

HAHN & HAHN LLP

LAWYERS

R. Scott Jenkins
A Professional Corporation
rsjenkins@hahnlawyers.com

Established 1899

(626) 796-9123
Fax (626) 449-7357
www.hahnlawyers.com

301 EAST COLORADO BOULEVARD
NINTH FLOOR
PASADENA, CALIFORNIA 91101-1977

September 16, 2021

VIA ELECTRONIC MAIL ONLY

Planning Commission
City of Pasadena
175 N. Garfield Ave.
Pasadena, CA 91101
c/o Mr. David Reyes
E-Mail: davidreyes@cityofpasadena.net

Re: Draft East Colorado Specific Plan

Dear Planning Commission Members:

We contact you on behalf of In-N-Out Burger regarding the Draft East Colorado Specific Plan (the "Plan"). The Plan as currently drafted prohibits new drive-through establishments of any sort throughout the entire Plan area. We feel this is a significant mistake, and should be corrected.

Under current law, drive-through businesses are allowed with a Conditional Use Permit ("CUP") as set forth in Section 17.50.090 of the Pasadena Municipal Code. The new effort to prohibit all new drive-through businesses reflects pre-COVID-19 pandemic thinking. As we all know, the world has changed significantly in the last 18 months, and we all need to modify our thinking to reflect this new reality.

Here are some observations that we hope you will consider:

1. Drive-through establishments are needed in the community for a wide variety of reasons. The pandemic has made all of us quite aware of the need to protect our personal health. At various times during the pandemic, often by governmental order, business establishments of all sorts were closed or prohibited from allowing patrons to enter enclosed buildings. During this period, many businesses survived and were able to serve their patrons only because of drive-through capabilities. These drive-through businesses were life-savers during the pandemic, and (unfortunately) will likely be needed again in the future.

2. The proposed prohibition on drive-through establishments would impact a wide variety of business establishments, not just fast-food outlets. When we hear the term "drive-

through," we often think of a fast-food restaurant. But drive-through establishments are surprisingly ubiquitous in our society. For example, many banks have drive-through tellers, pharmacies have drive-through pickup (separating the ill from the healthy), grocery stores have drive-through delivery, and curbside deliveries of all sorts are being developed in leaps and bounds. We fear that Pasadena would regret the prohibition of these much needed innovations and instead foster anachronistic business practices.

3. The growing use of electric vehicles will in time eliminate the concern about vehicle emissions at drive-throughs. In time, gasoline engines will be a thing of the past. Nearly all car manufacturers are already announcing dates by which they will cease manufacturing such vehicles and produce only electric vehicles. With the change in other modes of transportation, drive-throughs will cease to be an air pollution concern. Moreover, lacking convenient drive-through options, many residents will instead resort to using one of the new online ordering and delivering services, which will result in the same number of car trips and traffic.

4. A properly designed drive-through is likely the most efficient means in which to deliver take-away products to a customer in a timely manner. A drive-through restaurant can be configured in a way to allow on-site dining, walk-up delivery, car-hop type service, curbside delivery, and more traditional drive-through. If a restaurant were required to allow only on-site dining, then the customer who wanted take-home food would be required to drive to the restaurant, park (hopefully on site), walk up to the restaurant, order, pick up the bag of food, walk back to the car, and drive away. In terms of many factors – time, traffic, parking spaces, and the like, this is not the best way to meet the needs of the customer.

5. Pasadena residents should be allowed to visit their preferred businesses locally, and not be forced to drive out of town. Pasadena often thinks of itself as an island. The fact is that popular business establishments can locate just about anywhere. For many years, Pasadena prohibited "big box retail" establishments such as Home Depot, Walmart, Costco and others. As a result, Pasadenans had no choice but to drive long distances outside the city boundaries to shop at those businesses. We are lucky to now have a Home Depot locally, which increases local employment and produces significant local sales taxes. Drive through establishments are no different.

6. Allowing a business use, such as a drive-through establishment, with a CUP, allows the community to prohibit, or allow with appropriate conditions, such a business on a case by case basis, and protects the surrounding area from the possible annoying characteristics of such establishments. A well-drafted zoning code creates uniform use and development standards for a community. To avoid the constant need to amend such zoning rules, we typically allow for conditionally approved uses and variances. Drive-through businesses are a perfect use for a CUP requirement. Such a use might be inappropriate in a particular location, but in another area, it might be quite appropriate. To prohibit all such drive-throughs would allow such uses only with a code amendment. This is not good governance.

7. The belief that by prohibiting drive-through establishments you will cause people to walk, bike and otherwise avoid using their cars, is inspiring but not realistic. In a highly urbanized areas such as downtown Manhattan, or in an area where gas prices are ridiculously high, people might choose to walk rather than drive a car. But Pasadena is a suburban area where people are still fond of driving their cars and mass transit options are still underdeveloped. If anything, during the pandemic, local residents became more in love with their cars and possibly walked even less.

8. The belief that prohibiting drive-through establishments will improve public health by limiting access to high calorie foods is also not supported by facts. Planners in south Los Angeles banned new drive through restaurants in 2008. According to a study conducted by the RAND Corporation, rates of obesity and being overweight continued to climb in the years following the ban. (See article found at:
[https://www.sciencedirect.com/science/article/abs/pii/S0277953615001409?via%3Dihub.](https://www.sciencedirect.com/science/article/abs/pii/S0277953615001409?via%3Dihub))

9. Finally, banning drive-through businesses negatively affects those who are the most vulnerable in Pasadena. Drive-through businesses are often the most accessible and safest business options for those of who have impaired mobility, such as the disabled and the elderly.

Thanks for listening to our thoughts. We appreciate all the hard planning work done to make the East Colorado area the best it can be. Again, we urge you to allow drive-through businesses with a CUP in this Plan.

Very truly yours,



R. Scott Jenkins
of HAHN & HAHN LLP

RSJ:jh

cc: Mr. Jim Lockington

RS\37229.00001\3232383.2