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14 *McDougall, Kimberly Bomar, Iyanu Olukotun, LaDoris*
15 *Hazzard Cordell, and Sarah Longstreth*

16 SUPERIOR COURT IN AND FOR
17 SANTA CLARA COUNTY
STATE OF CALIFORNIA

18 NATIONAL ASSOCIATION FOR THE
19 ADVANCEMENT OF COLORED PEOPLE
OF SAN JOSE/SILICON VALLEY, GWEN
20 GASQUE, LAURA MARTINEZ, ALYSA
CISNEROS, GEOFFREY PAULSEN,
21 BRIDGET GRANT-FRASER, DONALD
MCDUGALL, KIMBERLY BOMAR,
22 IYANU OLUKOTUN, LADORIS
HAZZARD CORDELL, and SARAH
23 LONGSTRETH,

24 Plaintiffs

25 v.

26 CITY OF PALO ALTO, CALIFORNIA,
27 Defendant.

Case No.: _____

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF FOR
VIOLATIONS OF THE UNITED
STATES AND CALIFORNIA
CONSTITUTIONS AND CODE CIV.
PROC. § 526a**

1 **INTRODUCTION**

2 1. The City of Palo Alto (the “City”) describes the crown jewel of its parks system—
3 the 1,400-acre Foothills Park (the “Park”)—as a “nature lover’s paradise.” But the Park is a gated
4 paradise that unconstitutionally excludes non-residents. The ban on non-residents traces its roots
5 to an era when racial discrimination in and around the City was open and notorious. It is long past
6 time to relegate this unlawful exclusion to the dustbin of history. Plaintiffs seek injunctive and
7 declaratory relief to end the City’s unconstitutional prohibition against entry by non-residents into
8 the Park, and to prevent the City’s wasteful and unlawful expenditure of public funds to enforce
9 the prohibition.

10 2. The Park is a place of green, rolling hills, irrigated grass fields, forested slopes, and
11 spectacular views of the entire South Bay. It contains miles of hiking trails, picnic areas, a
12 seasonal campground, and a man-made lake providing opportunities for boating and fishing. It is
13 also a place where people are encouraged to gather for discussion, learning, and celebrations. Its
14 interpretive center contains space that is regularly booked for meetings. The Oak Grove, an area
15 for gatherings of up to 150 people, is proclaimed by the City to be “a wonderful place for events of
16 all sorts, from weddings to graduation parties to reunions.”

17 3. But since 1969, it has been a crime, punishable by up to six months’ imprisonment
18 and a fine of up to \$1,000, for non-residents to enter or remain in the Park. Palo Alto Municipal
19 Code (“PAMC”) § 22.04.150(a) (the “Ordinance”) provides, in pertinent part:

20 Only residents of the city and regular or part-time city employees, members of their
21 households related by blood, marriage, or adoption, and their accompanied guests are
22 entitled to enter on foot or by bicycle or vehicle and remain in Foothills Park.... Upon the
23 request of an authorized city employee or a member of the Palo Alto police department, a
24 person seeking to enter Foothills Park at the main gate or a person within the boundaries of
Foothills Park shall provide identification or information to satisfy the requirements of this
subsection.... No person shall enter or remain in Foothills Park in violation of this
subsection. Violations of this subsection shall be a misdemeanor.

25 Under PAMC § 1.08.010, a misdemeanor is punishable by imprisonment of up to six months, a
26 fine of up to \$1,000, or both.

27 4. By penalizing the act of visiting a public park, the Ordinance violates the rights
28 under the United States and California Constitution of individuals who are not residents of Palo

1 Alto. The Ordinance violates non-residents’ fundamental right of travel, which has been
2 repeatedly reaffirmed by the U.S. Supreme Court and the California Supreme Court. The
3 Ordinance also violates non-residents’ right to free speech by preventing them from expressing
4 their opposition to the Ordinance in the Park, precisely where such opposition needs to be heard,
5 and, indeed, from engaging in any other speech in the Park. And it violates non-residents’ freedom
6 of assembly by preventing them from peacefully gathering in the Park to address these matters. It
7 also results in the illegal and wasteful expenditure of public funds for the enforcement of an
8 unconstitutional statute.

9 5. Over the last five decades, the City has repeatedly been implored to repeal the
10 Ordinance and permit access to non-residents, but has refused to do so. Most recently, a proposal
11 in November 2019 by the City’s own Parks and Recreation Commission to consider phasing out
12 the non-resident ban on a trial basis has been met with obstruction and delay. The Ordinance
13 remains the law, making it illegal for non-residents of all ages to enter the Park unless they have
14 the good fortune (or social connections) to enter as an escorted guest of a Palo Alto resident.

15 6. The City’s ban on non-residents harkens back to a shameful era in its history. Well
16 into the middle of the 20th century, lending institutions, government agencies, and private
17 individuals combined to prevent Black Americans from residing or purchasing homes in the City.
18 The history of housing discrimination in and around Palo Alto included, among other things: (1) a
19 resolution passed by the Palo Alto Chamber of Commerce calling for the creation of a “segregated
20 district for the Oriental and colored people of the city”; (2) the placement of racially restrictive
21 covenants in deeds for the sale of homes in subdivisions throughout the City, which prevented
22 African-Americans or other persons of color from owning such homes; (3) FHA and VA
23 restrictions on insuring mortgages for homeowners in non-white neighborhoods (so-called
24 “redlining”); and (4) “block busting,” a systematic campaign by realtors and others that incited
25 “white flight” out of neighboring communities, such as East Palo Alto, that did not have the same
26 invidious real estate practices that excluded Blacks and other persons of color. Real estate agents,
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1 for example, gave African Americans free bus rides through East Palo Alto to encourage Black
2 families to settle there, while simultaneously profiting off of the resultant flight by white families.¹

3 7. Housing discrimination in Palo Alto was notorious. Indeed, according to one local
4 historian:

5 [A] realtor bluntly told the Palo Alto Times [in 1956]: ‘It’s pretty well proven that
6 when Negroes come in, property values drop. It’s quite a determining factor when I
7 realize I’m going to cost my neighbors two or three thousand dollars.’ In the same
8 article, Doug Couch, president of Palo Alto’s Board of Realtors, agreed, ‘If you do
9 sell to Negroes, everyone else is down your throat.’²

10 As a result of this combination of policies, Black migration to the area in and around Palo Alto in
11 the 1950s was largely confined to East Palo Alto.

12 8. The effects of this pervasive discrimination are still felt to this day. Palo Alto has a
13 far lower proportion of Black residents than neighboring communities such as East Palo Alto and
14 Menlo Park. When the land on which the Park sits was acquired in 1959, African Americans made
15 up 1.6% of Palo Alto’s population. As of 2019, Census Bureau data shows that percentage is still
16 just 1.6%.

17 9. The Ordinance perpetuates this historic exclusion and violates the constitutional
18 rights of individuals who are not Palo Alto residents. It bars non-residents from entering a public
19 park that occupies nearly 10% of the land in Palo Alto. And it transforms this vast space into a
20 preserve for the fortunate few: for people who were not systematically denied the right to reside in
21 the City during the era of outright racial exclusion, and people who are wealthy enough to afford
22 to move into the City today, as it has become one of the five most expensive places to live in the
23 United States. The Ordinance permits City residents to gather in the Park and enjoy the many

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26 ¹ This history is thoroughly documented in R. Rothstein, *The Color of Law: A Forgotten History*
27 *of How Our Government Segregated America* (2017). See also *Not all neighborhoods were*
28 *created equal in Palo Alto*, Palo Alto Weekly (July 3, 2020), available at
<https://www.paloaltoonline.com/news/2020/07/03/not-all-neighborhoods-were-created-equal-in-palo-alto>.

² *Discrimination in Palo Alto*, PaloAltoHistory.org, available at
<http://www.paloaltohistory.org/discrimination-in-palo-alto.php>

1 freedoms the Park affords, while unconstitutionally excluding non-residents under the threat of jail
2 time and a sizable fine.

3 **PARTIES**

4 10. Plaintiff the National Association for the Advancement of Colored People of San
5 Jose/Silicon Valley (the “NAACP”) is a civil rights organization that was founded under the laws
6 of California in 1952. Its members reside in 13 cities throughout Santa Clara County, with
7 individual and organizational partners throughout the greater Bay Area. The mission of the
8 NAACP is to secure the political, educational, social and economic equality of all citizens and to
9 remove all barriers of racial discrimination and ensure the health and well-being of all persons.
10 The NAACP includes members who do not reside in Palo Alto but who would like to travel to and
11 use the Park to enjoy its facilities and to engage in expressive activity, including to protest the
12 exclusion of non-residents. The NAACP’s members have standing to sue in their own right
13 because they are injured by the continued existence of the Ordinance, which threatens them with
14 punishment if they attempt to use and enjoy the Park, or to engage in protest or other expressive
15 activities within the Park. The interests that the NAACP seeks to protect by this action are
16 germane to its organizational purpose and mission. Neither the claims asserted here nor the relief
17 requested requires the participation of individual members in the lawsuit.

18 11. Plaintiff Gwen Gasque is African American and a resident of Menlo Park,
19 California. She grew up in South Carolina at a time when public schools were segregated, and
20 participated in the desegregation of her high school. Based on her experiences with segregation,
21 she believes the exclusion of non-residents from the Park to be particularly offensive. Ms. Gasque
22 is the owner of Letter Perfect, a high-end stationery and gifts store located at 384 University
23 Avenue in Palo Alto, California. For the 24 years that she has owned her business, she has
24 regularly paid sales and property taxes that fund the City. Ms. Gasque would like to travel into and
25 use the Park, but is banned by the Ordinance from doing so unless she goes as the guest of a Palo
26 Alto resident.

27 12. Plaintiff Laura Martinez is the former Mayor of East Palo Alto, where she
28 continues to reside. She attended Palo Alto Unified School District schools for her primary and

1 secondary education. She works in and provides volunteer and public service to prominent non-
2 profit organizations in Palo Alto. Ms. Martinez would like to travel into and use the Park, would
3 like to protest the Ordinance within the Park, and would like to discuss the exclusionary residents-
4 only policy within the Park and assemble with others within the Park to discuss these matters, but
5 is banned by the Ordinance from doing so unless she goes as the guest of a Palo Alto resident.

6 13. Plaintiff Alysa Cisneros is a resident of Sunnyvale, California. On July 4, 2020,
7 Ms. Cisneros traveled to the Park wearing a “Sunnyvale” pin, accompanied by her teenage
8 daughter and a friend who was wearing a “San Jose” t-shirt. She planned to celebrate
9 Independence Day by symbolically protesting the exclusionary Ordinance through her group’s
10 visible presence in the Park, and by talking to others about the ongoing pattern of exclusion. When
11 she and her group arrived at the front entrance of the Park in her car, she was told they could not
12 enter. She told the guard that she believed the Ordinance was unconstitutional but was not
13 permitted to enter. Ms. Cisneros would like to travel into and use the Park to protest the exclusion
14 of non-residents, including with other friends and family members who are not allowed in the Park
15 under the Ordinance. But she is banned by the Ordinance from doing so unless she enters the Park
16 as the guest of a Palo Alto resident.

17 14. Plaintiff Geoffrey Paulsen is a resident of Cupertino, California and a former
18 resident of Palo Alto. He is a grandson of Dr. Russel Lee and Mrs. Dorothy Lee, who sold the
19 property for the Park to the City in the 1950s. For approximately three decades prior to the sale,
20 Mr. Paulsen and four generations of his family had lived on a family compound on the property
21 that they called Boronda Farm. Mr. Paulsen subsequently worked as a ranger at the Park. While
22 volunteering in East Palo Alto, Mr. Paulsen and his wife took East Palo Alto children on trips to
23 Foothills Park. Mr. Paulsen no longer resides in Palo Alto. He would like to enter the Park and
24 take others into it, so that they may experience the Park and its many amenities and gathering
25 places. Mr. Paulsen, however, is prevented by the Ordinance from doing so unless he enters as the
26 guest of a Palo Alto resident.

27 15. Plaintiff Bridget Grant-Fraser is African American and has lived in East Palo Alto
28 since childhood. In her life, she has only been able to visit the Park twice, each time as the guest of

1 a Palo Alto resident. Ms. Grant-Fraser would like to enter the Park without needing to be escorted
2 by a resident of Palo Alto, but is banned from doing so under the Ordinance. Ms. Grant-Fraser
3 works at the East Palo Alto Senior Center. She would like to be able to take small groups of senior
4 citizens from the East Palo Alto Senior Center to the Park so that they can get the physical,
5 mental, and social benefits of visiting the Park. But, because neither she nor the senior citizens
6 who use the Senior Center are residents of Palo Alto, she is banned from taking them to the Park.

7 16. Plaintiff Donald McDougall is a resident of Burlingame, California. He previously
8 was a resident of Palo Alto and served as the Chair of the City's Parks and Recreation
9 Commission. Mr. McDougall has long believed that public parks, including the Park, should be
10 freely accessible to all; that opportunities to experience nature are important to one's physical and
11 mental well-being; and that depriving anyone of such opportunities is wrong. Mr. McDougall
12 frequently teaches volunteer classes on natural science to children in classrooms and in the
13 outdoors around the Bay Area. He would like to enter the Park and to take visitors, including
14 students, to the Park. But he is banned from doing so under the Ordinance because he no longer
15 resides in the City.

16 17. Plaintiff Kimberly Bomar is African American and a resident of Stanford,
17 California, an unincorporated area of Santa Clara County adjacent to the City. She is a practicing
18 attorney and a former member of the Sierra Club who enjoys hiking. She is the mother of Plaintiff
19 Iyanu Olukotun, who is an avid birdwatcher. Ms. Bomar would like to enter the Park with her son,
20 but is prevented by the Ordinance from doing so unless she and her son enter as guests of a Palo
21 Alto resident.

22 18. Plaintiff Iyanu Olukotun is African American, a minor, and a resident of Stanford,
23 California. He is an avid birdwatcher who would like to enter the Park for birdwatching, but
24 cannot unless he is the guest of a Palo Alto resident. His mother, Plaintiff Kimberly Bomar, has
25 filed simultaneously with this Complaint a petition with the Court to act as his guardian ad litem in
26 this action.

27 19. Plaintiff LaDoris Hazzard Cordell is African American and a long-time resident of
28 Palo Alto. She is a retired Santa Clara County Superior Court Judge, former Assistant Dean of the

1 Stanford Law School and Vice Provost at Stanford University, and a former Palo Alto City
2 Council member. She pays property and sales taxes that fund the City of Palo Alto. Although she
3 resides in Palo Alto and, therefore, is permitted to visit the Park, she opposes the Ordinance and
4 the City's unlawful and wasteful expenditures to enforce it, and has long advocated lifting the
5 non-residents ban.

6 20. Plaintiff Sarah Longstreth is a long-time resident of Palo Alto. She is a licensed
7 attorney. She pays property and sales taxes that fund the City of Palo Alto, and her minor son is a
8 student in the Palo Alto school system. The Park has long been a special place for her and her
9 family, and they regularly hold family events at the Park. Although she resides in Palo Alto and,
10 therefore, is permitted to visit the Park, she opposes the Ordinance and the City's unlawful and
11 wasteful expenditures to enforce it.

12 21. Defendant City of Palo Alto, California is a municipal corporation in Santa Clara
13 County, California. Pursuant to Article II of the City's Charter, the City exercises the powers
14 necessary and appropriate to a municipal corporation through its City Council.

15 **JURISDICTION AND VENUE**

16 22. Jurisdiction is proper under section 410.10 of the California Code of Civil
17 Procedure.

18 23. Venue is proper under section 394 of the California Code of Civil Procedure
19 because Defendant is a City located in Santa Clara County.

20 **FURTHER FACTUAL ALLEGATIONS**

21 **The City Acquires the Park and Restricts its Use to Residents Only**

22 24. In 1959—at a time when the discriminatory practices described above were
23 occurring—the City acquired the land comprising the Park from prominent Palo Alto residents Dr.
24 Russel Lee and Mrs. Dorothy Lee for \$1.3 million. At Mrs. Lee's insistence, the land was to be
25 preserved as a park for the benefit of all people. The sale was negotiated in 1958 and, following a
26 referendum on the purchase, was finalized in 1959. The sellers did not intend that access to the
27 land be limited to Palo Alto residents, and there were no legal restrictions on residency in
28 connection with the acquisition.

1 25. The Park is a vast space that makes up 8.4% of the City’s total area. The Park was
2 dedicated in the same manner as all other City park land, as “reserved for park, playground,
3 recreation or conservation purposes.” The City encourages Palo Alto residents to use the Park’s
4 facilities, which include five picnic areas and barbecues, a campground, vast irrigated grass fields,
5 and an extensive trail network. The City also invites visitors to attend activities and programs led
6 by volunteers and City staff, and to fish and boat in the Park’s man-made Boronda Lake.



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21 Figure 1: Boronda Lake: Foothills Park Presentation at City Council Meeting (Aug. 3, 2020)

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23 26. The Park has traditionally been open for expressive uses and it remains so today. It
24 contains an interpretive center and meeting rooms where lectures, lessons, discussions and
25 meetings frequently occur. It hosts weddings, other celebrations, and free public music concerts.
26 At the same time that the City makes the Park a place of gathering and expressive activity readily
27 available to residents, it warns repeatedly on its website and public documents that non-residents
28 are banned from the Park.

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Figure 2: Irrigated Grass Fields, Foothills Park

27. The sole vehicular entrance to the Park is the main entry gate on Page Mill Road. Through that gate, a visitor may drive in and park at one of numerous parking lots dispersed throughout the Park to allow for easy access to Park facilities. Non-residents are not legally permitted to enter through the main entry gate unless in the company of a Palo Alto resident.

28. Under an arrangement that the City agreed to in 2005 to enable it to secure funding from other government agencies for the purchase of land to complete the Bay-to-Ridge Trail (also known as the “Bay to Foothills Trail”), the City amended the Ordinance to allow non-residents to traverse the Park by foot on the Bay-to-Ridge Trail. But non-residents may do so *only* if they enter and leave the Park on foot along that trail and never leave that trail during their time in the Park. The entry and exit points for the Bay-to-Ridge Trail are far distant from the main Park gate on Page Mill Road and are not accessible by car. As a result, non-residents wishing to traverse the Park by that trail must hike several miles and are not legally allowed to step foot off of that trail.

1 Although the City sometimes asserts that the Bay-to-Ridge Trail makes the Park open to non-
2 residents, the reality is the opposite. The proviso heightens the disparity of treatment between
3 residents (who may freely enter the park and use all of the Park’s plentiful amenities and gathering
4 places) and non-residents (who are banned from doing so). Indeed, the City’s own employees have
5 openly acknowledged that the “option” of a strenuous hike over several miles to get into the Park
6 via the Bay-to-Ridge Trail affords no opportunity whatsoever for non-residents who are disabled
7 or unable to complete that hike.

8 **The City Aggressively Enforces the Residents-Only Ordinance**

9 29. The City enforces the Ordinance by refusing entry to the Park to persons not able to
10 establish that they are Palo Alto residents. Signs posted at the main entry gate prominently warn of
11 the prohibition on use of the Park by non-residents, and the City staffs the entry gate to the Park
12 with law enforcement officers (park rangers) or other uniformed guards, particularly during
13 weekends and holiday periods. According to an estimate provided by City staff, enforcement of
14 the Ordinance requires the main entry gate to be staffed, with associated costs to the City of
15 approximately \$89,000 per year.



26 Figure 3: Brown, Steven, *Admire Beautiful Foothills Park – through the Fence*, *The Stanford Daily*
27 (Dec. 10, 1980), stanforddailyarchive.com/cgi-bin/stanford?a=d&d=stanford19801210-01.2.84#
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1 30. The City’s enforcement of the Ordinance only heightens historic disparities. The
2 officer at the gate checks visitors’ identification and refuses entry to those who are not able to
3 prove that they are City residents. Plaintiffs have witnessed and are aware of numerous instances
4 of individuals being treated disparately based on their apparent background or perceived
5 socioeconomic status. For example, during a small protest on June 27, 2020, Plaintiff Cordell
6 witnessed a young, white non-resident family in an electric car being admitted to the Park.
7 Although not City residents, they were allowed in as so-called “guests” of the guard. The person
8 seeking to enter immediately after that young family, a female driver who was planning to join the
9 protest inside the Park, was refused entry, as were two pedestrians and a single male from East
10 Palo Alto driving an older Chevrolet truck, who stated that he has been repeatedly refused access
11 in the past.

12 31. During the past five years, the City has refused entry to approximately 3,100
13 vehicles per year, or approximately 8,200 persons per year, using the City’s own estimate of
14 passengers per vehicle.

15 32. In an attempt to deter non-residents from traveling to the Park, the City openly
16 publicizes the exclusionary Ordinance and related restrictions, which apply to entry and use of all
17 facilities, including group assembly and meeting facilities.

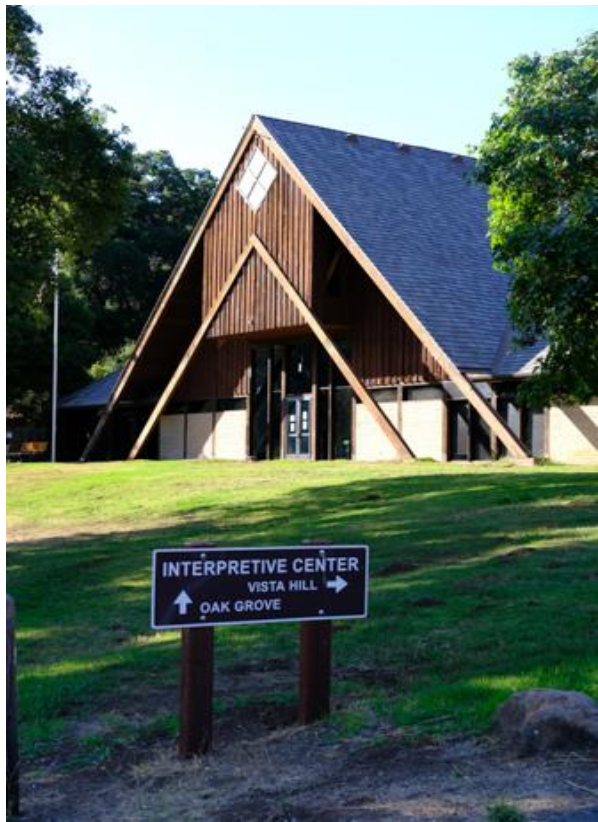


22 Figure 4: One of several Park entry signs. Photo credit Charles Krenz

23 33. Indeed, the City posts on the Park website a document entitled “Foothills Park
24 Residency Requirements,” which details acceptable forms of proof of Palo Alto residency and
25 which specifically states that “East Palo Alto addresses” are “NOT ACCEPTED.”
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1 **Assemblies and Expressive Speech Activities Regularly Occur in the Park**

2 34. With the City’s open encouragement, the Park is a place where expressive speech
3 activities frequently take place. As set forth on the reservations website maintained by the City,
4 meetings, weddings, seminars, reunions, recreational programs and other assemblies regularly
5 occur at the Park in various locations throughout the Park, including the Oak Grove and the Nature
6 Interpretive Center.



20 Figure 5: Interpretive Center, Foothills Park

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22 35. In addition, protests or attempted protests concerning the Ordinance have
23 frequently occurred at the Park.

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1 36. On June 27, 2020, a small protest was held at the Park. Three persons who are
2 residents of Palo Alto were allowed to enter the Park and protest. At least three other persons, all
3 with protest signs in hand, were refused entry because they were not residents of Palo Alto.



Figure 6: Photo credit Terry Scussel, Pro Bono Photo

19 37. On July 4, 2020, a small protest was planned at the Park. Plaintiff Cisneros and two
20 others were refused entry to the Park because they were not residents of Palo Alto. In response to
21 the would-be visitors questioning the basis for excluding the protesters, City staff stated that they
22 did not know whether it was constitutional to refuse entry, but that “it is the rule.”

1 38. On the night of July 5, 2020, a small protest with approximately a dozen people
2 was held at the entry gate to the Park, including the painting of a sign on the roadway (with chalk-
3 based, washable paint) calling for the “desegregation” of the Park. The City used hundreds of
4 gallons of water to wash the chalk away by 7 a.m. the next morning.



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16 Figure 7: Photo credit Benny Villareal

17 39. On Saturday, July 11, 2020, a protest took place at the Park. Some protesters
18 repainted the “desegregate” sign outside the Park and approximately 40-50 people marched into
19 the Park and held a protest.

20 40. On August 12, 2020, a further protest took place at the Park, as protesters met at the
21 Park to protest the non-resident ban.

22 **The City Has Repeatedly Refused to Rescind the Unlawful Ordinance**

23 41. The City has stated that it believes Foothills Park is the only public park in
24 California with a ban on non-residents.

25 42. The idea of a residents-only Park has been controversial since the Park was
26 established. After the City enacted the Ordinance in 1969, it considered dropping the policy in the
27 early 1970s. A survey taken at the time revealed that a majority of City residents favored opening
28 the Park, but the City Council refused to budge.

1 43. The City has advanced several justifications for its unlawful Ordinance. Each is
2 pretextual, and none withstands serious examination.

3 44. First, the City often attempts to justify its non-residents ban as rooted in the refusal
4 of neighboring communities to help pay for the acquisition of land for the Park. This justification
5 is not supported by the facts. Before the Park opened, the City turned down an offer from Santa
6 Clara County in 1964 to contribute \$500,000 toward the acquisition costs—which would have
7 defrayed a significant portion of those costs—because accepting the County’s offer would mean
8 that the Park would need to be open to all. Further, the two immediately neighboring towns, Los
9 Altos Hills and Portola Valley, are residential communities with limited commercial and retail
10 activity. Those towns were only incorporated in 1956 and 1964, respectively, and could not have
11 been expected to contribute significantly to the purchase of land for the Park after the City had
12 already committed to purchasing the land. In fact, the City preferred to create what Palo Alto
13 politicians called a “small attendance natural park for use by Palo Altans only.”³ Another local
14 politician added, “From the start, the whole idea has been that of a natural retreat for the people of
15 Palo Alto. It’s our park and we should run it to suit ourselves.”⁴

16 45. Second, the City has asserted that visitation must be limited to Palo Alto residents
17 to protect the environment, because they take better care of the Park than people of other
18 communities. This deeply offensive and arguably racist and classist notion has been repeated for
19 decades, beginning in the 1960s when the City Council put the “residents-only” Ordinance on the
20 books. In the 1970s, City administrators asserted that “Foothills Park visitors [i.e., Palo Alto
21 residents] demonstrate more pride of ownership and cause less damage than in other city parks
22 open to nonresidents.”⁵ As a City Councilman said after the debate over opening the Park in 1973:
23 “An issue of this sort doesn’t bring out people’s noblest sentiments.”⁶ The same sentiment was
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25 ³ *Joint Park Gets Cool Reception*, Palo Alto Times (July 29, 1964).

26 ⁴ *Id.*

27 ⁵ *Continued outsiders’ ban favored for Foothill Park*, Palo Alto Times (Aug. 1973).

28 ⁶ *Id.*

1 expressed in 2005, when the City Council voted 5-4 against allowing the City’s Parks &
2 Recreation Commission (the “PRC”) to study alternatives to the Ordinance, with one Council
3 member stating that allowing non-residents to access the Park would be “a prescription for
4 environmental degradation.”⁷ In all this time, the claim that Palo Alto residents cause less damage
5 to the Park than non-residents has never been supported by any data.

6 46. To the extent that the exclusion of non-residents is based on fears of over-use, the
7 reality is to the contrary: the Park is significantly underutilized. When Palo Alto enacted the
8 Ordinance in 1969, the Park had approximately 292,000 visitors annually. Visitation peaked for
9 two years in the early 1970s at approximately 372,000 visitors (i.e., approximately 1,000 visitors
10 per day). The Park did not suffer from that level of use. An entry fee was charged during the 1980s
11 and 1990s to help recover the costs of infrastructure repairs, and the annual visitation in 1998 was
12 only 29,000 visitors. For most of the last 20 years, visitation has hovered at approximately
13 150,000 visitors per year—approximately 40% of the usage from the early 1970s.

14 47. Even if the rate of visitation were a legitimate concern, the City could address this
15 concern by other means far less restrictive than banning non-residents. These include the obvious:
16 enforcing the existing cap on the number of persons visiting the Park at any one time, regardless
17 of resident status, or charging a non-cost-prohibitive, non-discriminatory entry fee. Given these
18 alternative mechanisms, the City’s ban on non-residents is not plausibly related to the number of
19 visitors to the Park. Rather, it is focused on *who* those visitors are and *where* they come from.

20 48. Indeed, a group of environmental experts empaneled by the City for a PRC meeting
21 on July 28, 2020 concluded that the supposed environmental concerns could be easily managed.
22 The Executive Director of Grassroots Ecology, a leading voice on the panel, added, “[w]e believe
23 that opening Foothills Park and allowing more people to experience this will have a net positive
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25

26
27 ⁷ *Foothills Park will remain closed: Council fears ‘another community war’ if issue is explored*,
28 Palo Alto Weekly (Oct. 25, 2005) (quoting a Council member who asserted that opening the Park
to non-residents is “a prescription for environmental degradation”).

1 effect on the overall ecosystem” and “that we need our wide-open public spaces more now than
2 ever.”⁸

3 49. Finally, the argument that non-residents should be excluded because they are not
4 paying for maintenance of the Park is not supported by the facts. The City pays for park
5 maintenance from its General Fund, and the vast majority of General Fund revenues derive *not*
6 from property taxes but from business and consumer taxes, such as sales taxes and transient
7 occupancy taxes paid by hotels. In the last decade, only about 20% of the City’s General Fund
8 revenues have come from property taxes, and of that 20%, only a portion has come from property
9 taxes paid by Palo Alto residents (as opposed to taxes paid by owners of commercial buildings
10 who may not be Palo Alto residents). Thus, the Park’s expenses are substantially paid by the
11 City’s business owners and the people who patronize them—many of whom are excluded from the
12 Park because they are not City residents.

13 50. In October 2018, the PRC formed a committee to closely study opening the Park to
14 non-residents. By July 2019, the PRC held the first of three public hearings concerning options to
15 open the Park. Residents opposed to opening the Park acknowledged the discriminatory nature of
16 the non-residents ban but still attempted to rationalize it. Statements at the hearing included: “We
17 shouldn’t have to feel embarrassed that we’re discriminating,” and that the residents-only
18 exclusion assured Palo Alto residents that they would not have to “worry about [their] car[s]”
19 being broken into and “worry about [their] safety” being threatened by non-resident visitors.⁹

20 51. After two more public hearings, the PRC voted 6-1 on November 12, 2019 to send
21 a formal report and recommendation to the City Council to open the Park to non-residents,
22 beginning with a controlled pilot program. This proposed pilot program was a limited proposal
23 that would involve charging a fee to non-residents for a non-resident pass, and capping the number
24 of passes at 50 for any given day. The report and recommendation of the PRC noted that the pilot
25

26 ⁸ PRC Meeting Minutes, at 27:14-17 (July 28, 2020).

27 ⁹ PRC Meeting Minutes, at 29:4-11 (July 23, 2019). (Others expressed the opposite: “To me, this
28 [residents-only] policy is one that makes me embarrassed to be a resident of Palo Alto.” *Id.* at
28:16-17.)

1 program would not require new capital expenditure and only that “incremental [operational] costs
2 may be incurred,” and further that the risk of negative impact on the Park was “viewed as a limited
3 one in light of past experience.”

4 52. Even this limited attempt to open the Park was met by delay, avoidance, and
5 opposition. By June 2020, more than six months after the PRC had passed its formal
6 recommendation, the Council had still not addressed the issue. In the national moment of
7 reckoning spurred by the killings of George Floyd, Ahmaud Arbery, and Breonna Taylor, more
8 than 130 faith, political, and academic leaders and public interest organizations representing a
9 broad range of constituencies called on the City Council to repeal the Ordinance. These included
10 four members of Congress, the local legislative delegation, nine rabbis, priests and ministers, ten
11 former mayors of Palo Alto, all of the members of the PRC, and numerous organizations
12 (including the ACLU and NAACP). (*See* Letter to City Council, attached as Exhibit A.)

13 53. The Palo Alto Mayor and City Manager scheduled the issue for discussion on
14 June 23, 2020. But on June 22, the day before the scheduled meeting, the City Council voted 5-2
15 to further postpone discussion.

16 54. Palo Alto Mayor Adrian Fine, who favored considering the proposal to open the
17 Park, insisted that the Council discuss the issue and was successful in keeping it on the agenda for
18 August 3, 2020. But on August 3, instead of adopting the PRC proposal, the same 5-2 Council
19 majority that had delayed consideration of that measure instead adopted a “substitute motion” that
20 delayed indefinitely the implementation of even a pilot program for non-resident access to the
21 Park. The “substitute motion” imposed a requirement that any “pilot program remains revenue
22 neutral,” while making that revenue neutrality impossible to achieve by attaching approximately
23 \$200,000 in additional cost items to the proposal (such as monitoring equipment and
24 improvements to the Park parking lot). Before the City Council passed the substitute motion, City
25 staff informed the Council, and several Councilmembers openly acknowledged, that there was no
26 way to generate enough revenue through a pilot program to offset the costs that the Council had
27 placed on the program. The discussion also made clear that the Council majority expected costly
28

1 environmental studies, even though the PRC had not recommended such studies and City staff had
2 concluded that they were not legally required.

3 55. By requiring a revenue-neutral proposal at the same time it called for \$200,000 in
4 added costs as well as costly environmental studies, the substitute motion would indefinitely defer
5 even a limited opening the Park to non-residents.

6 56. At its meeting on August 3, 2020, the Council also voted to “bring this item to the
7 Council in 2022 for a possible ballot measure.” The Council’s suggestion that it might place
8 access to the Park on a ballot measure in 2022 provides further evidence of the Council majority’s
9 intent to delay opening the Park and maintain the status quo.

10 57. The ballot measure suggestion also confirms the pretextual nature of the Council’s
11 concerns about cost. Even though some Council members claimed to be concerned about the costs
12 supposedly associated with opening the Park to non-residents, those same Councilmembers
13 expressed no concern when City officials informed them that it might cost up to \$150,000 to place
14 such a measure on the ballot. They also overlooked the fact that enforcing the existing Ordinance
15 was costing the City at least \$89,000 per year. Moreover, the City Attorney for Palo Alto has
16 conceded that the currently constituted City Council lacks the authority to put the matter to a vote
17 in 2022, because 2022 ballot measures must be considered by the City Council serving in 2022
18 (and not the current City Council).

19 58. The proposal for a future ballot measure regarding opening of the Park to non-
20 residents also has another, more profound, failing. As the Mayor of Palo Alto correctly stated
21 during the August 3, 2020 Council meeting, “You don’t put civil rights to a vote.”

22 59. Through its long history of inaction and delay, the City Council has demonstrated
23 that it has no intention of opening Foothills Park to non-residents, notwithstanding impassioned
24 calls from many residents, organizations, community leaders, and faith groups that it is long past
25 time for this shameful vestige of Palo Alto’s past to be eliminated.

26 60. Plaintiffs therefore urgently request that this Court enforce their rights by
27 invalidating the Ordinance and declaring that Foothills Park is open to all persons regardless of
28 their residency.

1 **FIRST CAUSE OF ACTION**
2 **Violation of Equal Protection Clause of the 14th Amendment to the U.S. Constitution**
3 **(Infringement of Right to Travel)**
4 **(By Plaintiffs NAACP, Gasque, Martinez, Cisneros, Paulsen, Grant-Fraser, McDougall,**
5 **Bomar, and Olukotun)**

6 61. Plaintiffs reallege and incorporate by reference the allegations contained in
7 Paragraphs 1-60 above.

8 62. Under the U.S. Constitution, all persons enjoy “the fundamental right, inherent in
9 citizens of all free governments, peacefully to dwell within the limits of their respective states, to
10 move at will from place to place therein....” (*United States v. Wheeler* (1920) 254 U.S. 281, 283.)
11 “Wandering or strolling ... are historically part of the amenities of life as we have known them.”
12 (*Papachristou v. City of Jacksonville* (1972) 405 U. S. 156, 164.)

13 63. Because the right of freedom of movement is a fundamental right, under the Equal
14 Protection Clause of the 14th Amendment to the U.S. Constitution, any ordinance restricting
15 exercise of that right is “presumptively invidious” and is invalid unless the government can prove
16 that the restriction has been “precisely tailored to serve a compelling governmental interest.”
17 (*Plyler v. Doe* (1982) 457 U.S. 202, 216-17.)

18 64. The Ordinance infringes the Equal Protection Clause of the 14th Amendment. The
19 Ordinance, specifically, infringes on the right of freedom of movement of individuals who are not
20 residents of Palo Alto, including members of Plaintiff NAACP and Plaintiffs Gasque, Martinez,
21 Cisneros, Paulsen, Grant-Fraser, McDougall, Bomar, and Olukotun, by making it a crime for them
22 to travel within the City, specifically into or within Foothills Park.

23 65. The travel restriction contained in the Ordinance serves no compelling
24 governmental interest; and even if it did, the City cannot prove that the Ordinance has been
25 precisely tailored to serve such an interest.

26 66. Accordingly, the Ordinance is invalid for infringing on Plaintiffs’ fundamental
27 right of freedom of movement.
28

1 of ideas and other expressive activities, and it is frequently so used today. It also contains a
2 network of paths that are public thoroughfares.

3 74. Because the Park is a public forum, the City’s prohibition on speech by non-
4 residents violates the First Amendment because it is not “narrowly tailored to serve a significant
5 governmental interest.” (*Berger v. City of Seattle* (9th Cir. 2009) 569 F.3d 1029, 1035-36.) None
6 of the purported interests advanced by the City as justifications for the residents-only restriction is
7 significant enough to justify infringement of protected rights to speech, and the restriction itself is
8 not narrowly drawn to serve any such interest.

9 75. By limiting the use of the Park to Palo Alto residents and threatening non-residents
10 with criminal prosecution, the City violates the First Amendment free speech rights of the non-
11 resident Plaintiffs and all non-residents.

12 **FOURTH CAUSE OF ACTION**
13 **Violation of Article I, § 2(a) of the California Constitution**
14 **(Infringement of Right of Freedom of Speech)**
15 **(By Plaintiffs NAACP, Cisneros, Martinez, Paulsen, and McDougall)**

16 76. Plaintiffs reallege and incorporate by reference the allegations contained in
17 Paragraphs 1-75 above.

18 77. Article I, Section 2(a) of the California Constitution provides protections for the
19 right of free speech that are “at least as broad as and in some ways broader than” the protections
20 afforded by the First Amendment. (*Kasky v. Nike, Inc.* (2002) 27 Cal. 4th 939, 958-59 (internal
21 quotations and citations omitted).)

22 78. Under California law, a place is a public forum unless the expressive activity at
23 issue is “basically incompatible with the normal activity” of the property. (*Kuba v. I-A Agr. Ass’n*
24 (9th Cir. 2004) 387 F.3d 850, 857.) The act of protesting the City’s exclusion of non-residents
25 from the Park, and the other expressive activity in which the non-resident Plaintiffs seek to
26 engage, are entirely compatible with the Park’s normal activity, which historically and expressly
27 included the discussion and exchange of ideas.

28

1 order of this Court restraining and preventing the illegal and/or wasteful expenditure of City funds
2 under Code Civ. Proc. § 526a.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiffs pray for relief as follows:

5 1. For a declaration that Palo Alto Municipal Code § 22.04.150 violates the
6 fundamental rights of persons who are not residents of Palo Alto to freedom of travel, freedom of
7 speech, and freedom of assembly; that the Ordinance is therefore unlawful to the extent that it
8 prevents non-residents of the City of Palo Alto from entering and remaining in Foothills Park; and
9 that the Ordinance may not be enforced.

10 2. For a preliminary and permanent injunction ordering the City as follows:

11 a. To immediately cease enforcing Palo Alto Municipal Code § 22.04.150, or
12 any other provision of law that prohibits non-residents of Palo Alto from entering or remaining in
13 Foothills Park or purports to punish such activity;

14 b. To refrain from enacting, in the future, any law or regulation that prohibits,
15 restricts, or punishes the use of Foothills Park by non-residents of Palo Alto; and

16 c. Within 30 days of the date of said injunction, to remove all references in
17 any signage, notices, postings, literature, or websites that state or suggest that the use of Foothills
18 Park is limited to residents of Palo Alto, or that non-residents are prohibited from using or
19 remaining in the Park, or are subject to any penalty for such activity.

20 3. For an order under Code Civ. Proc. § 526a restraining and preventing the City from
21 expending any funds, including but not limited to employee salaries, to enforce the residents-only
22 provisions of the Ordinance.

23 4. For attorney's fees and costs of suit.

24 5. For such other and further relief as the Court may deem just and proper.

25 **DEMAND FOR JURY TRIAL**

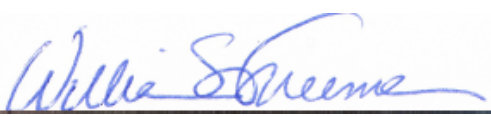
26 Pursuant to Code Civ. Proc. § 631, Plaintiffs hereby demand trial by jury of all issues so
27 triable.

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DATED: September 15, 2020

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF NORTHERN CALIFORNIA
WILLIAM S. FREEMAN

By: 
WILLIAM S. FREEMAN

MUNGER, TOLLES & OLSON LLP
ACHYUT J. PHADKE
GINA F. ELLIOTT
ANDREW R. LEWIS
LLOYD S. MARSHALL

By: 
ACHYUT J. PHADKE

Attorneys for Plaintiffs National Association for the
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Geoffrey Paulsen, Bridget Grant-Fraser, Donald
McDougall, Kimberly Bomar, Iyanu Olukotun,
LaDoris Hazzard Cordell, and Sarah Longstreth

Exhibit A

June 18, 2020

Dear City Council and Neighbors:

At this historic time, civic leaders across America are being challenged to reassess the policies and systems we've ensconced in law to find more equitable ways to achieve our communities' goals and values. Palo Alto's 50-year-old ban on non-residents at Foothills Park is one such outdated policy that requires action.

Since the 1960s, Palo Alto has made it a crime *punishable by jail time* for non-residents to enter Foothills Park. This policy sends a terrible message to our neighboring communities—particularly those which do not enjoy the same socioeconomic advantages that Palo Alto does—and leaves a bad taste in the mouths of thousands of would-be visitors who are prohibited by uniformed City staff from entering a public park. It is also expensive, costing nearly \$90,000 per year to enforce.

Last year, the Parks & Recreation Commission (PRC) undertook an extensive analysis of visitor and resource data and heard lengthy public input, which led to their recommendation that the Council reform this policy. We applaud the Council and Staff for taking this issue up this month. The urgency of reforming this ordinance is more apparent now than ever.

As concerned faith and community leaders, we call on Palo Alto to:

- (1) Repeal this ordinance (P.A.M.C. 22.04.150(a)), and**
- (2) Direct staff and the PRC to craft, within the next 60 days, a 21st Century policy that demonstrates Palo Alto's commitment to equality, openness and resource protection.**

In the past several months, we have seen the admirable speed with which our local governments can respond to big problems. This Foothills Park ordinance is only a small piece of the much larger policy choices that we need to consciously reconsider at this time, but it is a long-simmering issue that we can and should address now. Please meet this moment.

Sincerely,¹

Congresswoman Anna G. Eshoo
Congresswoman Zoe Lofgren
Congresswoman Jackie Speier
Congressman Ro Khanna
Hon. Lisa Jackson, former Administrator,
U.S. Environmental Protection Agency
Judge LaDoris Cordell, retired Superior
Court Judge and former
Councilmember
State Senator Jerry Hill
State Assemblymember Marc Berman

Organizational Signatories:
NAACP of San Jose/Silicon Valley
ACLU Foundation of Northern California
California Religious Action Center of URJ
American Association of University
Women, Palo Alto
Peninsula Democratic Coalition
Peninsula Young Democrats

¹ *Additional signatories welcomed; titles are for identification purposes only.*

Rev. Kaloma Smith, Pastor,
University AME Zion Church
Rabbi David Booth, Congregation
Kol Emeth
Rabbi Sarah Graff, Congregation Kol Emeth
Rabbi Janet Marder, Congregation Beth Am
Rabbi Jonathan Prosnit, Congregation
Beth Am
Rabbi Heath Watenmaker, Congregation
Beth Am
Rabbi Sarah Weissman, Congregation
Beth Am
Cantor Jaime Shpall, Congregation
Beth Am
Rev. Terry Gleeson, Rector, All Saints
Episcopal Church
Fr. Bob Glynn, S.J., Catholic Community at
Stanford
David Smernoff, Board Chair, Grassroots
Ecology
Elliot Wright, Executive Director,
Environmental Volunteers
Regina Wallace-Jones, Mayor,
East Palo Alto
Jim Keene, former City Manager
Leland Levy, former Mayor
Pat Burt, former Mayor
Gail Woolley, former Mayor
Dena Mossar, former Mayor
Betsy Bechtel, former Mayor
Vic Ojakian, former Mayor
Peter Drekmeier, former Mayor
Nancy Shepherd, former Mayor
Sid Espinosa, former Mayor
Lanie Wheeler, former Mayor
Cory Wolbach, former Councilmember
Gail Price, former Councilmember
Jennifer DiBrienza, PAUSD School Board
Trustee
Shounak Dharap, PAUSD School Board
Trustee
Don McDougall, former Parks & Rec
Commission Chair
Jeff Greenfield, Chair, Parks & Rec
Commission

Anne Warner Cribbs OLY, Vice Chair,
Parks & Rec Commission
Keith Reckdahl, Parks & Rec Commission
member and past chair
David Moss, Parks & Rec Commission
member and past vice chair
Jeff LaMere, Parks & Rec Commission
member
Jacqueline Olson, Parks & Rec Commission
member
Ryan McCauley, Parks & Rec Commission
member
Valerie Stinger, Vice Chair and past Chair,
Human Relations Commission
Steven Lee, Human Relations Commission
member
Patti Regehr Human Relations Commission
member
Cari Templeton, Chair, Planning &
Transportation Commission
Laura Martinez, former Mayor, East Palo
Alto
Larry Magid, CEO, Connect Safely
Dr. Kelsey Banes, Ph.D, Executive Director,
Peninsula for Everyone
Jim Thompson, Founder, Positive Coaching
Alliance
Dr. Carol McKibben, Lecturer in Urban
Studies, Stanford
Dr. Nicole M. Ardoin,
Emmett Interdisciplinary Program in
Environment & Resources, Stanford
Dr. Luke Terra, Ph.D.
Dr. Blakey Vermeule, Ph.D.
Dr. Esther Conrad, Ph.D.
Kelly Beck
Petra Dierkes-Thrun
Barbara Moreno-Lane
Tom Schnaubelt
Suzanne Abel
Patrick Archie
Joanne Tien
Peggy Propp
Mary Walsh
Priscila Garcia
Cristen Osborne

Munira Almire, President, Associated
Students of Stanford University
Vianna Vo, Vice President, Associated
Students of Stanford University
Steve Levy, Director of the Center for
Continuing Study of the California
Economy
Rod Sinks, Cupertino Councilmember and
former Mayor
Uriel Hernandez, Vice Chair, East Palo Alto
Planning Commission
Paul Lazarow, civil rights lawyer
Charlie Krenz, open space and trails
advocate
Peter Fortenbaugh
Will Davis
Sandy Couser, Nursing Instructor, Retired
Public Health Nurse Practitioner
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Sarah Aitken
Vicki Perkins
Maika Horjus
Dr. Enoch Choi, M.D.

***Lee family members, all descendants of
Foothills Park grantors Dorothy and
Russell Lee:***

Geoffrey Lee Paulsen, former Foothills Park
and National Park Service ranger
Martha Lee, retired executive, National Park
Service
Amy Paulsen
Joanie Paulsen
Eric Paulsen
Janine Paulsen
James Chadwick, Esq.
Patricia Chadwick
Dr. Rich Lee, M.D., Founder and Medical
Director, Hometown Healthcare, Palo
Alto
Barbie Paulsen
Dr. Catherine Lee, Ph.D.
Margaret Lee
Alison Margo Smaalders
Dr. Phyllis Lee, Ph.D.
Sally Paulsen
Virginia Lee Adi
Graham Lee
Sophie Lee
Amy Pinneo

*Additional signatories welcomed.
Titles are for identification purposes only.*