

MEASURE E

CITY ATTORNEY'S IMPARTIAL ANALYSIS OF MEASURE E

This ordinance would amend the Palo Alto Municipal Code to increase Palo Alto's Transient Occupancy Tax ("TOT" or "hotel tax") by one and one-half percentage points, from 14% to 15.5%.

The hotel tax applies to the rent that is charged to guests staying in hotels, motels and other short-term rentals located in Palo Alto. Hotel tax rates vary from city to city. The median rate in California is 10%. The hotel guest is responsible for paying the tax.

Currently, Palo Alto receives approximately \$25 million in hotel tax each year, which accounts for approximately 11% of Palo Alto's total general fund revenue. These revenues cannot be taken away by the State. They are used for general local governmental purposes such as police, fire, streets, parks and recreation, libraries, and capital improvements.

The City estimates that the proposed one and one-half percent increase will generate additional revenues of approximately \$2.55 million each year. The City Council has indicated an intention to use these funds for infrastructure improvements such as earthquake safe fire stations and public safety facilities, pedestrian and bike improvements, streets and sidewalks, and parks and recreation facilities.

Measure E was placed on the ballot by the Palo Alto City Council.

A vote "For the Ordinance" will increase the hotel tax from 14% to 15.5%. A vote "Against the Ordinance" will keep the hotel tax at 14%.

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

Dated: August 21, 2018

/s/ Molly S. Stump
City Attorney

COMPLETE TEXT OF MEASURE E

Ordinance of the Council of the City of Palo Alto Amending Chapter 2.33 of Title 2 of the Palo Alto Municipal Code Relating to the Transient Occupancy Tax

The People of the City of Palo Alto do ordain as follows:

SECTION 1. Chapter 2.33 of the Palo Alto Municipal Code is hereby amended by amending Chapter 2.33 as follows:

Chapter 2.33

TRANSIENT OCCUPANCY TAX

- 2.33.010 Definitions.
- 2.33.020 Tax imposed.
- 2.33.030 Exemptions.
- 2.33.040 Operator's duties.
- 2.33.050 Registration.
- 2.33.060 Reporting and remitting.
- 2.33.070 Penalties.
- 2.33.080 Failure to collect and report tax; determination of tax by supervisor of revenue collections.
- 2.33.090 Appeal.
- 2.33.100 Records.
- 2.33.110 Refunds.
- 2.33.120 Actions to collect.
- 2.33.130 Violations; misdemeanor.
- 2.33.140 Third party rental transactions.

2.33.010 Definitions.

Except where the context otherwise requires, the definitions given in this section govern the construction of this chapter:

(a) "Person" means any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.

(b) "Hotel" means any structure, or any portion of any structure, in the City of Palo Alto which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes, and includes any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, morning house, apartment, house, dormitory, public or private club, mobilehome or house trailer at a fixed location, or other similar structure or portion thereof, even if such structure is also used for other purposes, including residential purposes.

(c) "Occupancy" means the use or possession, or the right to the use or possession, of any room or rooms or portion thereof in any hotel for dwelling, lodging or sleeping purposes.

(d) "Transient" means any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license or other agreement for a period of thirty consecutive days or less, counting portions of calendar days as full days. Any such person so occupying space in a hotel shall be deemed to be a transient until the

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period of thirty days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy.

(e) "Rent" means the total consideration paid by a transient, for the occupancy of space in a hotel, whether or not received by the operator, including, without limitation, transaction service fees and any unrefunded advance reservation or other rental deposit. For purposes of this definition, rent shall be valued in money, whether it is received in money, goods, labor or otherwise, including all receipts, cash, credits and property and services of any kind or nature, without any deduction therefrom whatsoever.

(f) "Operator" means the person who is the proprietor of the hotel, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any other capacity. Where the operator performs his or her functions through a managing agent of any type or character (other than an employee), the managing agent shall also be deemed an operator for the purposes of this chapter and shall have the same duties and liabilities as his or her principal. Compliance with the provisions of this chapter by either the principal or the managing agent shall, however, be considered to be compliance by both.

(g) "Rental agent" means any person other than an operator who collects rent from a transient for the transient's occupancy of a hotel.

2.33.020 Tax imposed.

For the privilege of occupancy in any hotel, each transient is subject to and shall pay a tax in the amount of ~~fourteen~~ **fifteen and one-half** percent of the rent paid by the transient. Said tax constitutes a debt owed by the transient to the city, which is extinguished only by payment to the operator or to the city or to a rental agent pursuant to section 2.33.140. The transient shall pay the tax to the operator at the time the rent is paid. If the rent is paid in installments, a proportionate share of the tax shall be made with each installment. Any unpaid tax shall be due upon the transient's ceasing occupancy in the hotel. If for any reason the tax due is not paid to the operator, the supervisor of revenue collections may require that such tax shall be paid directly to the supervisor of revenue collections.

2.33.030 Exemptions.

No tax shall be imposed upon:

(a) Any person as to whom, or any occupancy as to which, it is beyond the power of the city to impose the tax herein provided;

(b) Any officer or employee of a foreign government who is exempt by reason of express provision of federal law or international treaty;

(c) Any federal or state of California officer or employee on official business who shall pay rent by warrant or check drawn on the treasury of the United States or the state of California or provides written evidence of such official business on a form approved in advance by the supervisor of revenue collections. Copies of the documentation for each exemption claimed must be submitted to the supervisor of revenue collections with each return made pursuant to Section 2.33.060.

COMPLETE TEXT OF MEASURE E-Continued

No exemption shall be granted under this section except upon a claim therefor made at the time rent is collected and under penalty of perjury upon a form prescribed by the supervisor of revenue collections. Additionally, a copy of such warrant or check and a copy of such claim form shall be submitted with each return made pursuant to Section 2.33.060.

2.33.040 Operator's duties.

Each operator shall collect the tax imposed by this ordinance to the same extent and at the same time as the rent is collected from every transient. The amount of tax shall be separately stated from the amount of the rent charged, and each transient shall receive a receipt for payment from the operator. No operator shall advertise or state in any manner, whether directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the operator, or that it will not be added to the rent, or that, if added, any part will be refunded except in the manner hereinafter provided.

2.33.050 Registration.

(a) Within ten days after commencing business, each new or unregistered operator of any hotel renting occupancy to transients shall present a valid certificate of occupancy issued by the building official pursuant to Title 16 and apply for registration of said hotel with the supervisor of revenue collections who will issue a "Transient Occupancy Registration Certificate" to be at all times posted in a conspicuous place on the premises by such registrant or any operator previously registered. The application shall require such information as the supervisor of revenue collections deems necessary or convenient to the collection of the tax imposed by this chapter. The supervisor of revenue collections may require updating of application information from time to time as he or she deems necessary or advisable. Registration under this section shall lapse with the certificate of occupancy upon which it was issued. Said certificate shall, among other things, state the following:

- (1) The name of the operator;
- (2) The address of the hotel;
- (3) The date upon which the certificate was issued;

(4) "This Transient Occupancy Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of Chapter 2.33 of the Palo Alto Municipal Code 'Transient Occupancy Tax' by registering with the supervisor of revenue collections for the purpose of collecting from transients the Transient Occupancy Tax and remitting said tax to the supervisor of revenue collections. This certificate does not authorize any person to conduct any unlawful business or to conduct any lawful business in an unlawful manner, or to operate a hotel without strictly complying with all local applicable laws, including but not limited to those requiring a permit from any board, commission, department or office of this city. This certificate does not constitute a permit and is not transferable to a different operator."

2.33.060 Reporting and remitting.

Each operator shall, on or before the last day of the month following the close of the previous calendar month, or at the close of any shorter reporting period which may be established by the supervisor of revenue

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collections, make a return to the supervisor of revenue collections on forms provided by him or her of the total rents charged to transients and the total rents paid by transients and the amount of tax collected for transient occupancies. If no tax was due or collected during the previous reporting period, the operator shall file a return so stating under penalty of perjury. At the time the return is filed, the full amount of the tax collected shall be remitted to the supervisor of revenue collections. The supervisor of revenue collections may establish shorter reporting periods for any certificate holder if he or she deems it necessary in order to ensure collection of the tax, and he or she may require further information in the return. Returns and payments are due immediately upon cessation of business for any reason. All taxes collected by operators pursuant to this chapter shall be held in trust for the account of the city until payment thereof is made to the supervisor of revenue collections.

2.33.070 Penalties.

(a) Original Delinquency. Any operator who fails to remit any tax imposed by this chapter within the time required shall pay a penalty of ten percent of the amount of the tax which penalty amount shall be added to the amount of the tax, for purposes of calculating additional penalties.

(b) Continued Delinquency. Any operator who fails to remit any delinquent remittance on or before a period of thirty days following the date on which the remittance first became delinquent shall pay a second delinquency penalty of ten percent of the amount of the tax including the ten percent penalty first imposed.

(c) Fraud or Misrepresentation. If the director of finance, in his or her judgment, determines that the nonpayment of any remittance due under this chapter is due to intentional conduct, misrepresentation or fraud, a penalty of twenty-five percent of the amount of the tax shall be added thereto in addition to the penalties stated in subsections (a) and (b) of this section.

(d) Additional Penalty. In addition to the penalties imposed under subsections (a) and (b) of this section, any operator who fails to remit any tax imposed by this chapter shall pay a penalty of one percent per month or fraction thereof, whichever is less, on the amount of the tax from the date on which the remittance first became delinquent until paid.

(e) Penalties Merged with Tax. Every penalty imposed and such additional penalties as accrue under the provisions of this section shall become a part of the tax herein required to be paid.

2.33.080 Failure to collect and report tax; determination of tax by supervisor of revenue collections.

If any operator fails or refuses to collect said tax and to make, within the time provided in this chapter, any report and remittance of said tax or any portion thereof required by this chapter, the supervisor of revenue collections shall proceed in such manner as he or she may deem best to obtain facts and information on which to base his or her estimate of the tax due. As soon as the supervisor of revenue collections shall procure such facts and information as he or she is able to obtain upon which to base the assessment of any tax imposed by this chapter and payable by any operator who has failed or refused to collect the same and to make such report and remittance, he or she shall proceed to determine and assess against such operator the tax and penalties provided by this chapter. In case such determination is made, the supervisor of revenue

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and collections shall give a notice of the amount so assessed by sending it personally or by depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at his or her last known place of address.

Such operator may within fourteen days after serving or mailing of such notice make application in writing to the supervisor of revenue collections for a hearing on the amount assessed. If application by an operator is not made within the time prescribed, the tax and penalties, if any, determined by the supervisor of revenue collections to be due shall become final and conclusive and immediately due and payable. If such application is made, the supervisor of revenue collections shall give not less than ten days' written notice in the manner prescribed herein to the operator to show cause at a time and place fixed in said notice why said amount specified therein should not be fixed for such tax and penalties. At such hearing, the operator may appear and offer evidence why such specified tax and penalties should not be so fixed. After such hearing, the supervisor of revenue collections shall determine the proper tax to be remitted and shall thereafter give written notice to the operator in the manner prescribed herein of such determination and the amount of such tax and penalties. The amount determined to be due shall be payable after twenty days of the serving or mailing of such determination unless an appeal is taken as provided in Section 2.33.090.

2.33.090 Appeal.

Any operator aggrieved by any decision of the supervisor of revenue and collections with respect to the amount of such tax and penalties, if any, may appeal to the director of finance or his or her designee by filing a notice of appeal with the city clerk within twenty days of the serving or mailing of the determination of tax due. The director of finance or the designee shall fix a time and place for hearing of such appeal, and give notice in writing to such operator at his or her last known place of address. The findings of the director of finance or the designee shall be final and conclusive and shall be served upon the appellant in the manner prescribed above for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of notice.

2.33.100 Records.

It shall be the duty of every operator liable for the collection and payment to the city of any tax imposed by this chapter to keep and preserve all records as may be necessary to determine the amount of such tax as he or she may have been liable for the collection of and payment to the city. Said records shall be kept or made available at one location within the limits of the city for a period of three years. The supervisor of revenue collections and/or city auditor or their designee shall have the right at any and all reasonable times, to examine and audit said records for the purpose of determining the accuracy thereof.

2.33.110 Refunds.

(a) Claim Required. Prior to seeking judicial relief with respect to a dispute regarding the amount of any tax, penalty, or interest collected or received by the city under this chapter, an aggrieved taxpayer, fee payer, operator, transient or any other person must comply with the provisions of section 2.28.230 of this code.

(b) Operators. An operator may claim as an overpayment any tax previously paid which was calculated on the basis of taxable

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consideration written off by the operator as a bad debt in accordance with generally accepted accounting principles and claimed as a deduction on a federal income tax return in accordance with provisions of the Internal Revenue Code, and regulations issued pursuant thereto. The bad debt claim may be taken as an adjustment to future taxes due the city after the operator's procedure and forms for adjustment of bad debt have been reviewed and approved by the supervisor of revenue collections.

(c) Transients. A transient may only request a refund of taxes under this chapter when the transient, having paid the tax to the operator, establishes that the transient has been unable to obtain a refund from the operator who collected the tax.

2.33.120 Actions to collect.

Any tax required to be paid by any transient under the provisions of this chapter shall be deemed a debt owed by the transient to the city. Any such tax collected by an operator which has not been paid to the city shall be deemed a debt owed by the operator to the city. Any person owing money to the city under the provisions of this chapter shall be liable to an action brought in the name of the city for the recovery of such amount.

2.33.130 Violations; misdemeanor.

Any operator or other person who violates any of the provisions of this chapter or who fails or refuses to register as required herein, or to furnish any returns or other data required by the supervisor of revenue collections, or who renders a false or fraudulent return or claim, is guilty of a misdemeanor, and is punishable as provided in this code.

2.33.140 Third party rental transactions.

(a) Any transient who pays rent to a rental agent instead of to an operator shall, at the time the rent is paid, pay the tax to the rental agent in the manner required by section 2.33.020. If for any reason the tax is not paid to the rental agent, it shall be paid to the operator before the transient has ceased occupancy in the hotel or paid directly to the supervisor of revenue collections pursuant to section 2.33.020. Any transient seeking a refund under section 2.33.110 of taxes paid to a rental agent must establish that the transient has been unable to obtain a refund from the rental agent who collected the tax.

(b) Any rental agent who collects rent shall comply with all obligations of the operator set forth in sections 2.33.040 and 2.33.100 of this chapter. The rental agent shall remit all collected taxes to the operator before the deadline for the operator to remit the taxes to the supervisor of revenue collections under section 2.33.060, and the rental agent shall provide the operator with copies of all records required to be maintained by the operator pursuant to section 2.33.100 of this chapter, including records necessary for the operator to comply with its obligations under this chapter.

(c) If the supervisor of revenue collection determines that a rental agent has failed to collect, remit, or report any tax, the supervisor may take any action against the rental agent that he or she may take against an operator under sections 2.33.070 and 2.33.080 of this chapter subject to the requirements of those sections. If the supervisor assesses unremitted taxes and penalties against the rental agent, the rental agent shall be subject to the provisions of sections 2.33.080, 2.33.090, 2.33.110, and 2.33.120 of this chapter as if it were an operator. Nothing in this

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section shall prohibit the supervisor from assessing the full amount of any unremitted taxes and penalties solely against the operator in lieu of assessing some or all of those taxes and penalties against the rental agent.

SECTION 2. General Tax. Proceeds of the tax imposed by this Ordinance shall be deposited in the general fund of the City and shall be available for any legal purpose.

SECTION 3. Amendment or Repeal. The City Council may repeal Chapter 2.33 of the Palo Alto Municipal Code or amend that Chapter without a vote of the people except that any amendment to Chapter 2.33 that increases the amount or rate of tax due from any Person beyond the amounts and rates authorized by this Ordinance may not take effect unless approved by a vote of the people.

SECTION 4. Severability. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unenforceable by a court of competent jurisdiction, the remaining portions of this Ordinance shall nonetheless remain in full force and effect. The people hereby declare that they would have adopted each section, subsection, sentence, clause, phrase, or portion of this Ordinance, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions of this Ordinance be declared invalid or unenforceable.

SECTION 5. Effective Date. This ordinance shall be effective only if approved by a majority of the voters and shall go into effect immediately after the vote is declared by the City Council and the duty of service providers to collect the tax shall commence as provided in California Public Utilities Code Section 799.

SECTION 6. Execution. The Mayor is hereby authorized to attest to the adoption of this Ordinance by the voters of the City by signing where indicated below.

I hereby certify that the foregoing Ordinance was PASSED, APPROVED and ADOPTED by the People of the City of Palo Alto voting on the 6th day of November, 2018.

ARGUMENT IN FAVOR OF MEASURE E

Vote Yes on Measure E to ensure that Palo Alto can invest in critical City infrastructure and vital City services. City streets and sidewalks are aging and need to be maintained, repaired and replaced. Our police and fire stations are not currently earthquake safe and lack reliable 911 communications. Our kids need bicycle safety improvements to enhance safe routes to school for all children. Not only do we need to complete the funding for a Bicycle and Pedestrian Bridge over Highway 101 and connect Palo Alto to the Bay Trail, we need to build new parking garages downtown and along Cal Ave to help reduce traffic congestion and lessen neighborhood parking impacts, all while supporting local business.

Measure E will enact a modest 1.5% increase in the tax paid by out of town visitors staying in Palo Alto hotels who rely on our roads and other infrastructure, and essentially ensures that the business community contributes towards supporting our infrastructure needs. This amounts to about the cost of a cup of coffee on a \$250 hotel bill.

Measure E is needed because construction costs have dramatically escalated since 2014. The City has responded by scaling back the Pedestrian and Bicycle Bridge and directing the City Manager to cut the city budget by \$4 million. Given the dramatic cost escalation, new revenue is needed to ensure that Palo Alto fulfills its commitment to complete its Infrastructure Plan. This plan was started in 2010 thanks to the Citizens Infrastructure Blue Ribbon Committee and finalized by the City in 2014.

By law, all funds from Measure E will stay here in Palo Alto under local control and cannot be taken away by the State.

Please join the Palo Alto City Council, as well as community and business leaders and vote Yes on Measure E

/s/ Liz Kniss
Mayor, Palo Alto

/s/ Greg Scharff
Council Member & Former Mayor

/s/ Penny Ellson
Community Volunteer

/s/ Greg Schmid
Former Vice Mayor

/s/ Cory Wolbach
Council Member

REBUTTAL TO ARGUMENT IN FAVOR OF MEASURE E

Measure E will authorize the HIGHEST tax rate in The State of California, boosting Palo Alto's Transient Occupancy Tax to 15.5 %, well ahead of San Francisco and Los Angeles.

It's easy to say this tax doesn't impact city residents as hotel guests will bear its burden. That's absolutely false. Business travelers, Stanford visitors & tourists will choose to stay in nearby cities where hotel taxes will be up to 55 % less. With restaurants already closing, when visitors and groups take their business elsewhere, this will further impact thousands of jobs in our hotels, restaurants and small businesses.

Measure E highlights the lack of fiscal accountability by City of Palo Alto leaders, who are asking voters to trust them-once again-after years of disingenuous mismanagement. Measure E proposes to fund many things. These are the same promises the City Council made in 2008 and again in 2014. Few of those infrastructure projects have been completed.

Measure E suggests this tax revenue will be earmarked for specific projects. Not true. It goes directly to the City's General Fund, which the City can spend however they want, including salary increases and exponentially escalating pension costs.

What happens in the next election when the unkept 2018 promises are added to the unfulfilled promises of 2008 and 2014? We remind City leaders to manage existing budgets with transparent accountability before overburdening hotels that already give so much to Palo Alto.

- Reject this lack of accountability by City of Palo Alto leaders.
- Reject this fiscal bait-and-switch.
- Reject Measure E.

/s/ Barbara Gross
Former G. M. The Garden Court Hotel

/s/ Stephanie Wansek
G. M. The Cardinal Hotel

ARGUMENT AGAINST MEASURE E

Palo Alto City Council carefully conducted polls focused on language specifically crafted to appeal to voters, for example instilling unfounded concern by implying the City of Palo Alto's 911 communications is not stable, when it is. These methods violate the trust that residents place in their elected officials to act ethically and in good faith.

As referenced in the August 10, 2018 Palo Alto Weekly editorial referring to Measure E, **"City officials are walking a dangerous line in developing ballot language that is less than transparent at best and dishonest at worst."**

If passed, City of Palo Alto's Transient Occupancy Tax will have increased **55% over the past ten years**. Wording in the current ballot language is misleading: increasing Transient Occupancy Tax from 14% to 15.5% effectively increases the tax by 10.7% not 1.5% as stated.

- The infrastructure projects to be funded in the 2014 ballot measure have not been completed. Palo Alto City Council uses the same formula to repeatedly justify runaway tax increases without accountability to voters on progress of promised projects.
- Transient Occupancy Tax flows into the General Fund and the City of Palo Alto spends these proceeds as they see fit and are **not required to spend the funds on the projects referenced in the ballot language**.

City of Palo Alto has reported that hotel occupancy is already trending downward in 2018. The increase in Transient Occupancy Tax will negatively affect tourism creating a ripple effect within the overall business community.

- If passed, this would be Palo Alto's **3rd Transient Occupancy Tax increase in 10 years**.
- City of Menlo Park and City of Mountain View's current Transient Occupancy Tax are 12% and 10% respectively. These municipalities **have not raised their Transient Occupancy Tax in the last decade**.
- City of Palo Alto will have the HIGHEST tax rate in the State of California-with none of the tourist attractions within City of San Francisco 14%, City of Los Angeles 14% and City of San Diego 10.5%.

Before increasing taxes, Palo Altans deserve a clear accounting of how prior increases were spent and an explanation of **why key infrastructure projects remain uncompleted a decade later**.

/s/ Barbara Gross
Former G. M. Garden Court Hotel

/s/ Stephanie Wansek
G. M. The Cardinal Hotel

/s/ Mark W. A. Hinkle
President: Silicon Valley Taxpayers Association

REBUTTAL TO ARGUMENT AGAINST MEASURE E

Mid-Peninsula construction costs have increased, by some estimates, **55% over the last six or seven years**--faster than almost all other costs, including Palo Alto's Transient Occupancy Tax; a consequence of the Bay Area's booming economy and tight labor markets.

The Infrastructure Plan was developed by the 2010-14 Citizens' Blue Ribbon Committee, to address Infrastructure needs which had slipped during the early 2000's and Great Recession. **The reality is: if we want these things, we must pay for them, and at today's prices.**

Infrastructure serves both Residents and Businesses. Since residential property taxes have increased faster than other City revenue since the Recession, the share of expenses paid by Residents has slowly risen. The TOT is essentially a Business tax--most Palo Alto hotel users are Corporate visitors--and has lagged construction costs; it is an appropriate source at this time. It will **not** be the state's highest; cities including Healdsburg are at 16%.

The City is already controlling capital costs--dropping the purchase of the Palo Alto Post Office building, downscaling the Adobe Creek bridge, and declining \$2M in A/V upgrades to Palo Alto City Hall.

Council is committed to these projects; claiming they will not happen is simply wrong. Some are in construction, such as the Fire Station 3 renovation. Others, such as the Public Safety building and bicycle bridge, have passed site approval and are in design. Infrastructure is a years-long effort, but it will last the community many decades to come. **Please invest in Palo Alto's future--vote YES on Measure E.**

/s/ Eric Filseth
Vice Mayor, City of Palo Alto

/s/ Adrian Fine
Council Member, City of Palo Alto

/s/ Tom DuBois
Council Member, City of Palo Alto

/s/ Neilson Buchanan
Downtown North Neighborhood