

February 23, 2024

**VIA E-MAIL**

Honorable Mayor and Members of the City Council  
CITY OF PALO ALTO  
250 Hamilton Avenue  
Palo Alto, CA 94301

Re: **City Council Special Meeting – February 26, 2024 – Agenda Item #9:**

***“Proposed Approval of Two Contracts for Consultant Services for the  
Downtown Housing Plan [DHP]...”***

*Comments, Questions, and Objections*

Honorable Mayor and Members of the City Council:

According to the Council Agenda report, this Agenda Item suggests that the City Council should approve and authorize the execution of two contracts for consultant services – totaling nearly \$ 2 million – for “planning, consulting, and project management services” in order to “advance the Downtown Housing Plan [DHP] in a timely manner.”

This proposed action, however, appears to be misguided and premature. On behalf of many merchants, business, and property owners in the Downtown area, we respectfully take this opportunity to urge the Council to reject the current proposed consulting contracts, which would unwisely “put the cart before the horse.” Council should instead defer action on this item – and should avoid the waste of public money – unless and until the City has a final and approved version of its new Housing Element, and unless that Housing Element is amended to recognize that the City is not free to abandon or replace Downtown parking facilities with other uses (even desirable uses such as affordable housing.)

The proposed contracts would spend City money – nearly two million dollars – to work on the Downtown Housing Plan [DHP]. According to the Agenda report, that work would involve “implementing components of the [current draft] of 2023-2031 Housing Element.” It is our understanding that that current version of the proposed Housing Element has not yet been reviewed, much less approved, by the California Department of Housing & Community Development. It is therefore at least premature, and imprudent, for Council to make such a huge commitment of City funds for outside consultants to “implement” a non-final Housing Element which may well be subject to further revisions following the State’s review.

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Moreover, the Agenda report also states that these consulting contracts are intended to assist in implementation of the highly-questionable portion of that draft Housing Element known as “**Program 1.4 [“City-Owned Land Lots”]**.” That “Program 1.4” in the draft Housing Element, however, is based on the unfounded and legally-unsound assumption that the City is free to abandon or “replace” the existing Downtown surface parking lots, or to convert them to uses other than providing public parking to serve the Downtown community.

To the contrary, those parking lots have been acquired, improved, and maintained as a result of assessments imposed on the Downtown property owners and business. As pointed out in our letter to Council dated December 12, 2023 [**copy attached**], the City is not free to disregard the important rights of those who have for many years paid assessments to provide for the creation and preservation of well-located and convenient permanent Downtown parking facilities, or the commitments made by the City in order to secure the approvals of Downtown property owners for the formation and funding of the assessment district.

The Council should therefore reject – or at least defer action on – the proposed contracts. There is no reason for Council to act hastily to hire outside planners based to work on a DHP that is based on unfinished Housing Element and which is erroneously premised on the assumption that the consultants can “implement” a program improperly dependent upon the unlawful abandonment and replacement of existing parking facilities. Council is urged to direct Staff to consider other alternatives, and revise the scope of work included in the proposed contracts so as to provide feasible and lawful ways of attempting to address Council’s concerns about increasing the supply of housing in the Downtown area -- consistent with existing local policies and commitments and that will not harm the economic vibrancy of the Downtown community.

Thank you for your consideration of these concerns.

Very truly yours,

RUTAN & TUCKER, LLP



David P. Lanferman

cc: City Manager, *via email*  
City Attorney’s Office, *via email*

December 11, 2023

**VIA E-MAIL**

Honorable Mayor and Members of the City Council  
CITY OF PALO ALTO  
250 Hamilton Avenue  
Palo Alto, CA 94301

Re: **City Council Meeting – December 11, 2023 – Agenda Item #8:**

***“Direction to Pursue New Parking and Refined Proposals for Housing in the University Avenue Downtown, etc.”***

*Comments, Questions, and Objections*

Honorable Mayor and Members of the City Council:

We understand that this Agenda Item requests that the City Council “provide direction” to Staff with regard to two separate items:

(a) resuming efforts to provide a new parking structure at Lot D (formerly known as the “Downtown Parking Garage Project”), and

(b) the possibility of pursuing more detailed proposals for potential construction of new “affordable housing” projects on one or more of the existing surface parking lots located in the University Avenue downtown area.

While it is gratifying that the **first Item** confirms that City Staff recognizes the importance and need for the creation of more new off-street parking opportunities to serve the Downtown community, including a Downtown Parking Garage, the **second Item** on the Agenda – seeking guidance for the possible conversion and loss of existing parking lots – is very problematic. This letter highlights just a few of the more obvious failings and errors of that proposal.

On behalf of many merchants, business, and property owners in that Downtown area, including many who have been paying assessments for the acquisition, improvement and maintenance of those parking facilities for decades, we take this opportunity to call your attention to some of the many flaws, conflicts, and dangers posed by that extraordinary proposal. The proposal to replace vital Downtown parking facilities with housing is inconsistent with many land use plans and policies, and is in disregard of the rights and interests of the Downtown community served by the existing parking lots.

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The City's laudable and long-overdue efforts to provide suitable sites for housing, including "affordable" housing, should not be pursued at the expense of demolishing the critically-needed existing public parking resources strategically located throughout Downtown to serve the community. The recent approval of many curbside "parklets" has removed more than 100 previously-available parking spaces. The City's planned "University Streetscape Project" will also result in a reduction of the parking supply in Downtown. Even the Staff Report (p. 6) acknowledges the continuing critical need for adequate parking in the Downtown: "[D]emand for parking in the downtown has increased since the COVID-19 pandemic...."

Accordingly, with regard to the possibility of pursuing proposals to destroy one or more existing parking lots in speculative pursuit of a few, poorly-located, incredibly expensive, affordable housing units, we would respectfully urge Council to provide Staff with direction to "go back to the drawing board" and to come back with more reasonable, viable, and lawful plans consistent with the City's Comprehensive Plan and other controlling plans and policies.

Among the questions and problems most readily apparent from the Staff Report on this Item, are the following:

**1. There Is No Apparent Parking Strategy or Plan for Downtown.** When the Council suspended work on the former Downtown Parking Garage back in February 2019, the Council also "directed Staff ... to return ... with a broader parking management strategy and options to meet Downtown parking needs." (Staff Report, p. 2). Now, nearly five (5) years later, the City still has no strategy or plan "to meet Downtown parking needs." The second Item on this Agenda appears to be a proposal for nothing more than piecemeal action aimed solely at creating a few spots of misplaced housing at the expense of the existing Downtown community – and largely ignores "Downtown parking needs."

Far from presenting a coherent parking strategy for Downtown, the Staff's proposal for the destruction of the critically-needed existing Downtown parking facilities and imposition of new, non-conforming, high-density residential structures in their place is nothing more than narrowly-focused, uncoordinated, and patchworked "urban planning." The City's recent quest for more opportunities for residential development, though welcomed, should not become an excuse for shattering the character of the Downtown community or destroying the economic viability of the Downtown, which is highly-dependent upon the availability of adequate parking throughout the community in order to provide convenient access for vehicles and people.

As observed by a recent article by the American Planning Association offering guidance for municipal parking strategies:

Parking is not an island in itself; it's one element of a transportation program. On-street and off-street parking, transit, walking, biking, and curb management must

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be connected to plan for how many vehicles — and more importantly people — are provided access.<sup>1</sup>

**2. No Outreach to Downtown Stakeholders.** Thus far, there has been little or no public outreach to the Downtown community regarding the possible loss of the existing parking lots — even though those facilities have been paid for, in large part, by the business and property owners and the University Avenue Parking Assessment District over many years. Since this idea has reportedly been under consideration by Staff at least since December 2021, the lack of such public outreach over the past two years is of concern and tends to alienate those who stand to be most impacted by such radical transformation of the Downtown area.

**3. No Net Parking Loss:** The City’s own proposed new **Housing Element** (not yet approved by the California Department of Housing & Community Development) expressly requires “no net loss” of existing parking. Program 1.4(a) would ostensibly allow existing City surface parking lots to be redeveloped to “replace and add” parking while creating new housing opportunities, including affordable housing. Lot T reportedly provides 51 parking spaces at present, and the new housing structures would increase the need for parking in close proximity to the proposed new housing, at least 40 new additional spaces if a 1.0 space/unit ratio were to be applied (the City’s standard requirement for all multifamily residential). Where and how could at least 91+ new public parking spaces be provided in Downtown? The Municipal Code generally requires that any “off-site” parking required in connection with a development project must be at least within 500 feet of the project site.

**4. Location, location, location....** The Staff Report indicates that both the MidPen and Alta proposals would entail destruction of the existing surface parking at Lot T, loss of its 51 spaces, construction of new very tall residential structures, and “relocation” of parking spaces to an undisclosed “off-site” location. It is unclear whether or how such new and “re-located” off-site parking could be located in the Downtown area or would otherwise provide equivalent value and convenience as the existing Lot T serving Downtown. The need for parking is directly related to existing land uses in the Downtown, and such needs may not be served by random developer-provided parking spaces in remote parts of the City. For just one example, the loss of Lot T’s parking would immediately impact many nearby retailers including Sancho’s Taqueria, Vino Locale, Ike’s Love and Sandwiches and the high-traffic Apple retail store.

An important, and irreplaceable, feature of the existing Downtown parking is the “distributive” nature of the locations. The existing parking lots are well-located and distributed at strategic sites throughout the Downtown, providing accessibility and convenience for employees, visitors, customers and others. Such well-distributed parking is key to retail, hospitality, and office viability.

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<sup>1</sup> Nichols & Dorsett, AICP, “8 Ways to Launch Your Parking Strategy,” PLANNING MAGAZINE (APA, Sept 29, 2021).

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**5. Need for dramatic changes to applicable Zoning:** The Staff Report indicates that the proposed actions would require that the existing zoning and land use policies be substantially changed in order to pursue the possible construction of new tall housing structures – exceeding the existing zoning height limitations and increasing the density such as to require more intense Floor Area Ratios (FAR) than currently permitted. We believe that Lot T, for example, is currently zoned “PF: Public Facility.” “The PF designation is designed to accommodate governmental, public utility, educational, and community service or recreational facilities.” Currently, residential uses are not allowed on a PF zoned property, so a significant zone change would be required.

Other substantial deviations or changes to the City’s existing planning policies and zoning would likely also be required, i.e., Comprehensive Plan Policy L-5; Goal L-4.1 [“Encourage the upgrading and revitalization of selected Centers in a manner that is compatible with the character of surrounding neighborhoods, without loss of retail and existing small, local businesses.]; Policy B-4.5 [“Maintain distinct business districts as a means of retaining local services and diversifying the City’s economic base.”]

**6. Wide impacts of zoning changes:** It is likely that the City would not only need to change the zoning and other policies applicable to Lot T, but also as to many other similarly-situated properties, in order to avoid legal exposure to claims of unlawful spot zoning or arbitrary discrimination. Consequently, the zoning changes that would be necessary to accommodate housing on Lot T (or other existing parking sites) would likely need to be made applicable to wider areas of the City. A “domino effect” leading to many more tall, intensely-developed, office buildings and housing structures is a likely consequence, essentially transforming the Downtown area. The scope of these wide impacts would need extensive and careful study and public input.

**7. Environmental impacts and need for CEQA compliance:** To the extent that the feasibility of pursuing housing on the existing parking lots is dependent on the City being able to make necessary changes to the City’s Comprehensive Plan and Zoning Ordinance, the City would first need to conduct the appropriate environmental review of those proposed land use actions. Zoning changes, for example, are generally recognized as the type of discretionary “project” requiring detailed CEQA review and analysis. (Pub. Res. Code § 21080.)

**8. Disregard of the Rights and Interests of Downtown Assesseees:** The existing Downtown parking facilities have been paid for, in large part, by the owners of businesses and properties in the area by way of assessments approved by the owners based on the City’s representations and agreements that the funds would be used solely for the provision of publicly-accessible parking facilities serving the Downtown community. Although the Staff Report claims that the City holds “title to the fee interest” in the twelve (12) existing parking lots, the Downtown owners who have financed those lots over many years are the beneficial owners of those properties. The City merely has custodial rights, in the nature of a trustee, to manage the parking facilities for their committed parking uses, for the benefit of those who have paid for the parking facilities. The City would be at risk of being found in breach of those fiduciary responsibilities by attempting to unilaterally abandon the designated use of the sites for “parking” purposes and instead converting



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the use to housing, of any type, without compensation and without the consent of the assessed property owners.

**9. Fiscal Uncertainties:** The costs of realizing either of the proposed new housing on the existing public parking lots are speculative and enormous. There is no indication as to the source(s) of funding for the planning and public infrastructure that would be necessary to bring either proposal to reality. The Staff Report estimates that the costs to construct just the hypothetical new affordable housing units would be approximately \$1 million per unit – even if the City could legally contribute the site at no cost to the developers. In addition, the developers would be required to provide a suitable site to construct “replacement” public parking spaces. The Staff Report estimates that the costs of building the Downtown Parking Garage Project have escalated to approximately \$36 million. It also reports that the City has identified no more than \$12 million or so in accumulated “parking in-lieu fees” to fund that project (and Staff notes that even that amount is uncertain due to pending litigation requiring the City to refund at least part of those fees.)

Pursuant to the City’s own Municipal Code, the use of “parking in-lieu fees” that the City has previously collected, or may collect from future downtown non-residential development, is strictly limited: such fee may be used “only for construction of public parking spaces within the assessment district to serve the parking needs of the district created by the developments that paid the Fees.” (PAMC § 16.57.060).

The Staff Report does not adequately disclose or explain the sources of funding that would be required even to set the stage for pursuing the proposed affordable housing development in Downtown. Consequently, that second Item on the Agenda appears to be unrealistic and fiscally unsound. It has been suggested that this effort to envision new, very tall, high-density affordable housing construction in Downtown is little more than an effort to create the illusion of potentially “feasible” housing sites in order to temporarily appease the State HCD and help win approval for the new Housing Element.

### **Conclusion:**

As noted at the outset, we respectfully support Staff’s requests for direction to pursue reasonable and lawful efforts to provide additional public parking in Downtown, consistent with the City’s planning and zoning, as well as reasonable pursuit of appropriate and feasible sites for housing development.

However, we respectfully object to the request for Council authority to pursue the second part of this Agenda Item, i.e., the unreasonable, unrealistic, and potentially unlawful attempt to destroy and misuse the existing public parking facilities and allow the construction of non-conforming housing (of any type or affordability) on those sites. For the reasons summarized above, and for such other reasons as may be raised at the hearing on this matter, we would urge the Council to direct Staff to consider other alternatives, and give further consideration to other, feasible and lawful, ways of attempting to address Council’s concerns about increasing the supply

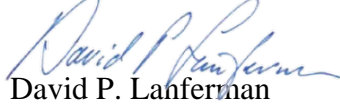
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of housing in the Downtown area consistent with existing local policies and commitments and that will not harm the economic vibrancy Downtown business owners are working so hard to maintain.

Thank you for your consideration of these concerns.

Very truly yours,

RUTAN & TUCKER, LLP

  
David P. Lanferman

cc: City Manager, *via email*  
City Attorney's Office, *via email*