads, in pertinent part: “3. Construction - If students are on the Castilleja campus during construction, maintain enrollment at 416 until construction is completed, then go to 450. If students are moved off site during construction, then can go to 450 immediately.” The motion does not state that all students have to be moved off-site in order for the school to enroll more than 416 students.\(^2\) It simply caps enrollment on-site at Bryant Street to 416 students, and if some students are moved off-site during construction, then overall enrollment may increase to 450 students until construction is completed. Indeed, Councilmember DuBois, the maker of the motion, stated that the motion “provided a combination of flexibility for adjustments to be made in the future but addressed the concerns raised by the Council and the community.” (Summary Minutes, June 6, 2022, p. 15.)

The Council’s June 6, 2022 motion, in turn, must be construed consistent with its prior unanimous March 29, 2021 motion whereby it allowed an enrollment increase starting at 450 students. (Action Minutes, March 29, 2021, p. 5 [“Allow an enrollment increase starting at 450 students”]; City Council Staff Report, May 23, 2022, p. 4 [same] and p. 7 [“The City Council in

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\(^1\) The condition has to be construed in accordance with its purpose and the legislative intent. (See, e.g., Alford v. Pierno (1972) 27 Cal.App.3d 682, 688 [“One of the cardinal rules of construction requires that words be given such interpretation as will promote rather than defeat the general purpose and policy of the law. . . . In construing a statute, the court should ascertain the intent of the Legislature so as to effectuate the purpose of the law.”].)

\(^2\) It is well settled that courts “may not add to or alter [words of a statute] to accomplish a purpose that does not appear on the face of the statute or from its legislative history” and that “[w]ords may not be inserted in a statutory provision under the guise of interpretation.” (Watsonville Pilots Assn. v. City of Watsonville (2010) 183 Cal.App.4th 1059, 1069 and Kirkwood v. Bank of America National Trust & Savings Association (1954) 42 Cal.2d 333, 341.)
its motion signaled its support to allow 450 students as a starting enrollment and directed the PTC to identify a procedure to allow a phased increase up to 540 students contingent upon verified compliance with objective standards.”) In other words, the Council first pronounced that Castilleja could immediately increase its enrollment to 450 students and then refined its direction via the subsequent motion to clarify that no more than 416 of the 450 students could be housed on the Bryant Street campus until construction is completed.

Substantial evidence in the record further indicates that the condition allows Castilleja to immediately increase enrollment to 450 students, provided that no more than 416 students are located on the Bryant Street campus.

- The agendas for the City Council’s May 23, 2022 and June 6, 2022 meetings on the Project stated that the Council would act on a proposed CUP amendment to, among others, “Increase Student Enrollment Initially to 450 Students Followed by Phased Conditional Increases to 540 Students.”

- Planning Director Jonathan Lait explained to then-Councilmember DuBois that if the Project were approved, “the school would be allowed to increase enrollment to 450 students immediately.” (Summary Minutes, May 23, 2022, p. 8.)

- Director Lait likewise explained to then-Councilmember Cormack that if approved, “the school would be allowed to increase to 450 students immediately.” (Summary Minutes, May 23, 2022, p. 16.)

- Then-Mayor Burt “inquired when would the school be allowed to increase enrollment to 450 students. Mr. Lait restated immediately upon approval.” (Summary Minutes, May 23, 2022, p. 19.)

- “Council Member DuBois predicted it would be hard to measure trips to the school with an increased enrollment to 450 students when construction was happening. Mr. Lait understood that the school will have 418 students for the [2022-23] academic year. If the CUP were approved, the school would increase up to 450 students for the following academic year. After three consecutive reports with no violations then enrollment could increase by another 25 students.” (Summary Minutes, May 23, 2022, p. 26.)

- Then-Mayor Burt wanted evidence “there was compliance with the TDM before enrollment was increased beyond 450 students.” (Summary Minutes, May 23, 2022, p. 27.)

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3 Even though certain Project opponents asked for the March 29, 2021 motion to be rescinded, the City Council took no such action. (Summary Minutes, May 23, 2022, p. 12; Action Minutes, June 6, 2022, pp. 4-5.)
The Planning & Transportation Commission (“PTC”) voted to immediately increase enrollment to 450 students and pause on further increases until after construction is completed. (Summary Minutes, April 20, 2022, pp. 13-16.)

“The PTC also suggested that there be no increase beyond 450 student enrollment until after construction has been completed.” (City Council Staff Report, May 23, 2022, p. 8.)

Project opponents spoke, expressing their understanding that Castilleja enrollment would be limited to 450 students until construction was completed. (Summary Minutes, May 23, 2022, pp. 9, 15.)

Here, only 365 students will be located on the Bryant Street campus during the 2023-24 academic year. This is 51 students fewer than the condition’s on-site cap. And, total enrollment will be 429 students, 21 students less than the condition’s overall cap. This proposal is consistent with the condition and the purpose underlying it, which was to ensure that the neighborhood would not experience any enrollment increase while construction was occurring. Indeed, under the proposed hybrid enrollment scenario (some on-campus, some off-campus), the neighborhood will experience a temporary enrollment decrease while construction is occurring.4

It is well settled that an “agency must interpret the conditions it imposes in a reasonable manner, consistent with its intent at the time the condition was enacted.” (Stone v. Board of Supervisors (1988) 205 Cal.App.3d 927, 935; see also Alford, supra, 27 Cal.App.3d at 688 (“A statute should be interpreted so as to produce a result that is reasonable. If two constructions are possible, that which leads to the more reasonable result should be adopted.”].) And, of course, the City cannot legally purport to limit or control other sites (whether inside or outside the City) through the CUP governing the Bryant Street site. (Anza Parking Corp. v City of Burlingame (1987) 195 Cal.App.3d 855, 861 [First Appellate District observes that “[n]o local governmental body . . . may condition the issuance of any use permit for any purpose not reasonably related to the use of the property for which the use permit is requested.”].)

Castilleja acknowledges that despite having the main campus at Bryant Street and the satellite campus at the JCC, that it will remain accountable for all the other conditions of approval at the Bryant Street campus, including traffic monitoring and reporting, enrollment audits, mitigation measures to address construction-related impacts, and a stringent adherence to the conditions surrounding events. To that end, the 6th grade students at the satellite campus will only come to the main campus for the five Major Events and will be considered “visitors” when present

4 Moreover, nothing in the record would justify opposition to or precluding this approach and the record is silent as to any limits on such a hybrid scenario. (See, e.g., Keen v. City of Manhattan Beach (2022) 77 Cal.App.5th 142, 148 [because a city ordinance permitting rental of residential properties was silent regarding the duration of the rentals, the city “cannot credibly insist its ordinances permit long-term residential rentals but have always banned short-term rentals. That interpretation makes no sense.”].)
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at the Bryant Street campus. Thus, when 6th graders are at the Bryant Street campus, they would contribute to the allowed count for Special Events, per Condition of Approval 6. All academic programming for the 6th grade class will exclusively occur at the JCC satellite campus where there will be a dedicated staff and faculty to meet their needs.

Thank you for your consideration of our client’s view on this important matter. Please feel free to contact me or Mindie Romanowsky (at 650-324-9300, ext. 1150) should you have any questions regarding the contents of this letter.

Very truly yours,

RUTAN & TUCKER, LLP

David P. Lanferman

cc: Ed Shikada, via e-mail  
Molly Stump, via e-mail  
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