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Planning & Transportation Commission Staff Report

From: Planning and Development Services Director
Lead Department: Planning and Development Services

Meeting Date: August 14, 2024
Report #: 2406-3170

TITLE

Recommendation to the City Council Retail Committee to Prioritize Certain Municipal Code Amendments Related to Retail and Retail Like Land Uses, Retail Preservation Ordinance, Changes to Office Limits, Parking Regulations and Related Development Standards and Application Processes.

RECOMMENDATION

Staff recommends the Planning and Transportation Commission (PTC):

- (1) Review and discuss the City's retail consultant's recommendations related to retail resiliency (Attachment A); and,
- (2) Endorse the consultant's recommendations or alternative recommendations to the City Council Retail Committee.

EXECUTIVE SUMMARY

In June, staff authorized its consultant Michael Baker International (MBI) to prepare additional deliverables to present to the PTC for endorsement of recommendations ranked by priority. The PTC review and discussion on August 14 is intended to focus on recommending the 15 zoning amendment recommendations in Attachment A, or a subset of these recommendations.

On May 8, 2024, the PTC reviewed the completed MBI Retail Study (Study) and its 20 recommendations and requested that staff encourage Council to move forward with 'two quick fixes' to Title 18 in June 2024. Staff has not yet presented the Study to City Council. The verbatim minutes from May 8 PTC¹ show the range of comments from the PTC members as individuals. Some Commissioners accepted the report's strategies and others noted additional opinions. Staff intends to present the PTC's recommendations to the Council Retail Committee

¹ Link to Verbatim Minutes from May 8, 2024 PTC meeting:

<https://www.cityofpaloalto.org/files/assets/public/v/1/agendas-minutes-reports/agendas-minutes/planning-and-transportation-commission/2024/ptc-05.08.24-draft-verbatim-minutes-bgh-and-taa-revisions.pdf>

(Committee) on September 18, 2024. The Committee², on May 15, 2024³, received and accepted a staff report regarding near- and medium-term initiatives focused on enhancing retail and hotel uses, and indicated a need for concrete/near-term solutions. The action minutes reflect that no action was taken.

BACKGROUND

The MBI Retail Study provides the background conditions, understanding, best practices, community and stakeholder engagement, and policy discussions and regulatory implications that led to the development of the recommended zoning strategies.

PTC

The PTC conducted six study sessions to receive presentations and deliberate on policies and strategies in a workshop format. The May 8, 2024 PTC report has links to reports, videos and presentations. The October through April meetings of the PTC featured these topics:

- October 25, 2023: Introduction/check in including reviewing the scope of work
- January 31, 2024: Peer cities comparison and stakeholder interviews results
- February 28, 2024: Formation of a PTC Ad Hoc
- March 13, 2024: Presentation regarding strategies and policy recommendations
- March 27, 2024: Recommendations for strategies
- April 24, 2024 Session: Continued discussion on retail strategies; the staff report includes excerpt verbatim minutes from the March 27th PTC session

The PTC's seventh session on the retail study was held on May 8. Though it was originally intended to enable the PTC to provide recommendations regarding the Study to Council, the PTC did not make a formal motion on May 8. The PTC received the report, provided individual comments, and expressed support for the ad hoc committee to prepare a letter to Council suggesting two 'quick fixes' to move forward on but not endorsing all 20 recommendations that had been organized around seven primary strategies, which were:

1. Conduct a comprehensive zoning cleanup of a mature, complex code
2. Create streamlined and predictable approval processes
3. Limit the Retail Preservation ordinance
4. Allow non-retail uses on ground floor with limitations
5. Repeal office conversion and construction limitations
6. Relax formula retail
7. Ease the parking regulations

PTC Ad Hoc Committee

² Council Retail Committee is Councilmembers Burt, Kou, and Lythcott-Haims.

³ Link to May 15, 2024 Council Retail Committee agenda, presentation and report <https://cityofpaloalto.primegov.com/Portal/Meeting?meetingTemplateId=14928>

The PTC retail ad hoc committee⁴ last met on April 30, 2024, when it reviewed and discussed Retail Study Report Appendix C⁵ in preparation for the PTC's first review of Appendix C. The PTC retail ad hoc had previously grouped its proposals into four categories and discussed these with the full PTC on April 24, 2024: (1) Simplify Rules, (2) Reduce Uncertainty, (3) Relax Restrictions, (4) Beyond Zoning. After May 8, the PTC ad hoc retail committee drafted a memorandum to Council for the targeted June Council meeting; formalization of the letter was paused due to postponement of the presentation to Council.

Council Extension of Ordinance #5517

On June 3 and June 17, 2024, City Council adopted an extension of 'temporary' Ordinance #5517 from June 16, 2024, to June 30, 2025⁶. Ordinance #5517, which Council had extended on December 12, 2022, to June 16, 2024, had temporarily updated Title 18 definitions, broadened permitted uses, and provided limits on certain uses through updates to the Conditional Use Permit (CUP) thresholds. The amendments were intended to promote retail activity and decrease commercial vacancies. Amendments were to the 'eating and drinking' establishments, 'personal service', 'retail services' and 'take-out service' definitions. The threshold floor area for requiring a CUP increased for 'commercial recreation', 'medical office' and some 'personal services' uses in commercial districts. The temporary ordinance included the Council's additional amendments for exceptions to the floor area thresholds for certain uses located along University Avenue, California Avenue and Town & Country Village Shopping Center. The changes reserved more significant policy recommendations to future PTC public hearings and analysis.

PROJECT DESCRIPTION

Attachments A (Recommendations Table) and B (Unique and Alternative Active Ground Floor Uses) reflect two of MBI's work efforts since the May 2024 PTC meeting. MBI also proceeded with a comparison of the proposed recommendations to the draft ordinance⁷ that was prepared and presented to the PTC and Council in fall 2022.

15 Zoning Amendment Recommendations

MBI's 15 suggested recommendations (reduced from 20) are provided in the table, Attachment A. These are also summarized in the analysis section of this report. The first two recommendations are the 'two quick fixes' the PTC noted during the May 8 PTC meeting. The PTC may wish to place these draft recommendations into three categories for ease of recommendation: (1) 'yes/proceed' recommendations, (2) 'maybe/needs more discussion' recommendations, and (3) 'no/not recommended' recommendations.

⁴ PTC retail ad hoc is PTC Chair Bryna Chang, Vice Chair Keith Reckdahl, and Commissioner Allen Akin

⁵ Appendix C is the assessment of parking conditions and the implications of State Assembly Bill AB 2097

⁶ Link to Council June 17, 2024 packet

<https://cityofpaloalto.primegov.com/Portal/Meeting?meetingTemplateId=14311>

⁷ The 2022 draft ordinance was reviewed by the PTC but not recommended

The recommendations table includes the primary rationale and arguments for each individual zoning change. After the PTC meeting, the table will be incorporated into the retail study to present to the Council Retail Committee, along with a list of the recommendations in the retail study's executive summary.

Unique and Alternative Active Ground Floor Uses

Attachment D is a presentation showing several examples of unique and alternative/unique retail and active ground floor uses. The document provides information about these uses and in some cases, shows where these uses were discovered. The uses include:

- Bank coffee shops
- Pet Salon
- Arcade Bar
- Micro Retail
- Pottery (color me mine)
- Small format stores
- Combined stores (Tesla and Nordstrom)
- Experienced based retail (Sonos) limited product display
- Build your own birch box
- Nescafe Sleeping Pods
- Medical retail
- VR experience
- Art sales/gallery
- Small hand made items production and sale (e.g. candles)
- Concept retail stores
- Pop up stores (temporarily operating for 60 days)
- Vacant building maintenance ("Vacant to Vibrant" in San Francisco)

ANALYSIS

The consultant recommendations below include near-term, medium-term, and long-term recommendations. The near-term (NT) items, 1-8 below, are anticipated to be implemented within six months. The medium-term (MT) items 9-13 are anticipated to be implemented within 18 months. The long-term (LT) items 14 and 15 are anticipated to be initiated over the next two to three years. The term or timeline starts with Council authorization and securing funding to authorize a consultant to proceed if needed. The rationale or justification for each recommendation is noted in the table (and briefly noted below). The PTC's 'two quick fixes' are the first two recommendations in the table.

1: Amend Parking Regulations to Allow/Exempt Change of Use/Conversion from Parking (NT)

As noted, this would be of particular benefit to properties lying outside the AB 2097 radii.

It removes a major constraint on changes of use to respond to market demands and effectively incentivizes retail and active, popular, retail-supportive uses. Consultant justification for this includes:

- Sites are already developed. Increased parking would come at expense of building area, desired uses, or amenities.
- Demand in excess of parking capacity is largely self-regulating in urbanized environments.
- People will use more distant alternative parking or not patronize the location. Becomes a business decision for the property owner.
- Provides relief for areas outside the influence of AB 2097.
- Allows property owners to experiment with new uses to fill in vacancies.

2: Relax the Formula Retail Restrictions (NT)

The recommendation is to only have franchise restrictions on restaurant uses and increase the threshold for 'franchise' from 10 to 50 such businesses in California or the United States. The item suggests the City might want to consider limiting the number of formula retail establishments in certain areas to ensure a balance between formula and non-formula uses.

Consultant justification for this item is:

- The City's existing rule for what constitutes a franchise is ten or fewer businesses in the U.S. and requiring a CUP effectively limits nearly all franchise businesses, limits innovation, and successful and attractive businesses from contributing to overall health and vibrancy.
- The existing rule assumes (without evidence) that franchises are harmful.
- The proposed revisions and limits would allow the best of such uses and avoid the worst aspects of large franchises.
- Many cities have established limits on the number of formula uses in certain areas to balance with non-formula uses.

3: Repeal the Retail Preservation Ordinance (RPO) Section 18.40.180 (NT)

The recommendation points out the redundancy with the Ground Floor (GF) and Retail (R) combining districts for University and California Avenue, and notes the PTC agreed the RPO is not needed beyond University and California Avenues.

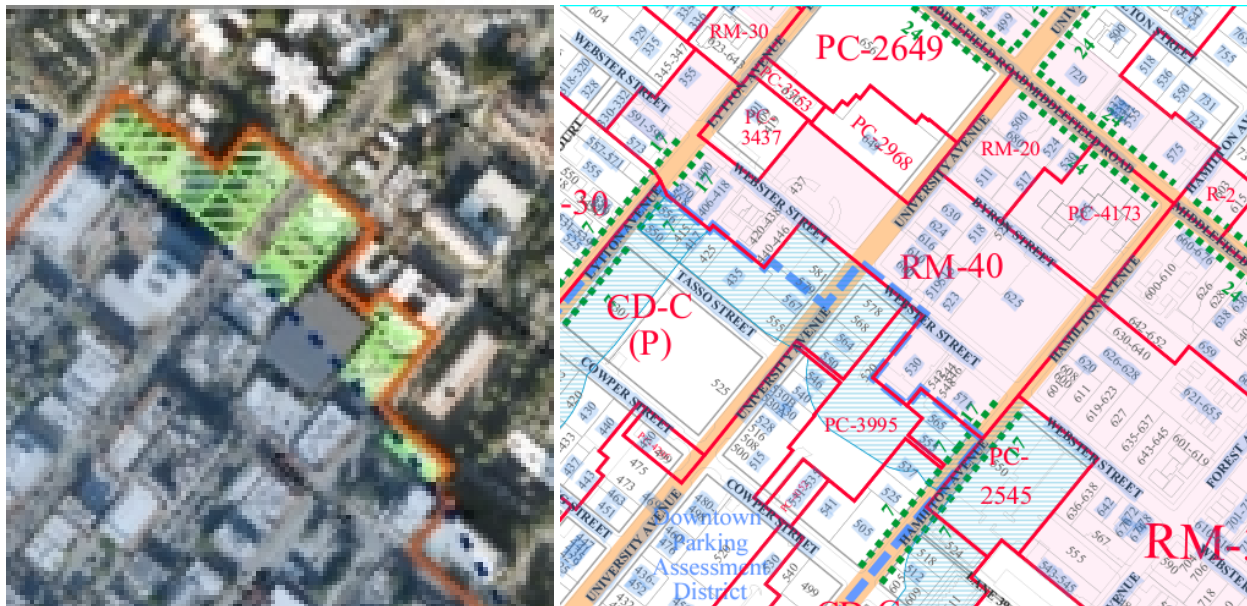
Consultant justification for this item is:

- The RPO (c. 2015) effectively extended the provisions of, and is redundant with, the GF and R Combining District limits for University and California Avenues, and Midtown. This leads to confusion, complication, excess floor retail floor area, and vacancies.
- A majority of the PTC agreed RPO is not needed beyond University and California Avenues.
- There is a need to allow a reduction of excess retail space city-wide.

- RPO may contribute to (requires) increased and prolonged vacancies and blighting effects.
- RPO may limit normal adjustments and responses to market demand; substantially limits natural concentrations and groupings of complementary uses.
- RPO appears to constrain business and property owners; limits options for reuse.
- Relief is effectively nonexistent and could be impossible via entirely subjective standards and criteria and virtually impossible standard of unconstitutional taking of all economic value of the property.

4: Amend Parking Regulations – Extend AB 2097 to the Entire CD-C Zone (NT)

This recommendation is to add the CD-C zoned parcels Downtown that are outside the radius of AB 2097; most of these parcels fall within the Downtown Parking Assessment District. Three parcels are outside of the assessment district. The justification is to ensure the 16 parcels would not have to follow the parking requirements at the “blended rate” of 1 space/250 square feet, and therefore create more equitable development conditions for all CD-C parcels.



Addresses that fall outside the AB 2097 radius are:

- Lytton: 550 and 556 (in parking assessment district but outside AB 2097)
- Tasso: 415, 417, 425, 435 (in parking assessment district but outside AB 2097)
- University:
 - 555, 567 (north side, in parking assessment district but outside AB 2097)
 - 570, 581 (north side, outside parking assessment district and outside AB 2097)
 - 546, 550, 564, 568, 578 (south side, in parking assessment district, outside AB 2097)
- Hamilton:
 - 537, 555, 565 (north side, within parking assessment district, outside AB 2097)
 - 524 (south side, outside parking assessment district and outside AB 2097)

The City Council is expected to have a discussion regarding AB 2097 during the August 12, 2024 Council meeting, which may also inform this discussion.

5: Create Comparative Zoning Use Table (Revise the What Use Where Handout) (NT)

MBI had prepared a table of uses permitted and conditionally permitted in the commercial districts and combining districts. The table was included as Appendix D beginning on packet page 138 of the May 8, 2024 PTC packet. Staff recently began updating the 'What Use Where' handout which had been pulled from the website when the "temporary" Ordinance #5517 was first adopted. The handout never included columns for the Retail and Ground Floor combining districts, as these were complicated with nuanced regulations not easily shown on a simple handout. The updated handout will reflect recent updates to zone district names (such as the change from RM15 to RM20), and Council's recent approval to extend Ordinance #5517.

Staff's update to the handout will be helpful as a basic document to then show an annotated version reflecting the MBI recommendations, if the PTC supports these. The handout is intended to improve stakeholders' understanding and ease of use, help identify internal conflicts, inconsistencies, gaps and opportunities to simplify and clarify the code and identify opportunities to consolidate, simplify, or eliminate excessive or redundant provisions.

6: Revise Chapter 18.30 Combining Districts to Allow Practical Waivers and Adjustments (NT)

This would amend the GF and R combining districts to use the Alternative Viable Use Standard (18.40.180(c)(1)(B)) from RPO. Midtown also is subject to GF combining district. This would eliminate the unconstitutional taking standard of section (a) Economic Hardship.

Consultant justification is that unconstitutional taking of all economic value standard is unreasonable and is a disproportionate and unrealistic standard. The proposed standard is a typical best practice. The proposed method of relief is proportionate to the potential impact.

7: Allow Non-Retail Uses on Ground Floor with Limitations: Part 1 (NT)

This would create a more flexible 'Retail-like' definition and use tables to allow non-retail uses at the non-street facing locations, on side streets, when vacancy exceeds 10% subject to limits.

Consultant justifications for this item include:

- Need to allow more retail-supportive uses on the ground floor.
- Allows more complementary uses on the ground floor while preserving the optimal street-facing spaces for active, pedestrian-oriented uses.
- Amended definition is based on the desired outcome, allowing new or innovative uses that are not otherwise listed or defined.
- Allows supplementary mechanisms to provide additional flexibility if needed to allow and encourage use of persistent and extensive ground floor vacancies.
- Conditional standards are not likely to be "gamed" if set at levels that reflect and justify the need for action and are not met easily or can be manipulated unilaterally by an individual business or property owner (e.g., if vacancies in the zoning district

exceed 10% for 12 months or more).

- Removes extra cost and delay of CUP for uses that are not obviously detrimental to the district's vitality, or uses whose potential operations and impacts do not vary greatly and are dependent upon the particular unique operation.

8: Allow Non-Retail Uses on Ground Floor with Limitations: Part 2 (NT)

This would increase fitness, spas, and exercise facilities floor area threshold for a CUP from 1,800 to 3,000 square feet to match the industry average and allow other viable active uses without a CUP such as pet grooming, beauty shops, nail salons, barbershops, small learning centers, day care and medical office with retail component, lifestyle, health services; and if necessary, require a CUP for certain uses in excess of a maximum size.

Consultant justification for this item is that a 3,000-square-foot facility is an industry standard size for exercise and fitness studios without a CUP and these uses generate strong foot traffic and sales to nearby uses.

9: Repeal or Amend Office Conversion and Construction Limitations (MT)

This item contains two different options. The first option is to repeal annual office limits. The second option is to relax PAMC Section 18.40.210 Annual Office Limits has three associated approaches:

- A. Repeal limits on upper-level office uses; Retain only office use conversion limits on ground level. Consider maximum percentage of the street-facing façade to ensure a minimum percentage for retail and retail-like uses; AND
- B. Allow ground-floor office uses behind retail frontages; AND
- C. Section 18.40.210 Annual Office Limit should be revised to replace the unconstitutional taking of all economic value standard of (e) Economic Hardship Waiver or Adjustment, with a practical difficulty standard like that recommended for the RPO, R and GF Combining Districts.

Consultant justifications for this item include:

- It is no longer necessary. Excessive vacancies (400,000+ square feet) of office uses are not a realistic or significant threat of forcing out retail.
- GF and R combining districts retain limits on office uses on the ground floor on University or California Avenues.
- Retaining and relaxing would retain 50,000 sf of new or converted office per year.
- Ensures balance of complementary uses. Similar technique used for the CN and CS Districts per 18.16.050(b)(1)(A).
- Upper-level office uses and workers are primary customers of University and California Avenues.
- Unconstitutional taking of all economic value standard for relief is too high, punitive, virtually impossible to achieve, and disproportionate to the real or perceived threat.

Staff notes this represents a departure from current City policy that may require further discussion and analysis; hence it is a mid-term recommendation.

10: Amend 18.16.050 Office Use Restrictions (CN, CS Districts) (MT)

This item is to eliminate or amend the 5,000-square-foot maximum office floor area per lot.

Consultant justifications for this item are that:

- This standard has no proportionality to the size of the lot and potentially creates severe inequities. It would only be okay if all the lots are the same size.
- Any limitation of office use floor areas should be proportionate to the size of the site or building to ensure an equitable impact allowed by the 25% FAR in section (b)(1)(A).

11: Amend Parking Regulations (MT)

Reduce minimum parking regulations and conduct use surveys toward resetting standards.

Consultant justification for this item, includes:

- Eliminates wasteful, underutilized, or excessive parking.
- Standards need to be based on actual demand.
- Standards do not need to and should not accommodate all potential demand.

12: Amend Parking Regulations (MT)

This item is to amend the parking requirements to implement the AB 2097 exemption of minimum parking requirements within a half mile of transit, for clarity. This recommendation is in progress since, on May 29, 2024, the PTC recommended code amendments referencing AB 2097 and as noted above, on August 12, 2024, the City Council is scheduled to discuss AB 2097 including the following items:

- (1) Enabling the city to require a TDM plan for all projects with reduced parking pursuant to California Government Code Section 65863.2 (AB 2097, 2022).
- (2) For projects within one-half mile of public transit, as defined in California Government Code Section 65863.2, no automobile parking shall be required, but loading a bicycle parking facilities shall be provided in accordance with this Section.
- (3) Projects providing no automobile parking pursuant to California Government Code Section 65863.2 shall provide at least one (1) on-site, short-term loading space for passenger vehicles, to be used by taxicabs and similar transportation and delivery services.
- (4) AB 2097 location boundaries and,
- (5) Discussion and possible direction regarding electric vehicle and accessible parking spaces.

13: Standards for Specified Retail Uses (MT)

This item is to amend Section 18.76.015 to replace subjective additional CUP approval criteria with objective standards or performance criteria. Consultant justifications for this item are:

- Provides certainty, accuracy, shorter and predictable approval processes and timelines. Existing standards are entirely subjective.
- These are fine as reasons to approve, but not as reasons to deny an application.

- They make proving compliance nearly impossible.

14: Amend Parking Regulations (LT)

This item suggests the City develop an ordinance to unbundle parking from the price of rent for qualifying residential properties, consistent with Assembly Bill AB 1317, which the Governor signed into law in October 2023 (Civil Code 1947.1). The state rule requires owners of rental properties consisting of 16 or more residential units to rent or sell parking spaces separately rather than automatically including the parking space rent within the rent, for properties that are issued a certificate of occupancy permit on or after January 1, 2025. The cited benefits of unbundling include that existing parking spaces will be more efficiently used, that non-drivers are not required to pay for parking they don't need and that the market value of land used as parking becomes clear. Though this item is noted as a long-term recommendation, there is the potential and perhaps a need for the item to be brought forward prior to January 1, 2025.

15: Comprehensive Zoning Ordinance Update (LT)

This item is long term recommendation that would require resources to accomplish, and includes the following components:

1. Conduct a comprehensive review, revision, and update of the zoning code to ensure it functions efficiently, equitably, and as intended.
2. Integrate the use and development standards of the combining districts into the use and development standard tables.
3. Reduce, simplify, and standardize the many and unnecessarily subtle differences and restrictions on personal service uses between the R and GF Combining Districts and the CD-C, CD-N, CS, and CC zones.
4. Streamline and standardize the standards. Reevaluate the need and effect of the precise standards and whether they are consistent with the broader goal of a health commercial corridor.
5. Amend the code to replace subjective criteria with objective standards.

Consultant justifications for this item include:

- The code should be clear, well-organized, intuitive, and user-friendly.
- The existing code is virtually unknowable, overly complex, internally inconsistent, and hard to understand, implement, and enforce.
- An updated code is important to overall understanding, implementation, and enforcement.
- An updated code is important to the ease of use and reputation of the City within the business community.

STAKEHOLDER ENGAGEMENT

The outreach included six stakeholder interviews with landowners, businesses, and Chamber of Commerce, peer city interviews with City of Santa Monica, City of Los Altos, City of Redwood City, and PTC Study Sessions and Ad Hoc PTC Sessions. During the many PTC meetings, there were very few public comments. There have not been any additional stakeholder interviews following the May 2024 PTC meeting. Public comments during the PTC meeting on August 14, 2024 will be shared with the Council Retail Committee and City Council.

The PTC had reviewed the Study but has not resumed its review began in 2022 of a 'permanent' ordinance to replace the interim ordinance. The PTC retail Ad Hoc Committee drafted a letter to the City Council but did not finish drafting the letter.

ENVIRONMENTAL REVIEW

The study does not represent a project under CEQA. No zoning ordinance changes have been prepared to date.

ATTACHMENTS

Attachment A: Recommended Zoning Amendments (Prepared by MBI)

Attachment B: Staff Report to Retail Committee May 15, 2024

Attachment C: June 17, 2024, Council Second Reading of Ordinance #5517 Extension

Attachment D: Unique and alternative/unique retail and active ground floor uses (MBI)

AUTHOR/TITLE:

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