

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:

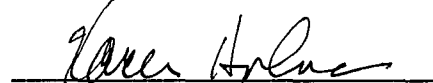
ABSENT:

ATTEST:



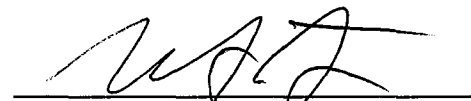
City Clerk

APPROVED:

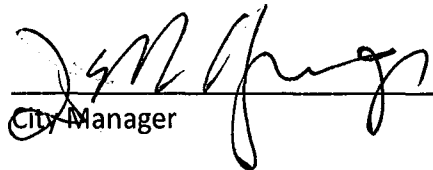


Mayor

APPROVED AS TO FORM:



Senior Assistant City Attorney



City Manager



Director of Planning and
Community Environment