



City of Palo Alto

City Council Staff Report

(ID # 7306)

Report Type: Action Items

Meeting Date: 10/17/2016

Summary Title: Downtown & SOFA II Retail Preservation Ordinance Framework

Title: Discussion and Direction Regarding Parameters of an Ordinance Strengthening Retail Protections in Downtown and the South of Forest Area (SOFA II)

From: City Manager

Lead Department: Planning and Community Environment

Recommendation

Staff recommends that the City Council review and provide feedback on the proposed draft framework for an ordinance strengthening retail protections in the Downtown and South of Forest Area (SOFA II). Based on the City Council's direction, staff will prepare an ordinance for review by the Planning & Transportation Commission and consideration by the City Council such that the effective date of the proposed ordinance will precede the end of the City-wide urgency ordinance currently in effect (i.e. April 30, 2017).

Executive Summary

To allow for continued retail protections in Downtown and SOFA II following the expiration of the Interim Retail Urgency Ordinance next April, this report outlines a framework for a permanent retail preservation ordinance in this area of the City. (A separate ordinance will address the balance of the City.)

The framework proposes to:

- Reinforce University Avenue as the Downtown retail core and limit or prohibit certain personal services, offices and other non-retail uses at the ground floor on University Avenue;
- Expand the existing Ground Floor (GF) protection boundary to strengthen the retail environment peripherally around the Downtown core;
- Modify permitted and conditionally permitted uses within the GF boundary; and,
- Add development standards to the GF and SOFA II districts to support active pedestrian-oriented retail uses.

Coupled with an outreach strategy that seeks feedback from decision-makers and Downtown and SOFA II stakeholders, staff proposes a work plan that aims to begin public hearings by December 2016 to enable adoption of the permanent ordinance prior to the expiration of the interim urgency ordinance.

Concurrent to this effort, staff is initiating work on a citywide ordinance that would establish or strengthen retail protections outside of Downtown/SOFA II and the California Avenue area, which was separately addressed by Ordinance 5358 (adopted October 26, 2015). The larger City-wide effort is also scheduled to be completed prior to expiration of the interim urgency ordinance in April 2017 and provides an opportunity to consider modifications to the definition of 'retail' that would apply Citywide. Tonight's discussion, however, is specifically tailored to the Downtown and SOFA II areas.

Background

In mid-2015, the City Council adopted an interim urgency ordinance prohibiting the conversion of ground floor spaces used for retail and "retail like" uses to office or other uses (Attachment A). The ordinance, which will sunset on April 30, 2017, was intended to protect retail spaces from converting to other uses while the City developed permanent zoning amendments to enhance retail preservations.

Since the interim urgency ordinance was adopted, the City has adopted a permanent zoning amendment affecting the California Avenue Area (Ordinance No. 5358, adopted October 26, 2015) and closed a loophole affecting the Community Commercial (CC), Neighborhood Commercial (CN), and Service Commercial (CS) zoning districts (Ordinance No. 5373, adopted January 11, 2016).

Several provisions in the interim urgency ordinance have proven difficult to administer, and/or have resulted in specific requests for a waiver or for a staff determination that the ordinance does not apply. The City Council considered these issues on August 22, 2016 and gave direction that framed this evening's discussion. (The Council's motion is included as Attachment B.)

Provisions of the Interim Urgency Ordinance

The interim urgency ordinance prohibits the conversion of ground floor retail use "permitted or operating as of March 2, 2015 or thereafter" to any other non-retail use, and defines "retail use" as including the following:

- retail service
- eating and drinking service
- hotels
- personal services
- theaters
- travel agencies

- commercial recreation
- commercial nurseries
- auto dealerships
- day care centers
- service stations and
- automotive services.

The ordinance applies to legal non-conforming uses, stating that such uses “shall remain... and shall not be subject to the change, discontinuance, or termination provisions of Chapter 18.70.” The ordinance also applies to basements “currently in retail use or in use for retail support purposes,” which is subject to some interpretation, and contains an exemption for “pipeline projects.” There are also provisions regarding “waivers and adjustments” (18.85.104) which allow an applicant to request a waiver based on economic hardship by “showing that applying requirements [of the ordinance] would effectuate an unconstitutional taking of property or otherwise have an unconstitutional application to the property.”

August 22 Direction from Council

On August 22, 2016 City Council discussed policies and priorities for permanent zoning ordinance amendments related to retail preservation. As shown in Attachment B, the Council directed staff to return to Council with a framework for a retail preservation ordinance that:

1. Requires transparent windows or window display for non-conforming uses;
2. Considers adjustments to the GF boundary;
3. Considers preservations outside the GF and for basements, updating definitions as needed;
4. Add to the requirement that retail uses be generally open to the public with a minimum number of hours; and
5. Considers how to amortize out certain non-conforming uses along University Avenue.

The framework described in this report address items #1, #2, and #3. #4 and #5 will be addressed through separate subsequent ordinances as detailed in the discussion section below.

The Council also requested that staff prepare an amendment to the existing interim urgency ordinance to allow private schools in the RT35 zone adjacent to Alma Street, providing property owners in this area with some additional flexibility when seeking ground floor tenants. The amendment to the interim urgency ordinance was on the Council’s agenda for October 4, 2016 and failed on a 5-4 vote (urgency ordinances require a four-fifths vote). This issue can be taken up again in the context of continued retail protections.

Discussion

The proposed ordinance framework seeks to prioritize locations where retail development and the impacts from potential office conversions are most salient. The parcels that have frontage on University Avenue would have the narrowest regulations for retail uses. Properties in the

greater GF district would have some additional flexibility to conditionally allow retail-like uses such as personal services, retail showrooms, and commercial recreation (e.g., gyms). Lastly, the GF and RT35 and RT50 districts, which comprise the majority of properties in Downtown and SOFA II, would include strengthened regulations that support pedestrian-oriented ground-level activity through additional development standards.

Proposed Framework

This proposed framework is further detailed below (with the relevant Code section in parentheses):

1. Revise GF district provisions (Chapter 18.13(C)):
 - Expand district purposes to extend beyond use classification and reflect a desire for active uses, with a high level of transparency and visual interest at the ground-level
 - Narrow the types of retail uses that are permitted on the ground-floor of properties with frontage on University Avenue:
 - i. Permitted uses on the ground-floor: eating and drinking, hotels, retail services, theaters, and entrances/lobbies to non-ground floor uses
 - ii. Prohibit personal services (such as nail salons and barbershops) , commercial recreation, yoga studios, schools, office uses, and similar non-retail uses (i.e. eliminate conditional uses)
 - Allow a range of retail and retail like uses in the greater GF district (outside of University Avenue):
 - i. Allow personal services, commercial recreation, medical offices, schools, and similar retail-like uses that encourage uses that promote active street life
 - ii. Prohibit ground-floor offices, except for medical office
 - Add district-wide regulations that support architectural design and operations that contribute to Comprehensive Plan and Downtown Design Guidelines' goals for pedestrian-oriented and active uses in Downtown:
 - i. Taller 1st floor story heights (e.g., 17 feet),
 - ii. High percentage of transparency in façades (e.g. 60% windows/doors)
 - iii. Require window openings to have transparent glazing and provide views into display/sales areas except where operations preclude them (i.e., theaters)
 - Expand the scope of the GF regulations to include basements in addition to ground-floor as a way to preserve existing retail or ancillary retail use in basements.
2. Modify GF district boundaries in targeted locations
 - a. Expand GF boundaries to include parcels along portions of Emerson Street, south of University Avenue, and select retail parcels close to University Avenue in order to broaden active retail uses Downtown (A map of the GF boundary that pre-existed a December 2009 ordinance is included as Attachment C; changes to the GF made by ordinance in May 2013 are included as Attachment D and a map of the current and proposed new GF boundaries is included as Attachment E.)

3. Require window transparency for non-conforming uses in the GF district:
 - a. Restrict window coverings in non-conforming tenant spaces (e.g., hair salons, offices, and financial services on University Avenue) fronting onto a sidewalk, during business hours. Require displays of merchandise, artwork or items of visual interest where customer privacy requires window coverings.
4. Modify RT35 and RT50 district standards in the SOFA II Plan:
 - a. Add development standards to foster an active street life in the SOFA II district that support goals for retail and actives uses described in the SOFA II plan. In the RT35 and RT50 districts for non-residential ground-floor uses, add standards for:
 - i. Taller 1st floor story heights (e.g., 17 feet)
 - ii. High percentage of transparency in storefront windows (e.g. 60%)
 - b. Retain private schools as a permitted ground floor use in the RT-35 district.

The GF district regulations would continue to allow 25 percent of ground floor areas not fronting onto a street to be occupied by offices or other uses permitted in the applicable underlying CD district.

Issues for Subsequent Ordinances and Studies

The framework above addresses retail preservation in the Downtown and SOFA II, which were identified as the priority areas for retail protection at the Council's August 22, 2016 meeting. Remaining issues identified by the City Council will be addressed through subsequent ordinances and/or studies:

1. Protection for the remaining areas citywide would be addressed in a subsequent ordinance and/or through the Comprehensive Plan Update process since they affect much larger areas of the city and will require additional analysis.
2. The definition of Retail uses would also be included in a subsequent citywide initiative with the intention of broadening the definition to be based on the sales of goods rather than an exhaustive list of example uses. Hours of operation and public access would also be addressed here.
3. Policies regarding amortization of non-conforming uses would be addressed separately and subsequent to approval of the permanent ordinance. Amortization ordinances can take significantly more time to complete, given the work required with affected property owners, and it will not be feasible to prepare such an ordinance prior to the upcoming expiration of the interim urgency ordinance.

Community Outreach

Staff and consultants propose to conduct comprehensive, but efficient outreach efforts over the next several months:

- *Stakeholder Meetings*: One-on-one or small group meetings to understand existing key

issues and concerns, and desires for the Downtown & SOFA II Retail Ordinance; and review the proposed framework and map changes. Stakeholders may include individuals representing the following groups:

- Palo Alto Chamber of Commerce
- Downtown Business Improvement District
- Commercial Brokers
- Major Property Owners
- Residents
- *Website*: The project website will serve as a library for existing documents and working products and memos; notification of upcoming meetings; and opportunity to sign up for the mailing list (to receive notification of meetings and new content).
- *Public Hearings*: The Planning and Transportation Commission and City Council hearings would also provide opportunities for both public comment and decision-maker review.

The analysis process will also rely on the extensive work completed to date for the Downtown Development Cap Evaluation, including survey data and stakeholder interviews.

Timing

The table below identifies proposed timing for completion of the permanent Ordinance.

Task	Timeline for Completion
<i>Community Outreach</i>	
Stakeholder Meetings	October – November 2016
City Council Study Sessions	August 22, 2016, October 17, 2016
Website and Continued Outreach	Ongoing
<i>Ordinance Development</i>	
Analyze Available Data	August – September 2016
Draft Framework	September - October 2016
Draft Ordinance	October - November 2016
Planning and Transportation Commission Hearing	November/December 2016
City Council Hearings	December 2016/January 2017

Policy Implications

The City’s Comprehensive Plan identifies the desirability of neighborhood serving retail (Policy L-16) and envisions inviting, pedestrian-scale “centers” with a mix of uses as focal points for neighborhoods (Goal L-4). Policy L-20 suggests that the City “encourage street frontages that contribute to retail vitality...” and Policy B-5 calls on the City to “maintain distinct business districts within Palo Alto as a means of retaining local services and diversifying the City’s economic base.”

Environmental Review

The Council’s direction to staff this evening does not constitute a “project” requiring

environmental review, however the resulting ordinance will be reviewed in compliance with the California Environmental Quality Act (CEQA).

Attachments:

- Attachment A: Ordinances 5325 and 5330 (Retail Preservation Interim Ordinance) (PDF)
- Attachment B: Excerpt August 22, 2016 City Council Minutes (PDF)
- Attachment C: Map of Previous GF Boundary (2009 Ordinance) (PDF)
- Attachment D: Map of Previous GF Boundary (2013 Ordinance) (PDF)
- Attachment E: Map of Existing and Proposed GF Boundary Expansion (PDF)

Ordinance No. 5325
Urgency Interim Ordinance of the Council of the City of Palo Alto
Adopting a Temporary Moratorium on the Conversion of Ground Floor
Retail and "Retail Like" Uses to Other Uses Citywide

FINDINGS

A. The City of Palo Alto has long been considered the birth place of Silicon Valley. With its proximity to Stanford University, its international reputation, its deep ties to technology firms, its highly rated public school system and its ample public parks, open space and community centers, Palo Alto continues to serve as a hub for technology based business.

B. Palo Alto is considered one of Silicon Valley's most desirable office markets. According to one study Class A office rates have climbed 49 percent since the start of 2010. The same study reported Class B office space increasing by 114.4 % since 2010.

C. In particular, average commercial rental rates have gone up significantly from 2013 to 2015. In 2013 the average monthly rental rate citywide for office was \$4.57 per square foot. That rate increased to \$5.12 in 2015. While retail rents have also increased during this period, retail rents are considerably lower than office rents. The average monthly rental rate for retail in 2013 was \$4.21 and in 2015 was \$4.88.

D. Price increases have been even more significant in the downtown area. In 2013 the average downtown monthly office rent was \$6.37. In 2015 the rate increased to \$7.33.

E. At the end of 2014, Palo Alto's downtown vacancy rate was a low 2.83 percent, according to a report prepared by Newmark Cornish & Carey.

F. These record high monthly rental rates for office and low vacancy rates have created financial incentives to replace current retail use with office use where such conversions are permitted by the City's zoning ordinance. These economic pressures are more severe in the downtown and California Avenue commercial areas but exist throughout the City.

G. The data submitted by the City to support the Valley Transportation Authority's Congestion Management Plan (CMP) each fiscal year suggests that there has been a loss of approximately 70,000 square feet of retail-type uses in the period from 2008 to the present. The CMP data is broad in the sense that it includes uses like automotive services in the "retail" category even though they are considered separate uses in the City's zoning ordinance. However any overstatement of the trend towards less retail is likely to be offset by the data's reliance on a list of discretionary applications processed by the City, since there have also been recent conversions of retail space to office space that did not require discretionary approvals and are not included in the 70,000 square foot number.

H. City residents have seen this occurring in the City's commercial districts as the City's Architectural Review Board has considered projects like those affecting Spagos restaurant at 265 Lytton, Inhabiture at 240 Hamilton Ave, Palo Alto Bowl at 4301 El Camino Real, and Club Illusions Restaurant at 260 California Avenue. In addition, familiar retail businesses like the Zibibbo restaurant have closed and their spaces have been acquired and occupied by non-retailers. Likewise the old location for Fraiche Yogurt, which moved from Emerson Street to Hamilton Avenue, was immediately re-purposed as office space.

I. Based on these trends, on March 2, 2015, the Palo Alto City Council asked staff to consider whether zoning-based protections for ground floor retail uses need to be strengthened where they currently exist and expanded to areas of the City where they do not.

J. On April 6, 2015, the City Council discussed these issues in detail and directed staff to prepare an urgency ordinance that would preserve existing ground floor retail and retail-like uses until permanent zoning revisions can be prepared.

K. This direction is consistent with the City's existing Comprehensive Plan, which identifies the desirability of neighborhood serving retail (Policy L-16) and envisions inviting, pedestrian-scale "centers" with a mix of uses as focal points for neighborhoods (Goal L-4). Policy L-20 suggests that the City "encourage street frontages that contribute to retail vitality..." and Policy B-5 calls on the City to "maintain distinct business districts within Palo Alto as a means of retaining local services and diversifying the City's economic base."

L. Palo Alto is in the process of updating its Comprehensive Plan, and it is expected that the updated Comprehensive Plan will contain additional policies and programs designed to preserve existing retail uses in the City.

M. The public's health, safety and welfare are currently and immediately detrimentally affected as neighborhood-serving retail service and related uses are priced-out by rising rents and replaced by uses that do not provide similar services or activate the street frontage by creating pedestrian activity and visual interest (i.e. shop windows and doors). These changes affect neighborhood quality of life, and mean that local residents have to drive to similar retail destinations in other locations, diminishing the public health benefit when residents can walk to needed services and increasing traffic congestion, vehicle miles traveled and greenhouse gas emissions.

N. Unless abated, the City's actions to approve conversion of ground floor spaces from retail to other uses will exacerbate the reduction of retail and changes described above, resulting in the need for the proposed interim ordinance.

O. The City Council desires on an interim basis to temporarily suspend conversions of retail and retail like uses to office throughout the City as such conversions may be in conflict with the City's Comprehensive Plan and zoning proposal that the legislative body, planning commission or the planning department is considering or studying or intends to study

within a reasonable time.

P. The possible extension of this interim ordinance beyond 45 days would not have a material effect on the development of projects with a significant component of multifamily housing because a specific exemption has been included to address this requirement of State law.

Q. This urgency interim ordinance is adopted in accordance with the requirements of Government Code Section 65858 and Palo Alto Municipal Code Section 2.04.270 and is based on the need to protect the public safety, health and welfare as set forth in the above findings. A 4/5 vote is required for adoption.

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

SECTION 1. Findings. The findings listed above are hereby incorporated.

SECTION 2. The following Section 18.85.100 (Retail Preservation) is added to a new Chapter 18.85 entitled "Interim Zoning Ordinances" to the Palo Alto Municipal Code to read as follows:

"18.85.100 Retail Preservation

18.85.101 Definitions. For the purposes of this Ordinance, the term "Retail" shall include a modified definition of "Retail Service" as well as the "Retail Like" uses defined below:

(a) Retail Service: A use predominantly engaged in providing retail sale, rental, service, processing, or repair of items primarily intended for consumer or household use, including but not limited to the following: groceries, meat, vegetables, dairy products, baked goods, candy, and other food products; liquor and bottled goods, household cleaning and maintenance products; drugs, cards, and stationery, notions, books, tobacco products, cosmetics, and specialty items; flowers, plants, hobby materials, toys, household pets and supplies, and handcrafted items; apparel, jewelry, fabrics, and like items; cameras, photography services, household electronic equipment, records, sporting equipment, kitchen utensils, home furnishing and appliances, art supplies and framing, arts and antiques, paint and wallpaper, carpeting and floor covering, interior decorating services, office supplies, musical instruments, hardware and homeware, and garden supplies; bicycles; mopeds and automotive parts and accessories (excluding service and installation); cookie shops, ice cream stores and delicatessens.

- (b) Retail Like Uses including but not limited to:
- (1) Eating and drinking service as defined in Section 18.04 (47);
 - (2) Hotels as defined in Section 18.04 (73);
 - (3) Personal services as defined in Section 18.04.030 (115);
 - (4) Theaters;

- (5) Travel agencies;
- (6) Commercial recreation;
- (7) Commercial nurseries;
- (8) Auto dealerships defined in Section 18.040.030(a)(12.5);
- (9) Day Care Centers defined in Section 18.040.030(a)(42);
- (10) Service Stations; and
- (11) Automotive Services.

To qualify as a Retail use under this definition, the use shall be generally open to the public.

18.85.102 Moratorium on Retail Conversions. The City Council hereby enacts this Urgency Interim Ordinance establishing a moratorium on the conversion of any ground floor Retail use permitted or operating as of March 2, 2015 or thereafter to any other non-Retail use anywhere in the City.

(a) 25% Exemption Suspended. During the pendency of this Ordinance, Section 18.30(C).020 permitting not more than twenty-five percent of the ground floor area not fronting on a street to be occupied by a non-retail service use otherwise permitted in the applicable underlying CD district shall be suspended.

(b) Conditionally Permitted Uses Suspended. During the pendency of this Ordinance, no ground floor Retail use operating as of March 2, 2015 may be replaced by any other non-Retail use, including uses for which Conditional Use Permits are currently allowed.

(c) Legal Nonconforming Uses. During the pendency of this Ordinance legal nonconforming Retail use shall remain as a grandfathered use and shall not be subject to the change, discontinuance, or termination provisions of Chapter 18.70.

(d) Conversion of Basements. During the pendency of this Ordinance, elimination of or conversion of basement space currently in Retail use or in use for retail support purposes shall be prohibited.

18.85.103 Exemptions. The following shall be exempt from this Ordinance:

(a) Pipeline Projects. Any Retail use where a discretionary permit or entitlement application to convert such Retail use to a non-Retail use was submitted to the City on or before March 2, 2015 and is currently pending. For purposes of this Ordinance a "Use and Occupancy" Permit Application shall not constitute a discretionary permit.

(b) Vested Rights. Any Retail use for which an applicant has received a valid building permit from the City and performed substantial work and incurred substantial liabilities in good faith reliance on such permit as of the date of this Ordinance.

18.85.104 Waivers and Adjustments. The following shall be grounds for a request for waiver or adjustment of this Ordinance:

(a) Economic Hardship. An applicant may request that the requirements of this Ordinance be adjusted or waived based on a showing that applying the requirements of this Ordinance would effectuate an unconstitutional taking of property or otherwise have an unconstitutional application to the property.

(b) Multi-family uses. Any project which (i) contains four or more housing units, (ii) the multi-family housing component constitutes at least one-third or more of the total square footage of the project and (iii) otherwise complies with all sections of the Zoning Code may apply for a waiver or modification from this Ordinance upon a finding that this Ordinance would have a material effect on the multi-family component of such project.

(c) Documentation. The applicant shall bear the burden of presenting substantial evidence to support a waiver or modification request under this Section and shall set forth in detail the factual and legal basis for the claim, including all supporting technical documentation.

Any such request under this section shall be submitted to the Planning and Community Development Director together with an economic analysis or other supporting documentation and shall be acted upon by the City Council.

18.85.105 Reconstruction. Any ground floor Retail use existing on or after March 2, 2015 may be demolished and rebuilt provided that the portion of square footage used as Retail use on or after March 2, 2015 is not reduced except that Retail square footage may be reduced by the minimum amount needed to provide access to any new upper floor and/or lower level parking.

18.85.106 Applicability to Current Requirements. Nothing in this ordinance shall alter requirements of site-specific Planned Community zoning ordinances or adopted conditions of approval. Nothing in the ordinance shall be construed to waive the requirement for a conditional use permit or other entitlement where such requirements currently exist."

SECTION 3. Study. The City Council directs the Department of Planning & Community Environment to consider and study possible amendments to the Comprehensive Plan and zoning ordinance to preserve existing Retail uses.

SECTION 4. Written Report. At least ten (10) days before this Urgency Ordinance or any extension expires, the City Council shall issue a written report describing the measures taken to alleviate the condition which led to the adoption of this Urgency Interim Ordinance.

SECTION 5. Severability. If any provision, clause, sentence or paragraph of this ordinance, or the application to any person or circumstances, shall be held invalid, such

invalidity shall not affect the other provisions of this Ordinance which can be given effect without the invalid provision or application and, to this end, the provisions of this Ordinance are hereby declared to be severable.

SECTION 6. Effective Period. This Urgency Ordinance shall take full force and effect immediately upon adoption. In accordance with Government Code Section 65856, this Ordinance shall be in full force and effect for a period of forty-five (45) days from adoption. This Ordinance shall expire on June 25, 2015 unless this period is extended by the City Council as provided in Government Code Section 65858.

SECTION 7. CEQA. The City Council finds that this Ordinance falls under the California Environmental Quality Act (CEQA) exemption found in Title 14 California Code of Regulations Section 15061(b)(3) because it is designed to preserve the status quo.

INTRODUCED AND PASSED: May 11, 2015


AYES: BERMAN, BURT, DUBOIS, FILSETH, HOLMAN, KNISS, SCHARFF, SCHMID, WOLBACH

NOES:

ABSTENTIONS:

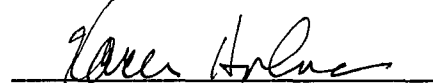
ABSENT:

ATTEST:



City Clerk

APPROVED:

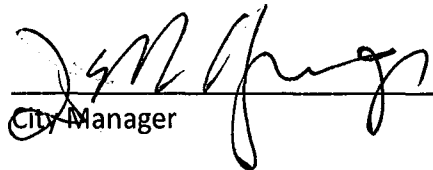


Mayor

APPROVED AS TO FORM:



Senior Assistant City Attorney



City Manager



Director of Planning and
Community Environment

Ordinance No. 5330

Ordinance of the Council of the City of Palo Alto Extending Urgency Interim Ordinance 5325 Adopting a Temporary Moratorium on the Conversion of Ground Floor Retail and "Retail Like" Uses to Other Uses Citywide

FINDINGS

A. The City of Palo Alto has long been considered the birth place of Silicon Valley. With its proximity to Stanford University, its international reputation, its deep ties to technology firms, its highly rated public school system and its ample public parks, open space and community centers, Palo Alto continues to serve as a hub for technology based business.

B. Palo Alto is considered one of Silicon Valley's most desirable office markets. According to one study Class A office rates have climbed 49 percent since the start of 2010. The same study reported Class B office space increasing by 114.4 % since 2010.

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D. Price increases have been even more significant in the downtown area. In 2013 the average downtown monthly office rent was \$6.37. In 2015 the rate increased to \$7.33.

E. At the end of 2014, Palo Alto's downtown vacancy rate was a low 2.83 percent, according to a report prepared by Newmark Cornish & Carey.

F. These record high monthly rental rates for office and low vacancy rates have created financial incentives to replace current retail use with office use where such conversions are permitted by the City's zoning ordinance. These economic pressures are more severe in the downtown and California Avenue commercial areas but exist throughout the City.

G. The data submitted by the City to support the Valley Transportation Authority's Congestion Management Plan (CMP) each fiscal year suggests that there has been a loss of approximately 70,000 square feet of retail-type uses in the period from 2008 to the present. The CMP data is broad in the sense that it includes uses like automotive services in the "retail" category even though they are considered separate uses in the City's zoning ordinance. However any overstatement of the trend towards less retail is likely to be offset by the data's reliance on a list of discretionary applications processed by the City, since there have also been recent conversions of retail space to office space that did not require discretionary approvals and are not included in the 70,000 square foot number.

H. City residents have seen this occurring in the City's commercial districts as the City's Architectural Review Board has considered projects like those affecting Spagos restaurant at 265 Lytton, Inhabiture at 240 Hamilton Ave, Palo Alto Bowl at 4301 El Camino Real, and Club Illusions Restaurant at 260 California Avenue. In addition, familiar retail businesses like the

Zibibbo restaurant have closed and their spaces have been acquired and occupied by non-retailers. Likewise the old location for Fraiche Yogurt, which moved from Emerson Street to Hamilton Avenue, was immediately re-purposed as office space.

I. Based on these trends, on March 2, 2015, the Palo Alto City Council asked staff to consider whether zoning-based protections for ground floor retail uses need to be strengthened where they currently exist and expanded to areas of the City where they do not.

J. On April 6, 2015, the City Council discussed these issues in detail and directed staff to prepare an urgency ordinance that would preserve existing ground floor retail and retail-like uses until permanent zoning revisions can be prepared.

K. This direction is consistent with the City's existing Comprehensive Plan, which identifies the desirability of neighborhood serving retail (Policy L-16) and envisions inviting, pedestrian-scale "centers" with a mix of uses as focal points for neighborhoods (Goal L-4). Policy L-20 suggests that the City "encourage street frontages that contribute to retail vitality..." and Policy B-5 calls on the City to "maintain distinct business districts within Palo Alto as a means of retaining local services and diversifying the City's economic base."

L. Palo Alto is in the process of updating its Comprehensive Plan, and it is expected that the updated Comprehensive Plan will contain additional policies and programs designed to preserve existing retail uses in the City.

M. The public's health, safety and welfare are currently and immediately detrimentally affected as neighborhood-serving retail service and related uses are priced-out by rising rents and replaced by uses that do not provide similar services or activate the street frontage by creating pedestrian activity and visual interest (i.e. shop windows and doors). These changes affect neighborhood quality of life, and mean that local residents have to drive to similar retail destinations in other locations, diminishing the public health benefit when residents can walk to needed services and increasing traffic congestion, vehicle miles traveled and greenhouse gas emissions.

N. Unless abated, the City's actions to approve conversion of ground floor spaces from retail to other uses will exacerbate the reduction of retail and changes described above, resulting in the need for the proposed interim ordinance.

O. The City Council desires on an interim basis to temporarily suspend conversions of retail and retail like uses to office throughout the City as such conversions may be in conflict with the City's Comprehensive Plan and zoning proposal that the legislative body, planning commission or the planning department is considering or studying or intends to study within a reasonable time.

P. The possible extension of this interim ordinance beyond 45 days would not have a material effect on the development of projects with a significant component of multifamily housing because a specific exemption has been included to address this requirement of State law.

Q. This urgency interim ordinance is adopted in accordance with the requirements of Government Code Section 65858 and Palo Alto Municipal Code Section 2.04.270 and is based on the need to protect the public safety, health and welfare as set forth in the above findings. A 4/5 vote is required for adoption.

R. The City Council adopted Interim Ordinance No. 5325 on May 11, 2015, by a four-fifths vote after a public hearing pursuant to Government Code Section 65858 and Ordinance 5325 will expire on June 25, 2015.

S. The Council desires to extend Interim Ordinance 5325 in accordance with the requirements of Government Code Section 65858 and Palo Alto Municipal Code Section 2.04.270 for an additional period of 22 months and 15 days. This extension is based on the need to protect the public safety, health and welfare as set forth in the above findings and a 4/5 vote is required for passage.

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

SECTION 1. Findings. The findings listed above are hereby incorporated.

SECTION 2. Written Report. Government Code Section 65858(d) states that "ten days prior to the expiration of an interim ordinance or any extension, the legislative body [the City Council] shall issue a written report describing the measures taken to alleviate the conditions which led to the adoption of the ordinance. Pursuant to this provision, the City Council hereby reports that much of the factors which gave rise to Urgency Interim Ordinance No. 5325 still apply, namely increasing commercial rental rates; low office vacancy rates; retail service uses being priced out of market and being replaced by office and other uses; and increased traffic congestion, vehicle miles traveled and greenhouse gas emissions resulting from these changing land use patterns. The City Council has undertaken a number of actions since the adoption of Ordinance Number 5325, including directing staff to bring to the Planning and Transportation Commission a "backstop" ordinance to retain retail and retail like uses as well as directing staff to more closely study retail protection initiatives together with a formula retail ban in the California Avenue commercial district. Staff has also begun detailed reviews of regulatory schemes from other jurisdictions. In order to have adequate time to fashion and propose appropriate regulations, and to ensure that the current and immediate threat to the public safety, health and welfare continues to be forestalled, adoption of this ordinance is necessary.

SECTION 3. Moratorium. The City Council hereby extends Interim Urgency Ordinance No. 5325 establishing a moratorium on the conversion of any ground floor Retail use permitted or operating as of March 2, 2015 or thereafter to any other non-Retail use anywhere in the City.

SECTION 4. Severability. If any provision, clause, sentence or paragraph of this ordinance, or the application to any person or circumstances, shall be held invalid, such invalidity shall not affect the other provisions of this Ordinance which can be given effect without the invalid provision or application and, to this end, the provisions of this Ordinance are hereby declared to be severable.

SECTION 5. Effective Period. This extension ordinance shall take full force and effect immediately upon expiration of Interim Ordinance No.5325. In accordance with Government Code Section 65856, this ordinance shall be in full force and effect for an additional period of 22 months and 15 days following expiration of Interim Ordinance No. 5325. Thus the moratorium shall expire on April 30, 2017, unless this period is extended by the City Council as provided in Government Code Section 65858.

SECTION 6. Supersedes Earlier Ordinances. During the time period that this Ordinance is effective, this Ordinance supersedes any provision of the Palo Alto Municipal Code inconsistent with the provisions of this Ordinance.

SECTION 7. CEQA. The City Council finds that this ordinance falls under the California Environmental Quality Act (CEQA) exemption found in Title 14 California Code of Regulations Section 15061(b)(3) because it is designed to preserve the status quo and therefore does not have the potential to significantly impact the environment. This ordinance is also categorically exempt under CEQA Section 15308 as a regulatory action taken by the City pursuant to its police power and in accordance with Government Code Section 65858 to assure maintenance and protection of the environment pending the evaluation and adoption of potential local legislation, regulation, and policies. Adoption of the proposed interim ordinance is categorically exempt from review under Section 15301 (Class One - Existing Facilities) of the California Environmental Quality Act (CEQA) Guidelines since it will temporarily perpetuate existing environmental conditions.

INTRODUCED AND PASSED: June 15, 2015


AYES: BERMAN, BURT, DUBOIS, FILSETH, HOLMAN, KNISS, SCHARFF, SCHMID, WOLBACH

NOES:

ABSTENTIONS:

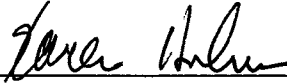
ABSENT:

ATTEST:



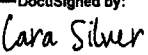
City Clerk

APPROVED:




Mayor

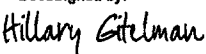
APPROVED AS TO FORM:

DocuSigned by:


C2CEDD84ABC3429
Senior Assistant City Attorney

DocuSigned by:


39E7298FB2084DB...
City Manager

DocuSigned by:


E07E6801E21E441
Director of Planning and
Community Environment

ACTION MINUTES

within one year of reaching the cap from the expiring NEM program with a report describing other NEM programs in California with a comparison to the Palo Alto program including the effectiveness of our program in spurring local residential solar options.”

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to add to the Motion, “change the method for calculating the NEM cap to five percent of the customer class non-coincident peak.”

MOTION RESTATED: Vice Mayor Scharff moved, seconded by Council Member Holman to adopt a Resolution adopting a Net Energy Metering (NEM) Successor Rate, E-EEC-1 (“Export Electricity Compensation”) amending Utilities Rule and Regulation 2 (“Definitions and Abbreviations”) and 29 (“Net Energy Metering and Interconnection”); direct Staff to return to Council within four months with options and a recommendation for the NEM Transition Policy; return to Council within one year of reaching the cap from the expiring NEM program with a report describing other NEM programs in California with a comparison to the Palo Alto program including the effectiveness of our program in spurring local residential solar options; and change the method for calculating the NEM cap to five percent of the customer class non-coincident peak.

MOTION AS AMENDED PASSED: 8-0 Filseth absent

Council took a break from 8:08 P.M. to 8:17 P.M.

12. Interim Retail Preservation Ordinance: Request for a Waiver at 100 Addison, Discussion Regarding Applicability to Retail and “Retail-Like” Uses Which do not Have Required Entitlements, and Discussion Regarding Potential Ordinance Improvements and Next Steps.

MOTION: Council Member DuBois moved, seconded by Vice Mayor Scharff to direct Staff to return to Council with a framework for an Ordinance for the Downtown Area, including South of Forest Area Coordinated Area Plan Phase 2 (SOFA II) and a more flexible framework for the City as a whole.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to add to the Motion, “including:

- A. Requiring display windows on properties with non-conforming uses; and

ACTION MINUTES

- B. Considering adjustments to the Ground Floor (GF) boundary; and
- C. Considering protections outside the GF and for basements; updating definitions as needed; and
- D. Options to amortize out certain non-conforming uses along University Avenue."

AMENDMENT: Council Member Holman moved, seconded by Council Member XX to add to the Motion, "somewhat" after "(SOFA II) and a."

AMENDMENT FAILED DUE TO THE LACK OF A SECOND

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to add to the Motion, "add to the requirement of Retail; 'generally open to the public with a minimum number of hours.'" (New Part E)

MOTION RESTATED: Council Member DuBois moved, seconded by Vice Mayor Scharff to direct Staff to return to Council with a framework for an Ordinance for the Downtown Area, including South of Forest Area Coordinated Area Plan Phase 2 (SOFA II) and a more flexible framework for the City as a whole, including:

- A. Requiring display windows on properties non-conforming uses; and
- B. Considering adjustments to the Ground Floor (GF) boundary; and
- C. Considering protections outside the GF and for basements; updating definitions as needed; and
- D. Options to amortize out certain non-conforming uses along University Avenue; and
- E. Add to the requirement of Retail; "generally open to the public with a minimum number of hours."

MOTION AS AMENDED PASSED: 8-0 Filseth absent

ACTION MINUTES

MOTION: Council Member Holman moved, seconded by Council Member DuBois to deny the request for a waiver at 100 Addison Avenue from the Retail Protection Ordinance and uphold the Director's decision.

AMENDMENT: Vice Mayor Scharff moved, seconded by Council Member DuBois to add to the Motion, "and allow education uses in the Interim Ordinance."

AMENDMENT WITHDRAWN BY THE SECONDER

AMENDMENT: Vice Mayor Scharff moved, seconded by Council Member Kniss to add to the Motion, "and allow education uses in the Interim Ordinance."

AMENDMENT WITHDRAWN BY THE MAKER

AMENDMENT: Mayor Burt moved, seconded by Council Member Berman to add to the Motion, "and allow education and medical office uses in the Interim Ordinance."

INCORPORATED INTO THE AMENDMENT WITH THE CONSENT OF THE MAKER AND SECONDER to add to the Amendment, "for properties in SOFA II, Residential Transition-35 Zone (RT-35)."

INCORPORATED INTO THE AMENDMENT WITH THE CONSENT OF THE MAKER AND SECONDER to add to the Amendment, "on Alma Street."

INCORPORATED INTO THE AMENDMENT WITH THE CONSENT OF THE MAKER AND SECONDER to add to the Amendment, "or abutting" after "(RT-35), on."

AMENDMENT RESTATED: Mayor Burt moved, seconded by Council Member Berman to add to the Motion, "and allow education and medical office uses in the Interim Ordinance for properties in SOFA II, Residential Transition-35 Zone (RT-35), on or abutting Alma Street."

AMENDMENT FAILED: 4-4 DuBois, Holman, Scharff, Schmid no, Filseth absent

AMENDMENT: Vice Mayor Scharff moved, seconded by Council Member Kniss to add to the Motion, "and allow education uses in the Interim Ordinance for

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properties in SOFA II, Residential Transition-35 Zone (RT-35), on or abutting Alma Street.”

AMENDMENT PASSED: 5-3 DuBois, Holman, Schmid no, Filseth absent

MOTION RESTATED: Council Member Holman moved, seconded by Council Member DuBois to deny the request for a waiver at 100 Addison Avenue from the Retail Protection Ordinance and uphold the Director’s decision and allow education uses in the Interim Ordinance for properties in SOFA II, Residential Transition-35 Zone (RT-35), on or abutting Alma Street.

MOTION AS AMENDED PASSED: 8-0 Filseth absent

13. Policy Discussion on Comprehensive Plan Update Environmental Impact Report Scenarios 5 & 6 **(Staff requests this item be continued to August 29, 2016).**

This Item was continued to August 29, 2016.

Inter-Governmental Legislative Affairs

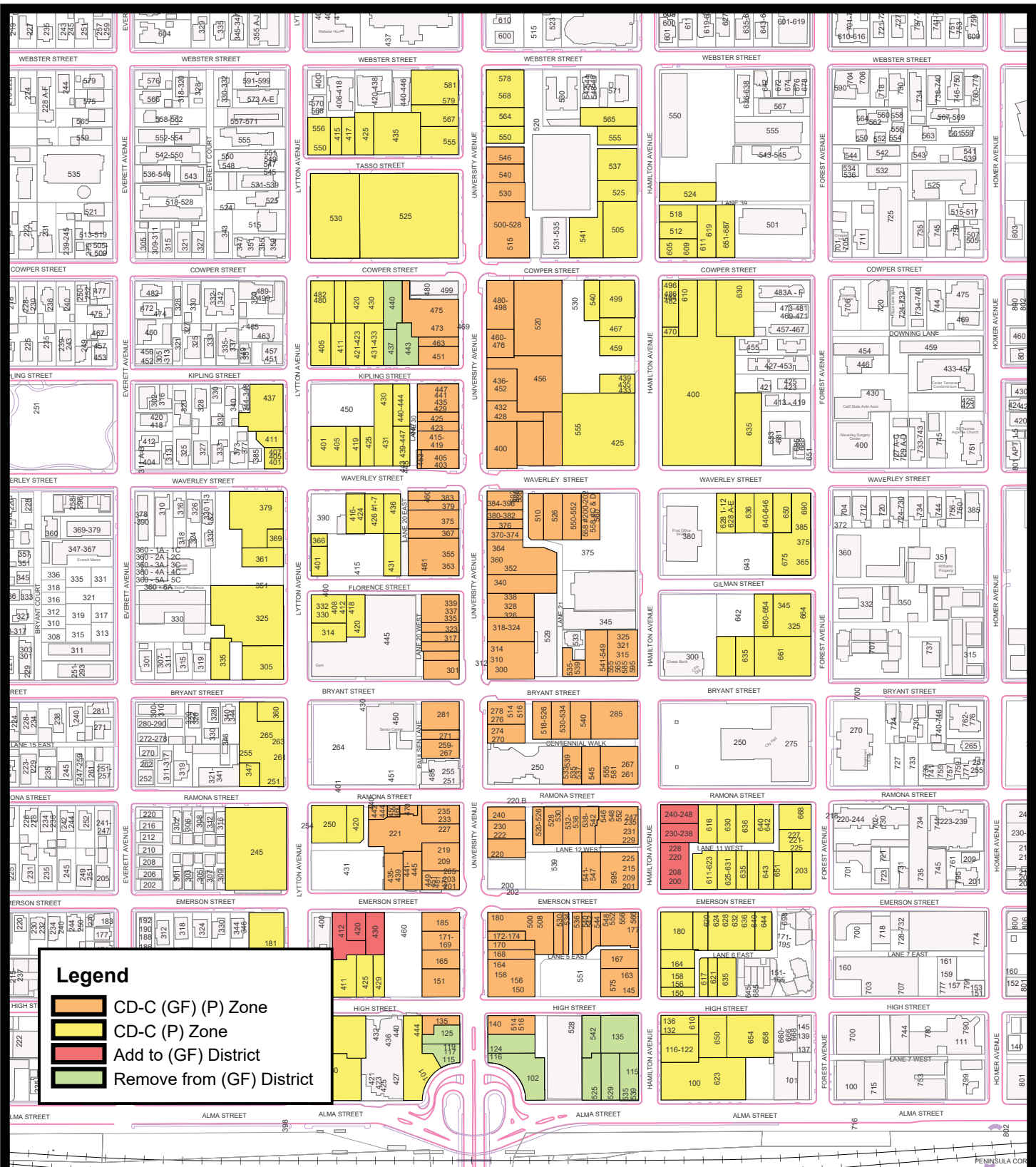
14. Status Update and Potential City Responses to the Governor's "By Right" Housing Bill and Pending Bills Addressing Housing Issues.

NO ACTION TAKEN

Council Member Questions, Comments and Announcements

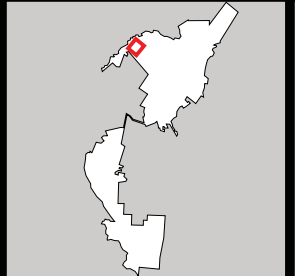
None.

Adjournment: The meeting was adjourned at 11:40 P.M.



Legend

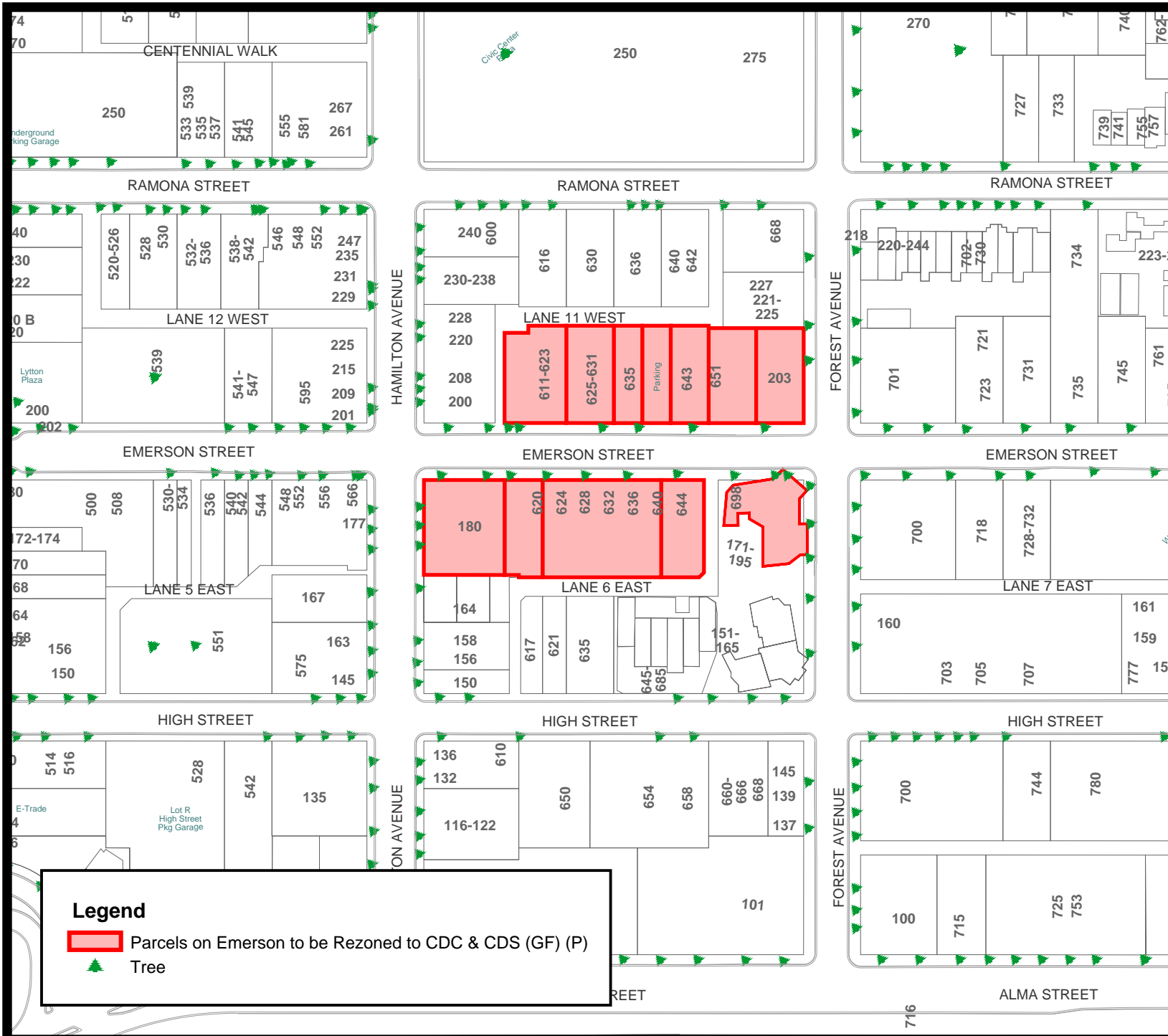
- CD-C (GF) (P) Zone
- CD-C (P) Zone
- Add to (GF) District
- Remove from (GF) District



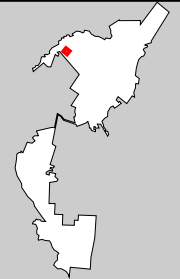
Downtown Zoning 2009 Changes to GF District

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





The City of
Palo Alto



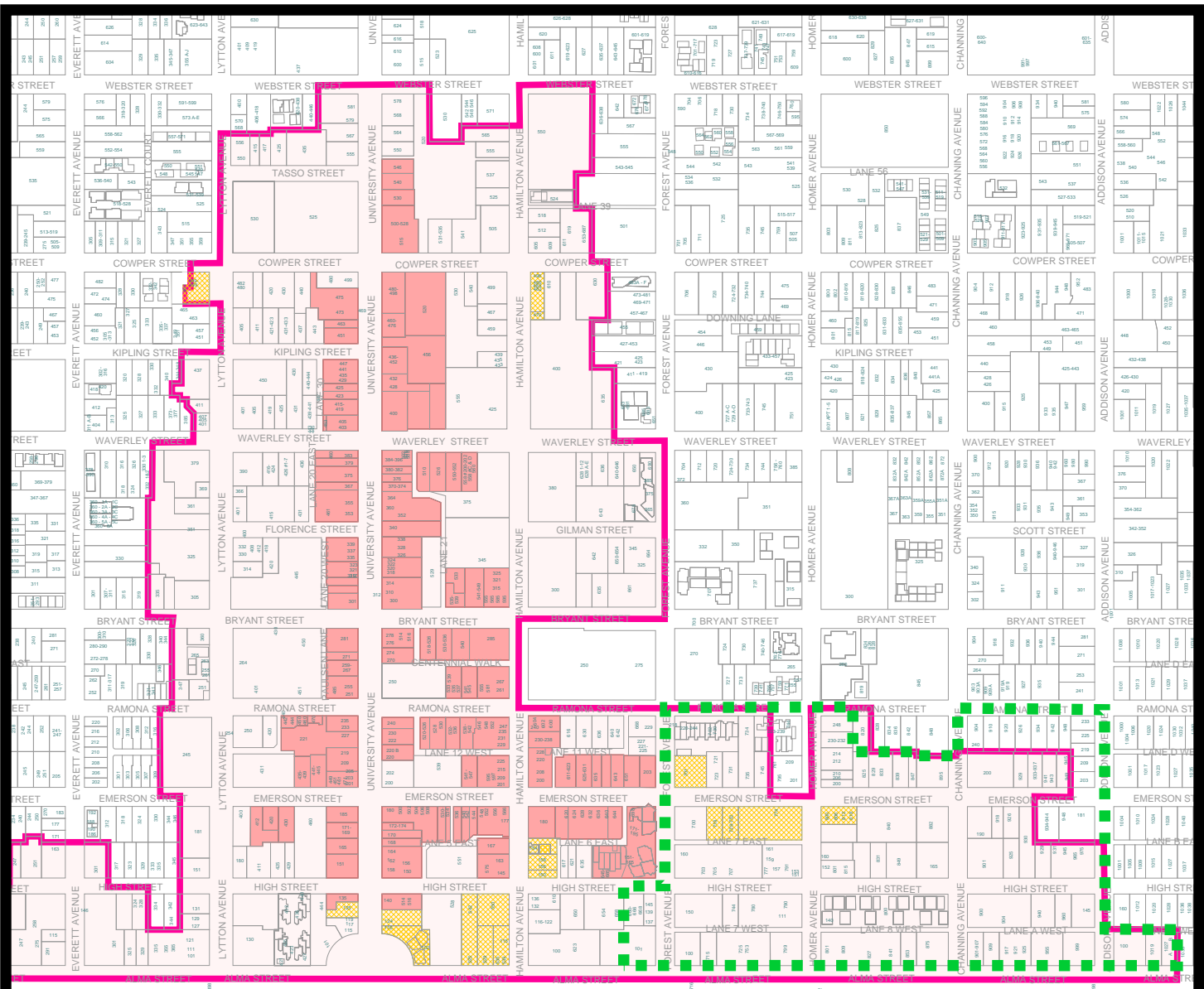
2013 GF Changes
CDC (P) and CDS (P) Parcels
on
Emerson St.
and
Forest Ave
proposed to be rezoned to
CDC (GF) (P) & CDS (GF) (P)

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








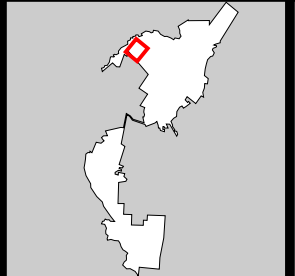
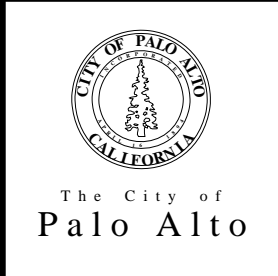
Legend

- Parcels on Emerson to be Rezoned to CDC & CDS (GF) (P)
- ▲ Tree




Legend


-  Transportation Station
-  University Avenue/Downtown Business District - Commercial Center
-  Existing Ground Floor (GF) Combining District Zoned Parcels
-  Proposed Ground Floor (GF) Combining District Zoned Parcels
-  SOFA II CAP



Proposed Ground Floor Combining District Additions 2016

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





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