

MEASURE C

CITY ATTORNEY'S IMPARTIAL ANALYSIS OF MEASURE C

This initiative ordinance would amend the Palo Alto Municipal Code to permit three medical marijuana dispensaries to operate in Palo Alto in any commercial or industrial zone subject to prescribed zoning criteria.

In 1996, California voters enacted Proposition 215, the Compassionate Use Act, which exempts patients and their primary caregivers from criminal liability under State law for possession and cultivation of marijuana for personal medical use. Subsequently, the State Legislature adopted the Medical Marijuana Program Act, which also exempts patients and caregivers who participate in medical marijuana collectives or cooperatives from State criminal liability for possession and cultivation.

The Federal Controlled Substances Act prohibits possession, cultivation, and distribution of marijuana. Federal law contains no exception for medical use.

In 1996, the City Council adopted an ordinance prohibiting medical marijuana dispensaries in Palo Alto. Currently, there are no dispensaries operating in Palo Alto.

The proposed ordinance would amend the Palo Alto Municipal Code as follows.

First, the ordinance would require the City to issue three medical marijuana dispensary permits, and to have three permits issued and outstanding at all times. Permits would be issued for one year and could be renewed annually.

The ordinance would require dispensaries to comply with certain operating requirements, including:

- dispensaries may only operate between 9:00am and 10:00pm;
- no person under 18 may be admitted unless the person is a patient and accompanied by a parent or guardian;
- no marijuana may be consumed on the premises;
- cultivation may occur on the premises provided it occurs in a "secure, locked, and fully enclosed structure, including a ceiling, roof or top," and
- the facility must provide adequate security.

Second, the ordinance would allow medical marijuana dispensaries in any commercial or industrial zone, except that no dispensary would be permitted within 150 feet of any residential zone, within 600 feet of any public or private school, or within 500 feet of any public library, public park, licensed day care center, or substance abuse rehabilitation center.

Third, the ordinance would impose a tax of 4 cents per dollar on the gross receipts of all medical marijuana dispensaries.

The establishment and regulation of medical marijuana dispensaries has been the subject of extensive litigation that is ongoing. As of August 21st, there are four cases pending before the California Supreme Court relating to cities' ability to permit, regulate or ban medical marijuana dispensaries.

CITY ATTORNEY'S IMPARTIAL ANALYSIS OF MEASURE C - Continued

The Charter provides that initiative measures go into effect 10 days after the Council conducts the official canvass of the election.

A vote "For the Ordinance" will amend the Palo Alto Municipal Code to permit three medical marijuana dispensaries to operate in Palo Alto in any commercial or industrial zone subject to prescribed zoning criteria. A vote "Against the Ordinance" will not amend the Municipal Code.

This ordinance will become effective if a majority of those voting on the measure vote in favor.

Dated: August 21, 2012

/s/ Molly S. Stump
City Attorney

COMPLETE TEXT OF MEASURE C

Notice of Intent to Circulate Initiative Petition

Notice is hereby given of the intention of the persons whose names appear hereon to circulate an initiative petition within the City of Palo Alto for the purpose of authorizing three medical marijuana dispensaries within the city, taxing sales, and regulating the time, place and manner of sales. A statement of the reasons of the proposed action as contemplated in said petition is as follows:

THIS ORDINANCE WILL HELP THE TERMINALLY ILL IN OUR COMMUNITY

This proposed ordinance would allow our neighbors, who are seriously or terminally ill, to legally and safely obtain marijuana near their home, if they have the approval of their physician. Proposition 215 was passed by California voters in 1996 with over 5 million votes, and yet Palo Alto has failed to implement the law. 15 years is long enough. Terminally ill patients, many of whom are elderly, are faced with a Hobson's choice of buying marijuana illegally, or traveling many miles to a city that has a dispensary. Marijuana is not a cure, but it can help cancer patients. Many have severe reactions to the disease and chemotherapy, including nausea. One in three patients discontinues chemo due to these side effects, despite a significant chance of improvement. When standard anti-nausea drugs fail, marijuana often eases patients' nausea and allows continued treatment.

THE TAXES GENERATED BY SALES CAN SAVE MANY JOBS OF OUR PUBLIC SAFETY WORKERS AND TEACHERS

A similar ordinance in San Jose generated \$290,000 in the first month! Think how many police, firefighters, teachers and libraries that would support. We have a choice: capture these taxes for our city or continue to lose them to neighboring municipalities. The ordinance will tax marijuana sales and place the revenue in the city's general fund. This will be in addition to any local sales taxes generated. The ordinance urges the City Council to use the revenue for public safety and education.

THE THREE DISPENSARIES WILL BE RESTRICTED TO APPROPRIATE LOCATIONS

The law will limit the number of dispensaries to three. The dispensaries cannot be located in a residential area, or near a school, park or day care center. Anyone wishing to operate a dispensary must meet strict qualification requirements.

MARIJUANA HELPS MORE THAN CANCER PATIENTS

University doctors and researchers have found that marijuana is also effective in: lowering the pressure inside the eye associated with glaucoma, slowing the onset of blindness, and alleviating muscle problems and chronic pain due to multiple sclerosis, epilepsy and spinal cord injuries.

Shouldn't our city support physicians who prescribe a medicine capable of relieving suffering?

Marijuana is not a cure. But often it is the only way to get relief. A Harvard University survey found that almost half of oncologists nationwide would prescribe marijuana to their patients if it were legal in their state.

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PLEASE JOIN US BY SIGNING THE PETITION!

Thomas Gale Moore, Ph.D. Cassandra Chrones Moore, Ph.D.

Petition for Submission to Voters of Proposed Amendments to the Municipal Code of the City of Palo Alto

To the City Council of the City of Palo Alto:

We, the undersigned, registered and qualified voters of the State of California, residents of the City of Palo Alto, California, hereby propose amendments to the Palo Alto Municipal Code, relating to medical marijuana, and present to the City Council this petition and request that the City Council either pass the ordinance without alteration or submit the same to the registered and qualified voters of the City for their adoption or rejection at a special election held in 2011, if the petition contains sufficient signatures. The proposed amendments read as follows:

Text of Proposed Ordinance

ORDINANCE OF THE CITY OF PALO ALTO AMENDING TITLE 2 OF THE PALO ALTO MUNICIPAL CODE TO ADD A NEW CHAPTER 2.49 MEDICAL MARIJUANA DISPENSARY GROSS RECEIPTS TAX; AMENDING TITLE 4 OF THE PALO ALTO MUNICIPAL CODE TO ADD A NEW CHAPTER 4.20 MEDICAL MARIJUANA DISPENSARIES; AND AMENDING TITLE 18 OF THE PALO ALTO MUNICIPAL CODE TO ADD A NEW CHAPTER 18.45 MEDICAL MARIJUANA DISPENSARIES.

WHEREAS, California voters approved Proposition 215 in 1996, the Compassionate Use Act ("CUA"), to exempt seriously ill patients and their primary caregivers from criminal liability for possession and cultivation of marijuana for medical purposes; and

WHEREAS, the Legislature enacted the Medical Marijuana Program Act of 2003 ("MMPA") providing for the association of primary caregivers and qualified patients to cultivate marijuana for specified medical purposes and also authorizing local governments to adopt and enforce laws consistent with its provisions; and

WHEREAS, the City of Palo Alto has a compelling interest in ensuring that marijuana is not distributed in an illicit manner, in protecting the public health, safety and welfare of its residents and businesses, in preserving the peace and quiet of the areas in which medical marijuana cooperatives and collectives operate, and in providing compassionate access to medical marijuana to its seriously and terminally ill residents; and

WHEREAS, the People of the City of Palo Alto express their preference that the City Council consider using the general tax funds generated by this ordinance for education and public safety, two areas hit very hard by the recent recession;

NOW, THEREFORE, the People of the City of Palo Alto do ORDAIN as follows:

SECTION 1: TITLE 2 of the Palo Alto Municipal Code is amended by adopting a new Chapter 2.49 to read as follows:

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2.49 MEDICAL MARIJUANA DISPENSARY GROSS RECEIPTS TAX.

2.49.010 Purpose and Intent.

(a) Through the passage of the Compassionate Use Act of 1996 ("CUA"), codified as Health and Safety Code section 11362.5, the voters of California authorized the limited use of marijuana for medical purposes.

(b) The City of Palo Alto desires to tax medical marijuana dispensary donations, transactions and sales as a specific category subject to a gross receipts tax, in addition to any otherwise generally applicable tax, imposed on businesses within the City of Palo Alto.

2.49.020 Definitions and Construction.

Any reference to California statutes includes any regulations promulgated thereunder and is deemed to include any successor or amended version of the referenced statute. All definitions set forth in Health & Safety Code section 11362.7, including but not limited to the terms "attending physician," "person with an identification card," "primary caregiver," "qualified patient," "identification card," and "serious medical condition," shall apply under this chapter in addition to the definitions set forth as follows:

(a) "City Manager" means the City Manager for the City of Palo Alto or designee.

(b) "Gross receipts," except as otherwise specifically provided, means the total amount actually received or receivable from all donations, transactions, and sales; the total amount or compensation actually received or receivable for the performance of any act or service, of whatever nature it may be, for which a charge is made or credit allowed, whether or not such act or service is done as a part of or in connection with the sale of materials, goods, wares or merchandise; discounts, rents, royalties, fees, commissions, dividends, and gains realized from trading in stocks or bonds, however designated. Included in "gross receipts" shall be all receipts, cash, credits and property of any kind or nature, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, interest paid or payable, or losses or other expenses whatsoever, except that the following shall be excluded therefrom:

1. Cash discounts allowed and taken on sales;
2. Credit allowed on property accepted as part of the purchase price, and which property may later be sold, at which time the sales price shall be included as gross receipts;
3. Any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser;
4. Such part of the sale price of any property returned by purchasers to the seller as refunded by the seller by way of cash or credit allowances or return of refundable deposits previously included in gross receipts;
5. Receipts from investments where the holder of the investment receives only interest and/or dividends, royalties, annuities and gains

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from the sale or exchange of stock or securities solely for a person's own account, not derived in the ordinary course of a business;

6. Receipts derived from the occasional sale of used, obsolete or surplus trade fixtures, machinery or other equipment used by the taxpayer in the regular course of the taxpayer's business;

7. Cash value of sales, trades or transactions between departments or units of the same business;

8. Whenever there are included within the gross receipts amounts which reflect sales for which credit is extended and such amount proved uncollectible in a subsequent year, those amounts may be excluded from the gross receipts in the year they prove to be uncollectible; provided, however, if the whole or portion of such amounts excluded as uncollectible are subsequently collected, they shall be included in the amount of gross receipts for the period when they are recovered;

9. Transactions between a partnership and its partners;

10. Receipts from services or sales in transactions between affiliated corporations. An affiliated corporation is a corporation:

(i) The voting and nonvoting stock of which is owned at least eighty percent (80%) by such other corporation with which such transaction is had;

(ii) Which owns at least eighty percent (80%) of the voting and nonvoting stock of such other corporation; or

(iii) At least eighty percent (80%) of the voting and nonvoting stock of which is owned by a common parent corporation which also has such ownership of the corporation with which such transaction is had.

11. Transactions between a limited liability company and its member(s), provided the limited liability company has elected to file as a subchapter K entity under the Internal Revenue Code and that such transaction(s) shall be treated the same as between a partnership and its partner(s);

12. Receipts of refundable deposits, except that such deposits when forfeited and taken into income of the business shall not be excluded when in excess of one dollar (\$1); and

13. Amounts collected for others where the business is acting as an agent or trustee and to the extent that such amounts are paid to those for whom collected. These agents or trustees must provide the City Manager with the names and the addresses of the others and the amounts paid to them. This exclusion shall not apply to any fees, percentages, or other payments retained by the agent or trustees.

"Gross receipts" subject to the medical marijuana dispensary tax shall be only that portion of gross receipts relating to business conducted within the City of Palo Alto.

(c) "Marijuana" shall have the same definition as set forth in Health and Safety Code 11018.

(d) "Medical marijuana" is defined in Title 4, section 4.20.020.

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(e) "Medical marijuana dispensary" is defined in Title 4, section 4.20.020.

(f) "Medical marijuana dispensary tax" means the gross receipts tax payable to the City by a medical marijuana dispensary pursuant to this chapter.

(g) "Person" means, without limitation, any natural individual, organization, firm, trust, common law trust, estate, partnership of any kind, association, syndicate, club, joint stock company, joint venture, limited liability company, corporation (including foreign, domestic, and nonprofit), municipal corporation (other than the City of Palo Alto), cooperative, receiver, trustee, guardian, or other representative appointed by order of any court.

2.49.030 Medical Marijuana Dispensary Gross Receipts Tax.

(a) Every medical marijuana dispensary shall pay a medical marijuana tax of four percent (4%) for each dollar of its gross receipts.

(b) The tax imposed by this section is imposed for general governmental purposes.

2.49.040 Payment; Time Limits.

The tax imposed by this Chapter shall be due and payable as follows:

(a) Each person owing a tax under this Chapter shall, on or before the last day of each calendar month, prepare a tax return to the City Manager of the total gross receipts and the amount of tax owed for the preceding calendar month. At the time the tax return is filed, the full amount of the tax owed for the preceding calendar month shall be remitted.

(b) All tax returns shall be completed on forms provided by the City Manager, which shall elicit only that information necessary to calculate and collect the taxes due under this chapter.

(c) Tax returns and payments for all outstanding taxes owed the City are immediately due the City Manager upon cessation of business for any reason.

2.49.050 Payment; When Taxes Deemed Delinquent; Penalties and Interest; Audit.

(a) Unless otherwise specifically provided under other provisions of this Chapter, the taxes required to be paid pursuant to this Chapter shall be deemed delinquent if not paid on or before the due date specified in Section 2.49.040.

(b) Any person who fails or refuses to pay the tax required to be paid pursuant to this Chapter for more than fifteen days after the due date shall pay a penalty equal to five percent (5%) of the amount of the tax in addition to the amount of the tax, plus interest on the unpaid tax calculated from the due date of the tax at a rate of ten percent (10%) per annum.

(c) Whenever a check is submitted in payment of the tax, and the check is subsequently returned unpaid by the bank upon which the check is drawn, and the check is not redeemed prior to the due date,

COMPLETE TEXT OF MEASURE C - Continued

the taxpayer will be liable for the tax amount due plus penalties and interest as provided for in Subsection (a) above.

(d) The tax due shall be that amount due and payable from the first date on which the person was issued a permit by the City.

(e) The City Manager may waive the penalties imposed upon any person, if the person provides evidence that failure to pay timely was due to circumstances beyond the control of the person and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, and the person paid the delinquent tax and accrued interest owed the City prior to applying for a waiver.

(f) The City Manager shall have the power to audit and examine quarterly the relevant books and records of a medical marijuana dispensary, including both state and federal income tax returns, California sales tax returns, or other evidence documenting the dispensary's gross receipts.

SECTION 2: Title 4 of the Palo Alto Municipal Code is amended by adopting a new Chapter 4.20 to read as follows:

4.20 MEDICAL MARIJUANA DISPENSARIES.

4.20.010 Purpose and Intent.

(a) It is the purpose and intent of this ordinance to promote the health, safety, and general welfare of the residents and businesses within the City of Palo Alto by taxing, regulating, and limiting the number of medical marijuana dispensaries. It is neither the intent nor effect of this ordinance to restrict or deny qualified patients access to marijuana for medical purposes as intended by the passage of the Compassionate Use Act of 1996.

(b) The Medical Marijuana Program Act of 2003 allows cities to adopt and enforce rules and regulations consistent with the Compassionate Use Act. The impacts of medical marijuana dispensaries are documented in the "White Paper on Marijuana Dispensaries" published by the California Police Chiefs Association's Task Force on Marijuana Dispensaries (April 22, 2009), and the United States Department of Justice's California Medical Marijuana Information report (October 19, 2009). The City of Palo Alto neither condones nor condemns the use of marijuana. This ordinance is enacted as a health and safety measure pursuant to the City's police powers as prescribed in Article XI, Section 7 of the California Constitution.

4.20.020 Definitions and Construction.

Any reference to California statutes includes any regulations promulgated thereunder and is deemed to include any successor or amended version of the referenced statute. All definitions set forth in Health and Safety Code section 11362.7, including, but not limited to, the terms "attending physician," "person with an identification card," "primary caregiver," "qualified patient," "identification card," and "serious medical condition," shall apply under this chapter, in addition to the definitions set forth as follows:

(a) "Applicant" means a person who files an application for a medical marijuana dispensary permit under this chapter.

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(b) "City Clerk" means the City Clerk for the City of Palo Alto or designee.

(c) "City Manager" means the City Manager for the City of Palo Alto or designee.

(d) "Cultivation of Medical Marijuana" means the growing of medical marijuana for medical purposes in accordance with Health and Safety Code sections 11362.5 and 11365.7 et seq.

(e) "Dispensary" shall have the same definition as "medical marijuana dispensary," as set forth in this section.

(f) "Dispensary area" means the dispensary property and the area within 100 feet of the dispensary property.

(g) "Dispensary building" means the building or portion of a building within which a dispensary is operated.

(h) "Dispensary permit" means a medical marijuana dispensary permit.

(i) "Dispensary property" means the parcel of real property or portion of the parcel of real property that is owned or leased by a dispensary and upon which a dispensary is operated.

(j) "Guidelines" means the "Guidelines For The Security and Non-Diversion of Marijuana Grown for Medical Use," issued by the California Attorney General in August 2008, as may be amended from time to time.

(k) "Management member" means a member with responsibility for the establishment, registration, supervision, or oversight of the operations of a medical marijuana dispensary, including but not limited to, a member who is, or performs the functions of, a board member, director, officer, owner, operating officer, or manager of the dispensary.

(l) "Marijuana" shall have the same definition as set forth in Health and Safety Code section 11018.

(m) "Medical Marijuana" means marijuana used for medical purposes in accordance with Health and Safety Code sections 11362.5 and 11362.7 et seq.

(n) "Medical marijuana dispensary" means a cooperative or collective of four or more members who associate at a particular location or real property to collectively or cooperatively distribute marijuana to members for medical purposes, and operate on a not-for-profit basis, consistent with California Health and Safety Code section 11362.5 and 11362.7 et seq., the Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use issued by the California Attorney General in August 2008, and this chapter. A medical marijuana dispensary shall not include the following uses: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code; a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code; a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code; a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code; and a residential hospice or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety

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Code, as long as any such use complies with applicable laws including, but not limited to, California Health and Safety Code section 11362.5 and 11362.7 et seq., and the City of Palo Alto Charter and Municipal Code.

(o) "Medical Marijuana Dispensary Permit" means a permit that authorizes a medical marijuana dispensary to operate within the City.

(p) "Member" means any qualified patient, primary caregiver, or person with an identification card who is registered with a medical marijuana dispensary.

(q) "Operate a dispensary" means to engage in or conduct the business of a dispensary, including, but not limited to, distributing medical marijuana and maintaining the facilities of a dispensary.

(r) "Permittee" means a person that holds a valid medical marijuana dispensary permit from the City of Palo Alto.

(s) "Person" means, without limitation, any natural individual, organization, firm, trust, common law trust, estate, partnership of any kind, association, syndicate, club, joint stock company, joint venture, limited liability company, corporation (including foreign, domestic, and nonprofit), municipal corporation (other than the City of Palo Alto), cooperative, receiver, trustee, guardian, or other representative appointed by order of any court.

(t) "Physician" means a licensed medical doctor as defined in California Business and Professions Code section 4039.

4.20.030 Enforcement of Chapter.

The City Manager shall have the responsibility and duty for enforcement of this chapter.

4.20.040 Medical Marijuana Dispensary Permit; Deadline for Applications.

(a) No person shall operate a medical marijuana dispensary unless the person holds a medical marijuana dispensary permit issued by the city pursuant to this chapter.

(b) An applicant for a proposed medical marijuana dispensary shall apply for a medical marijuana dispensary permit on an application form provided by the City and shall submit a non-refundable dispensary permit application fee of ten thousand dollars (\$10,000). To be eligible to receive one of the City's three (3) medical marijuana dispensary permits, applicants must submit to the City Clerk a medical marijuana dispensary application and dispensary application fee no later than fifteen (15) days after the operative date of this ordinance.

(c) The fact that an applicant possesses other types of permits or licenses from the State of California, County of Santa Clara or City of Palo Alto shall not exempt the applicant from the obligation to obtain a medical marijuana dispensary permit under this chapter, nor shall the terms and conditions of any other such permit or license modify the requirements of a dispensary permit granted under this chapter.

4.20.050 Limit on Number of Permits; Dates of Issuance.

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(a) The City of Palo Alto shall, as soon as is practicable following the operative date of this ordinance, issue three (3) medical marijuana dispensary permits.

(b) No person shall receive more than one (1) medical marijuana dispensary permit.

(c) The City of Palo Alto shall have no fewer than, and no more than, three (3) dispensary permits issued and outstanding at all times after the initial period described in Subsection (a).

4.20.060 Applicant Qualifications.

(a) Every management member of a dispensary shall be at the time the application or renewal is submitted:

1. At least twenty-one (21) years of age; and
2. A resident of the State of California.

(b) To ensure the health, safety, and welfare of the citizens and businesses of the City of Palo Alto, an applicant shall meet the following qualifications, and affirm the truthfulness of each separately on the application or renewal form:

1. No management member of the applicant has ever operated, managed, or participated in a medical marijuana dispensary in the City of Palo Alto without a permit, license, authorization, or other entitlement for use issued by the City of Palo Alto;

2. A management member of the applicant has at least twelve (12) months of experience as a board member, director, officer, owner or operating officer of a medical marijuana cooperative or collective registered or permitted as a medical marijuana dispensary by a city, county, or city and county within the State of California; and

3. No management member of the applicant has been convicted of a misdemeanor involving moral turpitude, or a felony. This requirement shall not apply to any conviction or plea of guilty or *nolo contendere* under federal law for an act that was lawful at the time under the Compassionate Use Act or The Medical Marijuana Program Act.

4.20.070 Applications.

(a) The applicant for a medical marijuana dispensary permit or renewal shall submit to the City Manager an application, provided by the City Manager. The application shall be made under penalty of perjury and shall include the following information:

1. A description of the statutory entity or business form that will serve as the legal structure for the medical marijuana dispensary and a copy of its business formation and organizing documents.

2. The name, address, telephone number, title, function(s) and copy of a valid government issued form of photo identification for each management member.

3. The address to which notice of action on the application is to be mailed;

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4. Written proof that the applicant and all management members are at least twenty-one (21) years of age;

5. A list of each misdemeanor involving moral turpitude or felony conviction, if any, of any management member of the applicant;

6. Number of employees, volunteers, and other persons who will work or provide services at the medical marijuana dispensary;

7. A plan describing how the medical marijuana dispensary will operate consistent with state law and the provisions of this chapter, including controls to ensure medical marijuana is only distributed to qualified patients or primary caregivers; and

(b) Each management member shall consent to fingerprinting and a criminal background check.

(c) The applicant shall include a description of the proposed location, including the street address and parcel number, the square footage, the number of expected members, and the characteristics of the neighborhood or surrounding area.

(d) The applicant shall provide a current copy of its business operations tax certificate and state sales tax seller's permit.

(e) The applicant shall authorize the City Manager to seek verification of the information contained in the application.

(f) If the applicant has completed the application improperly, or if the application is incomplete, the City Manager shall within ten (10) business days of receipt of the original application notify the applicant of such fact in writing, detailing any deficiencies, and allow the applicant a reasonable amount of time to submit an amended application correcting any deficiencies.

4.20.080 Granting or Denial of Permit Application.

The City Manager shall either grant or deny a dispensary permit within 30 days from the date the application is submitted to the city and deemed complete.

4.20.090 Priority of Applicants.

If there are more than three (3) applicants for dispensary permits who meet all of the requirements of this ordinance, the City Manager shall give priority in awarding the dispensary permits to any applicant that provides documentary evidence that, at any time after the passage of the Compassionate Use Act (Proposition 215) in 1996, the applicant applied for and was denied or refused a permit, business license, use or occupancy permit, zoning permit, other entitlement for use, or its equivalent by the City of Palo Alto to operate a medical marijuana dispensary in the City. Such applicants shall be given priority in the order of denial or refusal, from earliest to most recent. For example, an applicant who applied for a permit on May 1, 1997, shall be given priority over an applicant who applied for a permit on May 1, 2000.

4.20.100 Grounds for Denial of Permit.

A medical marijuana dispensary permit shall be granted or renewed unless the applicant or permit holder has not complied with the requirements of this ordinance, or any of the following apply:

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(a) The applicant knowingly made a false statement of material fact or has knowingly omitted to state a material fact in the application for a medical marijuana dispensary permit.

(b) The applicant or permit holder has not paid any applicable application or renewal fees.

(c) The City of Palo Alto already has three (3) medical marijuana dispensary permits in use.

4.20.110 Requests for Reconsideration.

(a) If the City Manager denies, suspends, revokes, or does not renew a dispensary permit, written notice of such action shall be served on the applicant or permit holder. The notice shall contain:

1. A brief statement of the grounds for the action.
2. A statement that the applicant may request reconsideration of the action, in writing to the City Manager, within ten (10) days of the date of service of the notice.
3. A statement that the failure to request reconsideration of the action will constitute a waiver of all rights to further City or judicial review, and that the action will become final.

(b) If the applicant properly files a request for reconsideration, the City Manager shall set the date of the hearing within 30 days from the date the request is filed. The hearing shall be conducted by the City Manager.

(c) Failure to properly file a written request for reconsideration of the notice of denial within ten days of the date of service of the notice shall constitute a waiver of all rights to a hearing, and the City Manager's decision shall be final. Failure to properly and timely file a request for reconsideration of the notice of the action of the City Manager shall also constitute a failure to exhaust administrative remedies and bar any judicial action pertaining to the City Manager's decision.

(d) If the applicant files a proper request for reconsideration but fails to appear at the hearing, the request for reconsideration is deemed abandoned, and the decision of the City Manager is final and may not be further appealed. Failure to appear at the hearing constitutes a waiver of all rights to a hearing and shall also constitute a failure to exhaust administrative remedies and bar to any judicial action pertaining to the City Manager's decision.

(e) Hearings need not be conducted according to the technical rules relating to evidence and witnesses. Government Code section 11513, subdivisions (a), (b) and (c) shall apply to hearings under this chapter.

(f) Oral evidence shall be taken only upon oath or affirmation.

(g) Each party shall have these rights:

1. To call and examine witnesses on any matter relevant to the issues of the hearing;
2. To introduce documentary and physical evidence;

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3. To cross-examine opposing witnesses on any matter relevant to the issues of the hearing;

4. To impeach any witness regardless of which party first called the witness to testify;

5. To rebut the evidence presented against the party; and

6. To represent himself, herself, or itself or to be represented by anyone of his, her, or its choosing, regardless of whether the person is an attorney.

(h) In reaching a decision after reconsideration, official notice may be taken, either before or after submission of the case for decision, of any fact that may be judicially noticed by the courts of this state or that may appear in any of the official records of the City or any of its departments.

(i) If it is shown, by clear and convincing evidence, that one or more grounds exist to deny, suspend, revoke, or not renew a dispensary permit, the City Manager shall uphold the original decision. The decision of the City Manager shall be in writing and shall contain findings of fact and a determination of the issues presented.

(j) The decision shall inform the appellant that the decision is a final decision and that the time for judicial review is governed by California Code of Civil Procedure Section 1094.6. Copies of the decision shall be delivered to the parties personally or sent by certified mail to the address shown on the appeal. The decision shall be final when signed by the hearing examiner and served as provided in this section.

(k) Written notice of the decision of the City Manager shall be served on the applicant within ten days following the hearing.

4.20.120 Judicial Review.

Judicial review of a final decision after reconsideration may be had by filing a petition for a writ of mandate with the Superior Court in accordance with Code of Civil Procedure section 1094.5 and 1094.6. Any such petition shall be filed within ninety (90) calendar days after the day the decision becomes final.

4.20.130 Commencement of Operations; Plan Submission Requirements.

(a) A permitted dispensary shall provide the following to the City within 45 days of commencing operations:

1. Accessibility Plan. A written evaluation of accessibility by the physically disabled to and within the building and identification of any planned accessibility improvements to comply with all state and federal disability access laws, including, but not limited to, Title 24 of the California Code of Regulations and the Americans with Disabilities Act. The evaluation must be prepared by a licensed civil engineer or architect.

2. Security Plan. A security plan, prepared by a qualified professional, outlining the measures that will be taken to ensure the safety of persons and to protect the dispensary property from theft.

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3. **Floor Plan.** A scaled floor plan for each level of the entire building showing the interior configuration of the dispensary building, including a statement of the total floor area occupied by the dispensary. The floor plan must include entrances, exits, restrooms, waiting area, office space, storage, and area for distributing marijuana to members. The floor plan must be prepared by a licensed civil engineer or architect.

4. **Site Plan.** A scaled site plan of the parcel of real property on which the dispensary building is located, including the outline of all structures, driveways, parking and landscape areas, and boundaries of the parcel. The site plan must be prepared by a licensed civil engineer or architect.

5. **Neighborhood Context Map.** An accurate straight-line drawing depicting the boundaries of the dispensary property, the boundaries of all other properties within 1000 feet of the dispensary property. The map must be prepared by a licensed civil engineer or architect.

6. **Lighting Plan.** A lighting plan showing existing and proposed exterior and interior lighting levels that would be the minimum necessary to provide adequate security lighting for the use.

7. A copy of the dispensary's commercial general liability insurance policy.

(b) If the applicant fails to submit any of the information required by this section by the deadline, the City Manager shall notify the dispensary to cease operations until the information is submitted.

4.20.140 Operating Requirements.

A medical marijuana dispensary, once permitted by the City Manager, shall meet the following operating standards:

(a) A medical marijuana dispensary shall be open for business only between the hours of 9:00 a.m. and 10:00 p.m. on any particular day.

(b) A medical marijuana dispensary shall maintain a current register of the names of all employees employed by the medical marijuana dispensary.

(c) A medical marijuana dispensary shall maintain a current register of all qualified patients, persons with identification cards and primary care givers to whom it provides or distributes medical marijuana. Once documented the qualified patients, persons with identification cards and primary caregivers shall be "members" of the medical marijuana dispensary. The medical marijuana dispensary shall further maintain records of all patients and primary caregivers using the identification card number only when issued by the county, or its agent, pursuant to California Health and Safety Code section 11362.7 et seq., so as to protect the confidentiality of the cardholders, or a copy of the written recommendation from a physician stating the need for medical marijuana.

(d) The building entrance to a medical marijuana dispensary shall clearly and legibly have posted a notice indicating that persons under the age of eighteen (18) years are precluded from entering the medical marijuana dispensary, unless they are a qualified patient and

COMPLETE TEXT OF MEASURE C - Continued

accompanied by their parent or guardian.

(e) No marijuana shall be smoked, ingested or otherwise consumed on the premises of the medical marijuana dispensary. The term "premises" includes the actual building, as well as any accessory structures, parking areas, or other immediate surroundings. Notice shall be clearly and legibly posted within the premises of a medical marijuana dispensary that smoking, ingesting or consuming marijuana on the premises of the medical marijuana dispensary or in the vicinity of the medical marijuana dispensary is prohibited.

(f) Any cultivation of medical marijuana or processing of medical marijuana conducted by the medical marijuana dispensary shall at all times occur in a secure, locked, and fully enclosed structure, including a ceiling, roof or top.

(g) No medical marijuana dispensary shall sell, provide or dispense alcoholic beverages at the medical marijuana dispensary.

(h) A medical marijuana dispensary shall provide adequate security on the medical marijuana dispensary premises, including lighting and alarms, to ensure the safety of persons and to protect the premises from theft.

(i) A medical marijuana dispensary shall provide litter removal services once during each day of operations on and in front of the premises and, if necessary, on public sidewalks within one hundred (100) feet of the medical marijuana dispensary premises.

(j) A medical marijuana dispensary shall not cultivate, distribute or sell medical marijuana for a profit. A medical marijuana dispensary may receive compensation for its actual expenses, including reasonable compensation for service provided, or for payment of out-of-pocket expenses incurred in providing those services. However, any such medical marijuana dispensary must pay the applicable sales or use tax on such sales or services and maintain the applicable seller's permit or similar permit from the State Franchise Tax Board or other applicable agency.

(k) A medical marijuana dispensary shall meet all of the operating criteria for the dispensing of medical marijuana required by California Health and Safety Code sections 11362.5 and 11362.7 et seq.

(l) A medical marijuana dispensary shall comply with all applicable laws and regulations related to the Americans with Disability Act.

Failure to comply with any of the above operating requirements shall result in the City of Palo Alto informing the permittee of any violation of this chapter, and revocation of the medical marijuana permit if the permittee does not remedy the violation within fourteen (14) calendar days.

4.20.150 Suspension or Revocation of Permit.

The City Manager may suspend or revoke a dispensary permit if the permittee engages in any act or conduct that would be grounds for denial of the permit in the first instance.

4.20.160 Term, Renewals and Fees.

COMPLETE TEXT OF MEASURE C - Continued

(a) A medical marijuana dispensary permit shall be renewed annually. The City Manager shall renew a medical marijuana dispensary permit unless grounds exist in this ordinance for denial of the permit.

(b) The City Manager shall renew each dispensary permit upon tender of a nonrefundable fee of ten thousand dollars (\$10,000).

4.20.170 Zoning and Development Standards.

The provisions of Chapter 18.45 of Title 18 ("Zoning") of the Palo Alto Municipal Code, adopted in this ordinance, are applicable to medical marijuana dispensaries and compliance with those provisions shall be considered additional requirements for issuance of a dispensary permit.

4.20.180 Minors.

(a) It shall be unlawful for any dispensary to employ, or allow to volunteer, any person who is under the age of twenty-one (21).

(b) Persons under the age of eighteen (18) years shall not be allowed on the premises of a medical marijuana dispensary unless they are a qualified patient and accompanied by their parent or guardian.

4.20.190 Display of Permit.

Every medical marijuana dispensary permittee shall display the medical marijuana dispensary permit at all times during business hours. The dispensary permit shall be displayed in a conspicuous place so all persons entering the medical marijuana dispensary may readily see the permit.

4.20.200 Location; Transfer of permits.

(a) A permittee shall not operate a medical marijuana dispensary under the authority of a medical marijuana dispensary permit at any place other than the address of the medical marijuana dispensary stated in the application for the permit.

(b) A permittee shall not transfer ownership or control of a medical marijuana dispensary permit to another person unless and until the transferee obtains an amendment to the permit from the City Manager, which shall not be unreasonably withheld, stating that the transferee is now the permittee. Such an amendment may be obtained only if the transferee files an application with the City Manager in accordance with the provisions of this Chapter, and the City Manager determines that the transferee meets all of the requirements of applicants pursuant to this chapter.

(c) Any transfer or attempt to transfer a permit in violation of this section shall be void, and the unlawfully transferred permit shall be deemed revoked by operation of law.

4.20.210 Operation Without a Permit.

The operation of a medical marijuana dispensary without first having obtained a permit from the City of Palo Alto pursuant to the provisions of this chapter shall constitute a violation of this chapter and shall be deemed a public nuisance.

COMPLETE TEXT OF MEASURE C - Continued

4.20.220 Violations of Chapter; Enforcement.

(a) Any permittee who violates any provision of this chapter shall be given written notice of the violation. Notice of the violation of any provision of this chapter shall be delivered to the permittee by overnight mail. The permittee shall have fourteen (14) calendar days following notice of any violation of this chapter to cure the violation prior to any penalty or adverse action being taken against the permittee.

(b) Any permittee who violates any provision of this chapter and fails to cure the violation within fourteen (14) calendar days following notice of the violation shall be subject to a five hundred dollar (\$500) fine for each day the violation persists.

(c) Any permittee who violates any provision of this chapter and fails to cure the violation within thirty (30) calendar days following notice of the violation shall be declared a public nuisance that may be summarily abated by the City of Palo Alto pursuant to the Palo Alto Municipal Code.

SECTION 3: Title 18 of the Palo Alto Municipal Code is amended by adopting a new Chapter 18.45 to read as follows:

Chapter 18.45 MEDICAL MARIJUANA DISPENSARIES.

18.45.010 Purpose and Intent.

(a) It is the purpose and intent of this ordinance to promote the health, safety, and general welfare of the residents and businesses within the City of Palo Alto by regulating the location and manner of development of three medical marijuana dispensaries within the City. It is neither the intent nor effect of this ordinance to restrict or deny qualified patients access to marijuana for medical purposes as intended by the passage of the Compassionate Use Act of 1996, codified as Health and Safety Code section 11362.5.

(b) The Medical Marijuana Program Act of 2003, codified as Health and Safety Code section 11362.7 et seq., allows cities to adopt and enforce rules and regulations consistent with the Compassionate Use Act. The impacts of medical marijuana dispensaries are documented in the "White Paper on Marijuana Dispensaries" published by the California Police Chiefs Association's Task Force on Marijuana Dispensaries (April 22, 2009), and the United States Department of Justice's California Medical Marijuana Information report (October 19, 2009). The City of Palo Alto does not condone or condemn the use of marijuana. It is the intent of this chapter, however, to prevent secondary adverse impacts brought about by the close proximity of medical marijuana dispensaries to incompatible uses, such as schools, parks and residentially zoned districts and uses, while allowing for the location of medical marijuana dispensaries in suitable areas, in compliance with Compassionate Use Act and the Medical Marijuana Program Act.

18.45.020 Definitions and Construction.

Any reference to California statutes includes any regulations promulgated thereunder and is deemed to include any successor or amended version of the referenced statute. All definitions set forth in Health & Safety Code section 11362.7, as may be amended, including

COMPLETE TEXT OF MEASURE C - Continued

but not limited to the terms "attending physician," "person with an identification card," "primary caregiver," "qualified patient," "identification card," and "serious medical condition," shall apply under this section in addition to the definitions set forth as follows:

(a) "Applicant" means a person who files an application for a medical marijuana dispensary permit under this chapter.

(b) "City Clerk" means the City Clerk for the City of Palo Alto or designee.

(c) "City Manager" means the City Manager for the City of Palo Alto or designee.

(d) "Collective or Cooperative Cultivation" means the association within California of qualified patients, persons with valid identification cards, and designated primary care givers to cultivate marijuana for medical purposes as defined in strict accordance with California Health and Safety Code sections 11362.5 and 11362.7 et seq.

(e) "Cultivation of Medical Marijuana" means the growing of medical marijuana for medical purposes in accordance with Health and Safety Code sections 11362.5 and 11365.7 et seq.

(f) "Dispensary" shall have the same definition as "medical marijuana dispensary," as set forth in this section.

(g) "Dispensary area" means the dispensary property and the area within 100 feet of the dispensary property.

(h) "Dispensary building" means the building or portion of a building within which a dispensary is operated.

(i) "Dispensary permit" means a medical marijuana dispensary permit.

(j) "Dispensary property" means the parcel of real property or portion of the parcel of real property that is owned or leased by a dispensary and upon which a dispensary is operated.

(k) "Guidelines" means the "Guidelines For The Security and Non-Diversion of Marijuana Grown for Medical Use," issued by the California Attorney General in August 2008, as may be amended from time to time.

(l) "Management member" means a member with responsibility for the establishment, registration, supervision, or oversight of the operations of a medical marijuana dispensary, including but not limited to, a member who is, or performs the functions of, a board member, director, officer, owner, operating officer, or manager of the dispensary.

(m) "Marijuana" shall have the same definition as set forth in Health and Safety Code 11018.

(n) "Medical Marijuana" means marijuana used for medical purposes in accordance with Health and Safety Code sections 11362.5 and 11362.7 et seq.

(o) "Medical marijuana dispensary" means a cooperative or collective of four or more members who associate at a particular

COMPLETE TEXT OF MEASURE C - Continued

location or real property to collectively or cooperatively distribute marijuana to members for medical purposes, and operate on a not-for-profit basis, consistent with California Health and Safety Code section 11362.5 and 11362.7 et seq.), the Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use issued by the California Attorney General in August 2008, and this chapter. A medical marijuana dispensary shall not include the following uses: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code; a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code; a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code; a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code; and a residential hospice or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code, as long as any such use complies with applicable laws including, but not limited to, California Health and Safety Code section 11362.5 and 11362.7 et seq.), and the City of Palo Alto Charter and Municipal Code.

(p) "Medical Marijuana Dispensary Permit" means a permit that authorizes a medical marijuana dispensary to operate within the City.

(q) "Member" means any qualified patient, primary caregiver, or person with an identification card who is registered with a medical marijuana dispensary.

(r) "Operate a dispensary" means to engage in or conduct the business of a dispensary, including, but not limited to, distributing medical marijuana and maintaining the facilities of a dispensary.

(s) "Permittee" means a person that holds a valid medical marijuana dispensary permit from the City of Palo Alto.

(t) "Person" means, without limitation, any natural individual, organization, firm, trust, common law trust, estate, partnership of any kind, association, syndicate, club, joint stock company, joint venture, limited liability company, corporation (including foreign, domestic, and nonprofit), municipal corporation (other than the City of Palo Alto), cooperative, receiver, trustee, guardian, or other representative appointed by order of any court.

18.45.030 Permitted Zones; Minimum Proximity; Other Requirements.

(a) Except as set forth in subsection (b) of this section, a medical marijuana dispensary shall be allowed to operate in any commercial or industrial zone, or equivalent, in the City of Palo Alto.

(b) Notwithstanding subsection A of this Section, no medical marijuana dispensary shall be located:

1. Within 150 feet of any residential zone;
2. Within 600 feet of any public or private school; or
3. Within 500 feet of any public library, public park, licensed day care center, or substance abuse rehabilitation center.

COMPLETE TEXT OF MEASURE C - Continued

Subsections (b)1., (b)2., and (b)3. of this section shall be collectively known as "sensitive uses." The distance between a medical marijuana dispensary and a sensitive use shall be measured in a straight line, without regard to the intervening structures or objects, from the primary entrance of the medical marijuana dispensary to the property line in which the sensitive use is located.

(c) A medical marijuana dispensary is not and may not be approved as an accessory use to any other use permitted by the Palo Alto Municipal Code.

(d) No more than one medical marijuana dispensary may operate out of a single building.

SECTION 4: Liberal Construction. This ordinance shall be liberally construed to effectuate its purposes.

SECTION 5: Severability. Should any provision of this ordinance, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this ordinance or the application of this ordinance to any other person or circumstance and, to that end, the provisions hereof are severable.

SECTION 5: Operative Date. This ordinance shall become operative on the next day following its adoption or enactment.

ARGUMENT IN FAVOR OF MEASURE C

As longtime residents of Palo Alto, we believe in the character of our community. This measure will strengthen that character by providing medicine to our terminally ill neighbors, generating new revenue for city services, and protecting our neighborhoods.

University doctors and researchers have found that **marijuana is effective at relieving chronic pain** and other conditions resulting from cancer, multiple sclerosis, and other serious ailments.

Proposition 215 was passed by California voters in 1996 to allow for patients to obtain marijuana with the approval of their physician. The measure passed here in Palo Alto by a 3-to-1 margin, but 16 years later, **the City has failed to implement the law.**

As a result, terminally ill patients in our community, many of whom are elderly, are faced with a Hobson's choice of buying marijuana illegally, or traveling many miles to a city that has a dispensary.

That's why we support this measure to allow for three medical marijuana dispensaries in Palo Alto.

- **This measure will help patients in our community.** Our neighbors who suffer from serious and terminal illnesses will be able to legally and safely obtain marijuana near their homes.
- **Tax revenue from sales will save jobs.** A similar ordinance in San Jose generates more than \$300,000 a month, money that can go to fund public safety, parks, libraries, and roads.
- **The dispensaries will be restricted to appropriate locations.** The three dispensaries cannot be located in a residential area, or near our schools, parks, or day care centers. *Anyone wishing to operate a dispensary must meet strict requirements.*

Marijuana is not a cure. But often it is the only way to get relief. We urge you to vote YES and help our neighbors get the medicine they need. Please visit www.paloaltopatients.com to learn more.

/s/ Cassandra C. Moore
Ph.D.

/s/ Thomas G. Moore
Ph.D.

REBUTTAL TO ARGUMENT IN FAVOR OF MEASURE C

Federal prosecutors are cracking down on California's medical marijuana industry. The California Supreme Court is reviewing the state of the law. On the advice of its city attorney in October of 2011 the Redwood City Council unanimously voted to ban medical marijuana. Mountain View, Menlo Park Sunnyvale, Cupertino and most if not all peninsula communities ban medical marijuana dispensaries. On February 14, 2012 the San Jose City Council repealed the Medical Marijuana Regulatory Ordinance and medical marijuana dispensaries are not currently legal in San Jose although a number of them are still operating. In San Jose, for the 18 months prior to the repeal, 77 complaints had been received, including public nuisance, illegal drug use, harassment of passersby, loitering, smoking too close to schools and day cares, and disturbing the peace. We should not make Palo Alto the center of the Peninsula for this negative activity as other cities move to ban pot dispensaries.

The Proponents suggest Medical Marijuana is not available near Palo Alto. Medical Marijuana is 30-minutes or less from Palo Alto. The Proponents argue that the City will make money and cite the San Jose ordinance. The truth is San Jose's gross receipt tax (7%) is almost double of that proposed for Palo Alto (4%) and the City's revenue will be insignificant (a million in sales generates \$40,000 for the City assuming 100% collection). Finally San Jose also restricted the locations, but still had substantial issues including smoking too close to schools and day care centers.

Protect our children, protect our community, vote no on Measure C

/s/ Melissa Baten Caswell
Member PAUSD Board of Education

/s/ Larry Klein
Palo Alto City Council Member and Former Mayor

/s/ Dena Mossar
Former Mayor, Palo Alto

/s/ H. Gregory Scharff
Vice Mayor Palo Alto

ARGUMENT AGAINST MEASURE C

Measure C would allow the sale of Marijuana throughout Palo Alto. These "Pot Shops" would be allowed in Midtown, California Ave and Downtown as well as other commercial areas of the City. Storefront Marijuana shops are hotspots for crime. California cities that have permitted their establishment have experienced negative effects on public health and safety, including an increase in crimes such as burglary, robbery, and the sale of illegal drugs. To that end the City of Los Angeles recently felt compelled to ban Pot Shops. Its Police Chief criticized most shops as "for-profit businesses engaged in the sale of recreational marijuana to healthy young adults"

Almost all the marijuana is prescribed by pot doctors who hand out marijuana cards to anyone with cash. This is not a real doctor-patient relationship. So don't buy the story that this is about people with cancer and other serious illnesses. The real story is that almost all the marijuana will go to people with no significant health problems.

Pot dispensaries will increase marijuana use by our kids and it will hurt them physically and academically. Children entering drug abuse treatment routinely report that they heard that 'pot is medicine' and, therefore, believed it to be good for them. The best hope for reducing drug use is to teach children not to start. A child is less likely to use if there is a clear warning. The biggest threat to our children and our community is to blur the line between dangerous, illegal drugs and medicine.

Measure C's proponents have spent over \$128,000 so far and the campaign has barely begun. Measure C is about making money selling marijuana, not helping the sick.

Protect our children, protect our community, vote no on Measure C

/s/ Greg Scharff
Vice Mayor Palo Alto

/s/ Gary Fazzino
Former Mayor Palo Alto

/s/ Liz Kniss
Supervisor D5 Santa Clara Co.

/s/ Lanie Wheeler
Former Mayor, Palo Alto

/s/ Larry Klein
Council Member and Former Mayor Palo Alto

**NO REBUTTAL TO ARGUMENT AGAINST MEASURE C
WAS SUBMITTED**