



denver STREETS PARTNERSHIP.org
Advocating for people-friendly streets in Denver

FEBRUARY 7, 2025

Dear Mayor Johnston and Denver City Council Members:

I am writing to express the Denver Streets Partnership's (DSP's) support for the proposed Gas Station Limitations text amendment to the Denver Zoning Code.

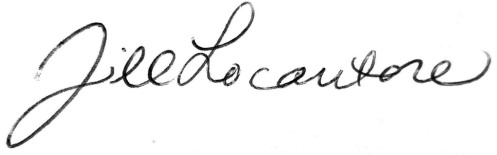
The DSP is a coalition of community organizations advocating for people-friendly streets in Denver. We advocate for the cultural and systemic changes necessary to reduce our city's unsustainable dependence on cars and to design communities that put people first. By prohibiting new gas stations within ¼ mile of an existing gas station and within ¼ mile of a rail transit station, the proposed text amendment will prioritize the use of land on transit corridors and within urban centers for housing and other non-car-oriented uses. Notably, new gas stations would not be allowed on many of Denver's High Injury Network streets, where the preponderance of traffic fatalities occur, helping to facilitate the transformation of these streets from dangerous car-centric arterials into truly people-friendly main streets. The proposed text amendments are also consistent with policies within *Blueprint Denver* and *Denver Moves Everyone* that assert the City's intention to prioritize people over automobiles in our transportation system.

I urge you to consider further restrictions on the locations of gas stations, such as near bus rapid transit (BRT) stations, open space, and the South Platte River corridor, and to ensure that gas stations do not become overly concentrated in areas of the city that were historically under-served, and where inequities tend to persist, including neighborhoods abutting industrial districts along the South Platte River and northeast Denver, such as Overland, Globeville, Elyria-Swansea and Montbello.



Thank you for your consideration of this issue.

SINCERELY,

A handwritten signature in black ink that reads "Jill Locantore". The signature is written in a cursive style with a large initial "J".

Jill Locantore

Executive Director, Denver Streets Partnership



Councilperson(s) Sawyer, Romero – Campbell, and Kashmann, Denver City Council and Mayor Johnston,

I want to thank and commend you and your offices for the extensive engagement and outreach on the proposed land use restriction relative to Gasoline and Diesel dispensers this last half of a year. From the first proposal briefing, your offices and staff have been nothing short of stellar in outreach to our association and the industry. We feel that through collaboration we have made this proposal better and a benefit to both the longstanding marketers that have for decades helped to support Denver and to the desperate need relative to housing and land use allocation.

This is a proposal where even four years ago we would have likely opposed as government overreach and a restriction on competition and anti-consumer. However, we need to acknowledge and recognize the following factors and accommodations that we have studied and worked on with you and your staff.

1. Gasoline demand in the DMNFR and specifically Denver is relatively flat. While in the last decade population increase has generally balanced fuel efficiency standards, in the last 18 months, and in part due to the imposition of RFG (a half a billion dollars cost increase to families) we are seeing for the first time since the early 1980's declining fuel volumes.
2. Housing costs are driving up employment costs including in the transportation fuel sector. The elegance of the proposal lies in that this is a "pro housing proposal" not an "anti-consumer/fuels proposal" and we need to have affordable housing in order to recruit and retain workers in our industry. We hope that all industries realize that we need to balance limited housing space with rightful growth in the commercial business sector.
3. We acknowledge and recognize that parts of Denver, specifically the planned residential and commercial needs in the eastern parts of the county including Green Valley Ranch and the industrial planned complex near DIA are accommodated and new stations are allowable.
4. We support the allowances for rebranding, station updates, and necessary environmental remediation that are necessary allowances for store owners in order to remain compliant with Federal and State laws. Further in order to not devalue investments that families have made in locations, we are glad that change of ownership provisions are allowed. A lot of Denver families have made substantial investments in time and sacrifice in these locations. In other jurisdictions that have considered these types of proposals, we have had to retroactively fix these issues.
5. Setbacks are not uncommon in our industry. With the relatively recent thresholds adopted by the Council for Tobacco sales relative to schools, Rec centers and child cares facilities, and acknowledging the setback rules at the state level relative to other alcohol licenses, the inclusion of the setbacks from other stations and other entities is not unduly burdensome in our view.
6. We are thankful for the provisions or our members and stations owners to make adjustment for new fuel types including E.V. Charging. There are substantial changes coming at the state level



relative to carbon offsets and inventory reporting. This allowance is forward thinking and is helpful.

7. The Council might consider some accommodation for an existing station that is simply relocating. This wouldn't increase the number of dispensers or overall number of stations in the city, but for facilities that have invested in Denver, there are reasons (increased inside store sales/healthy food options to accommodate recently passed state legislation) that an owner might want to expand the footprint even if the number of gasoline dispensers remain the same. This is not a make or break provision for us but in some locations retail space is limited and we want to make sure we can expand footprints for increased food offerings without losing another vital revenue source.

Finally, I want to commend the process. There are three things the Association is working on in front of Council currently and while one (Hazardous materials routing) is in the initial stages this has been a really good example of the sponsors approaching the industry and bringing them a "this is the problem we are trying to solve" discussion.

We are not naïve, and the areas of Denver that have seen an uptick in the number of stations need to be addressed. We are aware that the Council and City government could pass this without our support and input but what is definitely true is that the hard work the sponsors have spent in engaging our group has led to a better outcome.

I want to publicly commend Councilwomen Sawyer, Romero- Campbell and Councilman Kashmann and importantly their staffs, for spending that time and doing that work. While not unanimously, the Associations Denver retailers and members think this is a good path forward and would urge your support.

Remove

For your consideration,

Grier Bailey

Executive Director

CWPMA



Brownstein

December 16, 2024

David Wm. Foster
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Carolynne C. White
cwhite@bhfs.com

Via Email: Katie.McLoughlin@denvergov.org Adam.Hernandez2@denvergov.org

City and County of Denver City Attorney's Office
Attention: Katie McLoughlin, Adam Hernandez
201 W Colfax Ave, Ste 704
Denver, CO 80202

Re: Legal Concerns Regarding the Proposed Text Amendments Applicable to New Gas Stations

Dear Ms. McLoughlin and Mr. Hernandez,

To follow up on our correspondence to your office dated October 15, 2024, as well as a call with Mr. Hernandez on December 4, 2024, this letter seeks to clarify the constitutional concerns we have regarding the Denver Zoning Code ("Code") gas station text amendments proposed by Councilmembers Romero-Cambell, Sawyer, and Kashmann. In summary, the Denver City Council ("Council") proposed new Code amendments which will prohibit the development of new gas stations within ¼ mile of existing gas stations, within a ¼ mile of a light rail transit station, and within three-hundred (300) feet of low-intensity residential zone districts. The sponsoring Councilmembers propose that these changes would apply to **any gas station application for which a concept plan application was not submitted by May 13, 2024**. Given that the proposed amendments would not be adopted until the new year, setting the cutoff date for applicability more than nine (9) months prior to the adoption of the amendments is an illegal retroactive application of law.

As you know, both the Colorado and United States Constitutions prohibit the retroactive application of laws.¹ The Colorado Supreme Court has already answered the question at hand: "Where a zoning ordinance is adopted by a city council and becomes a law on a given date; will a provision thereof purporting to fix the effective date of the ordinance as of a time prior to the

¹ U.S. Const. art I, § 9, cl. 3; Colo. Const. art. II, § 11 (emphasis added).

adoption be upheld?”² The court answered no: those who applied for their building permit prior to the effective date of the subject ordinance were entitled to have their application considered under the only zoning law in force at that time.³ We understand the City will likely fix the effective date of the ordinance to the date of presumptive adoption. However, applying the new Code to applications filed in the past has the practical effect of setting the effective date to May 13, 2024, which is illegal.

We also recognize that not all retroactive legislation is retrospective, and the distinction between the two is important.⁴ The general prohibition against retrospective legislation is intended to prevent any unfairness that might result from the application of new law to rights already in existence.⁵ The proposed gas station text amendments will constitute retrospective legislation which is obvious given the blatant unfairness if applied to applications that have already been accepted for processing by the City under then-existing regulations, received multiple rounds of staff comments, and on which the applicants have expended significant resources in responding to those comments. To establish a constitutional violation for retroactive legislation, it must be proven that the legislature intended for the legislation to apply retroactively, and that the law will be retrospectively applied to either (1) impair a vested right; or (2) creates a new obligation, imposes a new duty, or attaches a new disability.⁶

The City Council, as set forth in the draft for public review and included within applicants’ site development plan comments, apparently **intend for the gas station text amendments to be retroactively applied to all gas station applications not under concept review by May 13, 2024**, and we anticipate this language will be included in the draft ordinance. Therefore, the first inquiry into whether the gas station text amendments are intended to be retroactively applied is satisfied.

We recognize that land use applications do not constitute vested rights. However, **the gas station text amendments to the Code impose new obligations, duties, and attach new disabilities to property owners who have pending applications for gas stations on properties that are permitted to do so by right under the current Code**. When purchasing property, and ultimately submitting a land use application for a gas station, property owners look to the Code which tells them which properties are available for such use. By adopting amendments to the Code and seeking to apply them mid-application cycle, property owners are faced with new disabilities: any of the properties located within ¼ mile of an existing gas station, ¼ mile from a transit station, and 300 feet from a low-intensity residential district will have their applications denied. The amendments will not be a mere procedural or remedial action by the City. The amendments are

² *City & Cnty. of Denver v. Denver Buick, Inc.*, 347 P.2d 919, 930 (Colo. 1959).

³ *Id.*

⁴ *City of Golden v. Parker*, 138 P.3d 285, 290 (Colo. 2006).

⁵ *Id.*

⁶ *In re Estate of Dewitt*, 54 P.3d 849, 855 (Colo. 2002).

substantive changes to law that will retrospectively attach a new disability to the use of property. Put simply, an applicant for a gas station within one of these regional categories will, under the amendments, go from having a viable project to a prohibited project. They will lose their entire project.

Constitutional language and the rule of the Colorado Supreme Court are clear: the retroactive application of the gas station text amendments is illegal. If the City chooses to proceed with such application of the amendments, we will not hesitate to pursue the legal remedies available to our clients.

Sincerely,



David Wm. Foster
FOSTER GRAHAM MILSTEIN & CALISHER, LLP

Signed by:



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Carolynne C. White

BROWNSTEIN HYATT FARBER SCHRECK, LLP

CC:

Councilmember Sawyer, amanda.sawyer@denvergov.org

Councilmember Kashmann, paul.kashmann@denvergov.org

Councilmember Romero-Campbell, Diana.Romerocampbell@denvergov.org

October 15, 2024

David Wm. Foster
david@fostergraham.com

Carolynne C. White
cwhite@bhfs.com

Via Email: Kerry.tipper@denvergov.org

City and County of Denver City Attorney
Attention: Kerry C. Tipper
201 W Colfax Ave, Ste 704
Denver, CO 80202

Re: Legal Concerns Regarding the Proposed Text Amendments Applicable to New Gas Stations

Dear Ms. Tipper,

The undersigned counsel to this letter and their respective law firms represent multiple clients who develop and operate gas stations in the City and County of Denver (the “City”). The purpose of this letter is to address legal concerns regarding the Denver City Council’s (“City Council”) proposed text amendments to the Denver Zoning Code (the “Code”) related to new gas station development (the “Regulations”). Specifically, we are concerned with the potential retroactive application of the Regulations to applications for gas stations that were not submitted before May 13, 2024, and the effective moratorium on gas station applications caused by the City’s current improper procedure regarding the Regulations.

I. Under the Pending Ordinance Doctrine, the Regulations cannot be applicable to all applications for gas stations submitted after May 13, 2024.

a. *Background*

At a May 13, 2024, Budget and Policy Committee Meeting, three (3) City Council members: Amanda Sawyer, Diana Romero Campbell, and Paul Kashmann presented research prepared by the aides from each respective Council office regarding potential Code text amendments related to gas stations. The research focused on retail gas stations, and it included

information related to above-ground benzene vapors, soil contamination, groundwater contamination, the number of retail gas stations in the City, the number of gas stations that are permanently closed, and data regarding underground petroleum tanks throughout the City. The stated purpose of this research was to assist the Council in determining what types of Code amendments should be adopted to increase the regulations on new gas stations.

Based on the research, staff presented seven (7) different proposals for how the City further regulate new gas stations. Those proposals included: (1) total cap on new construction of gas stations; (2) a 300-foot buffer from residential or protected zone districts; (3) a quarter-mile buffer from transit stations; (4) a buffer from other service stations; (5) stricter use limitations; (6) stricter use limitations through a conditional use permitting process; and (7) stricter permitting process including a zoning permit with special exceptions.

At the May 13, 2024, Budget and Policy Committee Meeting, no actual text of any bill was presented, filed, or posted online. Therefore, it was unknown to the public—and impossible to determine—which individual or combination of the seven (7) proposed amendments would be included in any Regulations to be considered by City Council. The City’s website then stated that a draft version of the Regulations would be available in September, 2024. Although the City has updated its website regarding the Regulations, draft language will not be available until December, 2024. Thus, as of this point, the public knows that the Regulations may or may not include restrictions to prohibit gas stations within ¼ mile of an existing gas station, within ¼ mile of a light-rail transit station, and within three hundred (300) feet of a Protected District, but applicants do not have the necessary draft language to understand if the changes will affect their applications for new gas stations. This lack of specificity in combination with the three (3) City Council members’ intent to apply the Regulations to all applications submitted after May 13, 2024, raises multiple legal concerns including an impermissible use of the Pending Ordinance Doctrine, illegal ex post facto legislation, and a failure by the City Council to pass a moratorium on gas stations applications—while functionally seeking to achieve the same goal by other means.

b. *Pending Ordinance Doctrine*

The Pending Ordinance Doctrine is a legal doctrine that “allows local governments to apply ordinances that have yet to be officially enacted, but that are legally “pending” on the date of a permit application.”¹ For an ordinance to be considered “pending,” the proposed change need not be before the governing approval body, but the appropriate department of the city must be actively pursuing it.² A local government can properly refuse a permit for a land use that is contrary to a pending zoning ordinance as long as the local government has not unreasonably or arbitrarily

¹ *Villa at Greely, Inc. v. Hopper*, 917 P.2d 350, 357 (Colo. App. 1996).

² *Id.*

refused or delayed the issuance of a permit, and provided that the ordinance was legally pending on the date of the permit application.³

In *Nat'l Advertising Co. v. City and Cnty. of Denver*, 912 F.2d 405, 413 (Colo. App. 1990), an application for a billboard was denied under the Pending Ordinance Doctrine. The court agreed that the Pending Ordinance Doctrine was applicable because the application was submitted after the ordinance was pending, the City staff started issuing comments on applications in accordance with the proposed legislation, and the applicant knew of the status of the pending legislation at all times.

c. *Inapplicability of the Pending Ordinance Doctrine*

The Regulations cannot be retroactively imposed upon all applications submitted after May 13, 2024. As stated above, pending legislation cannot be applied using the Pending Ordinance Doctrine unless the appropriate department of the City is actively pursuing it.⁴ City Council as a whole has not reviewed this idea for the Regulations. Only three members of City Council, which accounts for less than 25% of the City Council, presented the concept. Also, changes to the Code require engagement by the Community Planning and Development Department (“CPD”).⁵ Specifically, the Manager of CPD shall review and make recommendations to the City Council regarding text amendments.⁶ Thus, in addition to City Council, CPD is an appropriate department of the City that must actively be pursuing a text amendment for the Pending Ordinance Doctrine to apply. At the May 13, 2024, Budget and Policy Committee presentation, the ideas for the Regulations were entirely speculative in nature. The Budget and Policy Committee did not provide clear direction as to which gas station restrictions should be prepared for further consideration, nor was any draft language presented. Nor has any additional clarity on this issue been forthcoming since that presentation. Thus, no evidence exists to support a claim that City Council as a whole, or CPD, was involved in pursuing the Regulations on May 13, 2024, because at that point, the Regulations were mere conjecture.

Under the precedent in *National Advertising*, it is clear that the City’s attempt at retroactive application of the Regulations to May 13, 2024, would not withstand judicial scrutiny. The Regulations cannot be considered “pending” as of May 13, 2024, because neither City Council nor CPD were actively pursuing any specific Regulations at that time. Unlike the City in *National Advertising*, City staff has not been reviewing pending applications for gas stations under the standards of the new Regulations (largely because there is no draft language for such Regulations—at least not that has been publicly presented). Instead, City staff is reviewing applications for gas

³ *City of Aspen v. Marshall*, 912 P.2d 56, 59 (Colo. 1996).

⁴ *Hopper*, 917 P.2d at 357.

⁵ Denver Zoning Code § 12.2.3.4.

⁶ *Id.*

stations using current Code. Lastly, applicants were not, and still are not, apprised of the status of the Regulations or even what the Regulations will require or prohibit. Applicants did not, and still don't, know which of the seven (7) concepts proposed on May 13, 2024, would be pursued by the City; no draft language has been made available for review; and staff continues to apply current Code. Thus, it cannot be said that the Regulations were pending as of May 13, 2024, and the City therefore cannot use the Pending Ordinance Doctrine to apply the Regulations to applications for gas stations not submitted by May 13, 2024.

In fact, the Pending Ordinance Doctrine cannot be invoked until draft language is made available to the public. At the August 21, 2024, Denver Planning Board ("Planning Board") meeting, Alisa Childress and Andrew Webb of CPD presented an informational PowerPoint presentation titled "Gas Station Text Amendment" with a disclaimer on the front page that states "DRAFT: SUBJECT TO CHANGE." The presentation included a proposed scope for the Regulations but stated that there would be exceptions to the Regulations related to grocery availability, and requirements that new retail gas stations include infrastructure for EV charging stations. The presentation was labeled as an informational presentation, and included the disclaimer that it was only a draft, subject to change.

In order to apply the Pending Ordinance Doctrine, the City may not unreasonably or arbitrarily refuse a permit, even if the ordinance was pending at the time of permit application.⁷ As of August 21, 2024, the Regulations were still in a conceptual state as evidenced by the "DRAFT: SUBJECT TO CHANGE" disclaimer. Pending ideas are not pending ordinances. Furthermore, City staff has posted comments to applications that are currently being processed that the application could be denied because the subject property is located in an area that may or may not be affected by the Regulations. It is still unclear to the public, and to applicants, which areas will be affected by the Regulations if they are adopted, and which Regulations or exceptions will apply to their property. The arbitrary nature of the three (3) City Council members' pending idea precludes the Regulations—when and if they are adopted—from being retroactively applied to applications for gas stations.

d. *Ex Post Facto and Retrospective Laws*

As explained herein, the Pending Ordinance Doctrine cannot be used to retroactively apply the Regulations to applications for all gas station applications submitted after May 13, 2024. The Regulations, if adopted, cannot become effective until the date the ordinance is passed by City Council.

Colorado Constitution Article 2, Section 11 provides a prohibition against ex post facto and retrospective laws. Specifically, the constitution provides that "[n]o ex post facto law, nor law

⁷ *Marshall*, 912 P.2d at 59.

impairing the obligation of contracts, or retrospective in its operation or making any irrevocable grant of special privileges, franchises or immunities, shall be passed by the General Assembly.”⁸ As explained by the Colorado Supreme Court, when this constitutional provision is applied to the effectiveness of land use ordinances passed by municipalities, applicants under review for a land use decision are entitled to have their application considered only under the zoning law in force at the time of the application.⁹ The Colorado Supreme Court has developed a two-part inquiry to determine whether an ordinance is retrospective in operation. First, for a law to have retrospective effect, there must be a determination that the legislative intent of the municipality is to have the ordinance operate retroactively.¹⁰ Second, there must be a determination of whether the ordinance “(1) impairs a vested right, or (2) creates a new obligation, imposes a new duty, or attaches a new disability.”¹¹

The legislative intent of the City Council members who proposed the Regulations is for the Regulations to apply retroactively to applications for gas stations submitted after May 13, 2024 as evidenced by the August 21, 2024 informational Planning Board presentation in which the presentation states, “Include a provision that would allow projects that were in Concept Review by May 13, 2024 to be processed under the code prior to the December 9, 2024 change. Any projects not at that stage by this date and that have not received a permit by December 9, 2024 [assuming this is effective date of ordinance] must be processed under the updated version of the code.” Thus, the first piece of the inquiry required for the ordinance to be unconstitutional is satisfied.

The second part of that inquiry is also satisfied. The Regulations, if adopted, will constitute an ordinance that imposes new duties and attaches new disabilities because of the new use standards and inability for many properties to be developed as a gas station. Therefore, the two-part inquiry is met, and the Regulations, if adopted, would constitute illegal, *ex post facto* legislation.

II. City Council has effectively stopped gas station development in the City without adopting a moratorium in a public forum.

The proposed Regulations, although not applicable, effectively caused a moratorium on gas station development in the City. Although the City has not stopped processing gas station applications, the possibility of such sweeping regulations that could prohibit gas stations has a chilling effect on a property owner’s willingness to go forward with their application for a gas station. Applicants are receiving the comment on their applications that “The City Council is

⁸ Colo. Const. art. II, § 11 (emphasis added).

⁹ *City & Cnty. of Denver v. Denver Buick, Inc.*, 347 P.2d 919, 930 (Colo. 1959).

¹⁰ *City of Golden v. Parker*, 138 P.3d 285, 290 (Colo. 2006).

¹¹ *Parker*, 138 P.3d at 290 (emphasis added).

expected to take action on the proposed legislation in early 2025. If adopted, the new rules will be applied to any concept that was submitted after May 13, 2024. That means that these proposed new rules may apply to your project.” For all intents and purposes, the City has told applicants that their work will be invalid, without having gone through the required public process of adopting a moratorium or affording due process to affected persons. Appropriately, this raises due process concerns surrounding the current situation.

Although we of course would oppose an actual moratorium, without clear public notice or a formal moratorium having been adopted at a public hearing, the City has functionally adopted a moratorium, because property owners are being held in limbo while the City decides what kind of Regulations it wishes to adopt. The conversation around the potential Regulations has resulted in uncertainty about the development potential of property in the City, without the adoption of a proper moratorium and the associated due process. This uncertainty is a functional moratorium on new gas stations, which creates uncertainty and frustration for property owners and gas station developers.

The City cannot achieve the goals of a moratorium by retroactively applying new “ideas” for regulation without publicizing draft regulations that actually state what properties will be affected and what the new rules will be, providing due process for the public and affected property owners, and creating an effective date that follows, not precedes, the public process and adoption.

For these reasons, we urge the City to revoke its statements in the various pending applications related to the retroactive application of the proposed Regulations, and to continue to process all pending applications under the zoning regulations applicable at the time of their submittal. Please do not hesitate to contact us should you have any questions.

Sincerely,



David Wm. Foster
FOSTER GRAHAM MILSTEIN & CALISHER, LLP

Carolynne C. White
Carolynne C. White (Oct 17, 2024 14:31 MDT)

Carolynne C. White
BROWNSTEIN HYATT FARBER SCHRECK, LLP


FGMC BHFS Letter to Denver City Attorney - Gas Station Text Amendments [FINAL 10.16.24]


Final Audit Report


2024-10-17


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"FGMC BHFS Letter to Denver City Attorney - Gas Station Text Amendments [FINAL 10.16.24]" History

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February 12, 2025

Dear Members of Denver City Council:

On behalf of Enterprise Community Partners, I'm pleased to submit this letter of **support for the proposed text amendment to the Denver Zoning Code to create limitations for the establishment of new gas stations**, sponsored by Councilmembers Kashmann, Romero Cambell, and Sawyer.

Enterprise is deeply committed to advancing affordable housing and housing stability in Denver. We're honored to have participated in and supported multiple local initiatives to advance the production and preservation of affordable homes, and to help residents stay in their homes and communities within the city. And our regional vice president, Jennie Rodgers, is grateful for the opportunity to serve as the chair of HOST's Housing Stability Strategic Advisors.

From these engagements, recent analyses by DRCOG and CHFA, and resident experiences, we know that Denver's housing costs continue their rapid rise, accelerating displacement and furthering the need for high-quality homes affordable to lower-income individuals and families—particularly those living at 60% of Denver's Area Median Income and below. Denver simply cannot meet these residents' housing needs, much less welcome displaced Denverites home, without preserving existing affordable properties and high-quality new affordable construction.

Enterprise also prioritizes climate resiliency in our programmatic and policy work. We played a significant role in establishing recent statewide policies promoting transit-oriented communities while also providing for meaningful affordability and displacement mitigation.

We therefore support this effort to increase Denver's land area that might be used for affordable development or community-led and serving entities by reducing the amount of land that may be utilized for new gas stations. This well-considered proposal serves myriad goals of Blueprint Denver and Comprehensive Plan 2040, will facilitate Denver's ability to take full advantage of new state policies and resources, and will benefit residents' health and wellbeing without undermining access to gas stations for those who need it.

Enterprise urges your yes vote on the gas station limitations text amendment, and I'd be happy to answer any questions: khasstedt@enterprisecommunity.org.

Sincerely,

Kinsey Hasstedt
Director, State & Local Policy
Enterprise Community Partners

Dear Members of the Denver City Council,

We write to express our significant constitutional concerns regarding the proposed gas station text amendments to the Denver Zoning Code (“Code”) introduced by Councilmembers Sawyer, Kashmann, and Romero-Campbell. These amendments, as currently drafted, aim to apply to any gas station application for which a concept plan application was not submitted by May 13, 2024. However, given that the proposed amendments would not be adopted until February 2025, applying such provisions retroactively is both unlawful and contrary to the foundational principles of fairness enshrined in our Constitution.

The Colorado and United States Constitutions explicitly prohibit retroactive application of laws. The Colorado Supreme Court has already addressed this very issue, ruling that zoning ordinances cannot legally set an effective date prior to their adoption. Applicants who submit building permits under the existing legal framework are entitled to have those applications evaluated based on the laws in force at the time of submission. Any attempt to apply these proposed amendments retroactively to applications submitted as early as May 2024 undermines the rule of law and violates constitutional protections.

While we acknowledge that not all retroactive legislation is unconstitutional, the distinction between retrospective and prospective application is critical. Retrospective laws disrupt settled expectations, impose undue hardships, and create unfairness. Here, the proposed gas station text amendments unquestionably constitute retrospective legislation. They impose substantive new burdens on applicants who have already expended significant time, resources, and effort in good faith reliance on the current Code.

To establish a constitutional violation for retroactive legislation, two key criteria must be met: (1) a clear legislative intent for retroactive application, and (2) a demonstrable impairment of vested rights, creation of new obligations, or imposition of new disabilities. Unfortunately, the draft amendments meet both criteria. The language provided in public review documents makes clear that these amendments are intended to retroactively apply to applications not under concept review by May 13, 2024. This creates significant new disabilities for applicants who submitted under the existing rules.

While land use applications may not establish vested rights, the proposed amendments would fundamentally alter property owners’ rights midstream. These changes would impose prohibitions on gas station projects that are otherwise permitted under the current Code, including applications that have already undergone multiple rounds of review. By imposing distance-based restrictions on gas station locations—such as proximity to existing stations, transit stations, or residential areas—the proposed amendments would render previously viable projects entirely unfeasible. This is not a procedural adjustment but a substantive change that directly infringes on the expectations and investments of property owners.

When property owners purchase land and submit development applications, they do so based on the clear guidance of existing zoning laws. The retroactive application of the proposed amendments undermines this reliance, creates instability, and imposes unjust burdens on

individuals and businesses. Under the amendments, applicants who previously met all requirements would suddenly find their projects denied—a stark and unconstitutional outcome.

The Colorado Supreme Court has been unequivocal on this matter: retroactive application of zoning amendments violates constitutional principles. If the City chooses to proceed with the proposed amendments in their current form, we would expect impacted property owners to pursue every legal remedy available to protect their rights and to uphold the constitutional principles that safeguard fairness and due process.

We urge the City Council to respect these constitutional boundaries and reconsider the retroactive provisions within the proposed amendments. By doing so, the Council can avoid unnecessary legal conflict and demonstrate a commitment to the principles of fairness, clarity, and the rule of law.

Sincerely,



Tyler Carlson, Public Policy Chair

NAIOP Colorado

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AAA Colorado

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Denver City Council, District 5

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Transportation and Infrastructure

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Paul Kashmann
Denver City Council,
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Glendale City Council

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January 23, 2025

City Councilmembers
City and County of Denver
201 W. Colfax Ave
Denver, CO 80202

Denver City Councilmembers,

I am writing to express my support for the proposed amendments to the zoning code. These changes represent an important step toward prioritizing the implementation of Denver's adopted plans and policies for walkable, mixed-use, sustainable development with affordable housing on and near transit corridors.

I urge the Denver City Council to adopt these amendments to ensure the thoughtful placement of new gas stations. Thank you for considering this important issue, and I am happy to provide additional input or assistance as needed.

Sincerely,



Stuart Anderson
Executive Director
Transportation Solutions

PO BOX 8448, Denver, CO 80201 • www.transolutions.org



QuikTrip Corporation
DENVER DIVISION
12000 Washington St, Suite 175
Thornton, CO 80241

Denver City Council
1437 Bannock Street, Room 450
Denver, CO 80202

January 21, 2025

Re: CB24-1866/Gas Station Limitations Text Amendment

Dear Council President Sandoval and Members of Council –

Thank you to the sponsors of Council Bill 24-1866 and to members of council who have taken time to meet with the QuikTrip team to understand our concerns around potential unintended consequences of the proposed regulation. QuikTrip is a family and employee-owned company with more than 1200 stores in 18 states. With more than 31,000 employees, QuikTrip has consistently been ranked as one of the top convenience store marketers in product quality and friendly service. We are a market leader in providing fresh food, EV charging, and clean and safe restroom access. QuikTrip also gives back to the communities it serves, donating five percent of net profits to charitable organizations in those communities.

Our concerns, that were also detailed in the letter to Planning Board as part of the record on this item, stem from our experience as a “best in class” operator. While those concerns remain, we want to focus today on the Effective Date applied to concept review applications submitted after May 13 as the most significant challenge to investments already made in Denver.

While we appreciate and generally support the sponsors’ desire to protect against a last minute flood of completely speculative applications, as has happened with other regulatory changes, we do not believe that is an issue here when only 7 applications have been submitted post-May 13. This does not equal the flood seen with other regulations like EHA.

In the case of QuikTrip’s 4 applications of the 7 total that Community Planning & Development have identified, the applications represent months and sometimes years of site acquisition/control work prior to submission. QuikTrip has invested an estimated \$500,000 in engineering, design and other due diligence costs in submitting their 4 applications that are now at risk. That represents sunk costs that cannot be recovered – and demonstrates the legitimacy of the applications they have submitted. We would also note that 2 of QuikTrip’s 4 now at-risk applications were actually submitted PRIOR to the May 13 date, but due to issues with site control the applications lapsed and had to be re-submitted. The concepts, however, had been in the review process long before regulation was proposed.

We believe that May 13 does not represent a point in the process where the specifics of the proposed regulation could have been known to an applicant – or even whether regulation would certainly proceed. May 13 is the date of Budget & Policy Committee where 7 different ideas were discussed and no specific direction on drafting was provided. An applicant could not have reasonably known at that

time if their proposal would meet speculative future regulations or not – or even if/when regulation might move forward. Given the amount of time and money already invested in these applications, it was prudent for applicants to continue on in the process.

Additionally, at the time of several of the post-May 13 applications, applicants were not necessarily informed of the at-risk nature of their submissions. It has been our experience that only later in the process did CPD staff begin sharing information on possible limitations and their impact to the applicant.

The City Council has taken a prominent and commendable role in seeking to improve predictability in the permitting and development process. Rendering these sites unusable to a property owner after hundreds of thousands of dollars in investment is contrary to that goal. We believe a date later than May 13 allows for a fair processing of applications that represent many months and many thousands of dollars of work.

Thank you for your consideration.

Jessica Glavas
QuikTrip



QuikTrip Corporation

DENVER DIVISION
12000 Washington St, Suite
175 Thornton, CO 80241

December 18, 2024

Denver Planning Board
201 W. Colfax Avenue
Denver, CO 80202

Re: Proposed Zoning Code Text Amendment – Gas Station Limitations

Dear Members of the Denver Planning Board,

Thank you for the opportunity to share feedback on the proposed zoning changes to limit new gas stations in Denver. We appreciate the effort and thoughtfulness of the sponsors and the Community Planning & Development staff in addressing issues like walkability, sustainability, and equitable development.

While we agree with many of the goals behind this proposal, we are deeply concerned that the current draft will create more problems than it solves. Below, we outline key issues and offer suggestions to make the ordinance more effective while avoiding unintended consequences.

Concerns and Suggested Improvements

1. The Retroactive Effective Date Harms Businesses

The proposed retroactive effective date of May 13, 2024, is unfair to businesses that submitted conceptual applications before the regulations were no longer inchoate. The May 13 date refers back to the first hearing on this topic at the Budget & Policy Commission discussion. Starting the clock at the first meeting on the topic – when not even the participants had yet decided on the final shape of the text amendment – would be inconsistent and unnecessary. Indeed, City Council has regularly applied regulations of this nature on a go-forward basis after the final adoption of the regulation.

Many applicants, including QuikTrip, have made significant investments based on existing zoning rules, including purchasing land and preparing detailed proposals. Predictability is so important for family- and employee-owned businesses like ours, and setting this retroactive date will create unnecessary friction with good companies wanting to do business in Denver.

- **Our Ask:** Please adjust the effective date to align with the City Council's final adoption of the ordinance or a more recent draft date when the rules became clearer to applicants.

2. The Ordinance Protects Outdated Gas Stations and Technologies

According to Colorado's Division of Oil and Public Safety, Denver has 206 active gas stations, with an average installation date of 27 years ago. Many of these older stations use outdated materials like cathodically protected steel tanks, which are prone to leaks. In the recent past, Denver has had 48 open-air discharges and nearly 2,500 petroleum release events at its gas

stations. And, older facilities are more likely to lack modern vapor recovery systems.

At QuikTrip, we are at the tip of the spear in integrating EV charging infrastructure into our refueling options. Our hyper-clean facilities provide a range of fresh food options, and utilize best practices in energy-efficient designs. From an environmental safety perspective, QuikTrip is an industry leader in vapor capture, tank integrity, and safety.

Blocking new gas stations removes the competitive pressure that encourages older stations to upgrade. Without competition, these facilities remain entrenched, locking Denver into less efficient and less environmentally friendly options.

- **Our Ask:** Reduce the buffer distances to allow competition from modern, environmentally advanced stations that can meet today's standards for safety and sustainability.

3. Unintended Consequence: Fewer EV Chargers?

By restricting new stations, this ordinance reduces opportunities for new builds designed to accommodate EV chargers efficiently and affordably. While Colorado's EV sales have increased in the last quarter, the installation of faster EV chargers has not yet kept pace. Reasons for this include infrastructure and technological limitations, as well as the significant costs. For example, the new construction cost to install two Level 3 fast chargers is approximately \$200,000 – that price does not include ongoing utility fees to power the chargers.

Unlike new builds, retrofitting older gas stations will be substantially more expensive due to the incremental costs associated with breaking pavement, upgrading outdated electrical systems, and rebuilding impacted areas. The opportunity costs to the legacy businesses, including shutting down operations during construction, will be significant.

- **Our Ask:** Narrow the text amendment to allow new EV-ready gas stations rather than assume existing stations will absorb the costs of retrofitting their properties.

4. Vulnerable Communities Will Be Impacted

The staff memo to the ordinance shows that the proposed restrictions will actually push new gas stations into areas along the "Inverted L" – which directly overlaps with historically marginalized neighborhoods. This could create an overconcentration of industrial uses in these areas, much like what happened with marijuana grow facilities.

- **Our Asks:** Ensure fair distribution of gas stations across Denver to avoid concentrating them in specific neighborhoods. Exempt stations with on-site kitchens or substantial food service offerings from size thresholds, as smaller parcels in underserved neighborhoods may not meet the proposed 20,000 square foot requirement for exemptions.

5. Consumers Benefit From Competition

When multiple gas stations are located near one another, it drives down prices and increases convenience for consumers. Restricting their development risks eliminating this competition, which will lead to higher fuel costs—a burden that families already struggling with inflation cannot afford.

- **Our Ask:** Limit the number of gas stations at major intersections rather than imposing large blanket buffer zones.

Why We Care

We are committed to raising the bar for gas stations and convenience stores in Denver. At QuikTrip, we proudly offer affordable refueling options for gas and electric vehicles, fresh food options, and hyper-clean facilities, and we are honored by the passionate support of our customer base. In the same way that many are often surprised to learn that affordable housing doesn't look like affordable housing, we take great joy in showing people what a next-generation convenience store can deliver.

- **Commitment to Sustainability:** New QuikTrip stations, where there is need, include Level 3 fast EV charging infrastructure to meet growing market demand. We also use advanced vapor recovery systems, tank integrity designs, and energy-efficient operations for increased environmental protections.
- **Modernizing Denver's Fuel Infrastructure:** The city's own estimates show that many gas stations are outdated. By welcoming newer entrants like QuikTrip, Denver can phase out older facilities and bring modern, sustainable solutions to its residents.
- **Fresh Food Options:** While no convenience store can fill a food desert, newer companies like QuikTrip and its peers have based their business models on providing fresh food options and expanded services.

Conclusion

We share Denver's goals of creating a more sustainable and walkable city. However, this ordinance, as written, will protect 27-year-old (or older) facilities, discourage innovation in EV charging, and limit access to affordable, high-quality refueling options.

By adjusting the effective date, rethinking buffer zones, and encouraging responsible innovation from companies like QuikTrip, Denver can achieve its vision while maintaining fairness and equity.

Thank you for your time and thoughtful consideration. We are available to discuss these suggestions further and look forward to working together on this important issue.

Sincerely,
Jessica Glavas
QuikTrip

CC: Andrew Webb



Outlook

[EXTERNAL] ULC support for gas stations text amendment 2025

From Andrea Burns <aburns@urbanlandc.org>**Date** Thu 1/16/2025 12:59 PM**To** Bupp, Elise - CC YA2246 City Council Aide Senior <Elise.Bupp@denvergov.org>

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To Denver City Council:

Urban Land Conservancy (ULC) is a 21-year Denver nonprofit real estate organization that conserves buildings and land for community benefit. ULC supports the Denver Zoning Code text amendment to limit the location of new gas stations, as proposed by councilmembers Romero Campbell, Sawyer, and Kashmann.

ULC has reviewed the map showing the effect of this amendment, and we believe the change will result in thoughtful placement of new gas stations. This change can help prioritize the implementation of Denver's adopted plans and policies for walkable, mixed-use, sustainable development with affordable housing on and near transit corridors.

Land use policy and implementation is critical to the delivery of affordable housing and other development designed to serve communities in Denver.

For these reasons we support the amendment.

Thank you,
Andrea Burns

Andrea Burns | Vice President of Impact & Engagement**Urban Land Conservancy**

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ULC preserves, develops, stewards, and manages permanently affordable real estate to positively impact lives and communities in Colorado.

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