Dear Denver City Council,

I am writing in strong support of the proposed amendment to limit where new gas stations can be built in Denver. This amendment is a necessary step to align our city's development with public health, environmental protection, and responsible urban planning.

Why This Amendment Matters:

1. Protecting Community Health
    - Gas stations release benzene vapors, a known carcinogen. While modern vapor recovery systems help, benzene exposure still poses long-term risks.
    - Placing gas stations too close to homes increases residents' exposure to harmful air pollutants, affecting vulnerable groups like children and seniors.
2. Aligning with Denver's Sustainability Goals
    - Cities like Louisville, Broomfield, and Sacramento have already taken action to limit gas station expansion. Denver should follow suit to encourage cleaner energy alternatives.
    - Limiting gas station growth supports Blueprint Denver and the Comprehensive Plan 2040, which emphasize reducing pollution, cleaning up contaminated sites, and prioritizing pedestrian-friendly urban design.
3. Preventing Oversaturation & Prioritizing Smarter Development
    - Denver already has 180 retail gas stations, while 318 have closed, reflecting shifts in demand.
    - The amendment prevents unnecessary clustering of gas stations, which inhibits housing and retail development.
    - A buffer from residential areas ensures that neighborhoods remain safe and livable.
4. Encouraging Thoughtful, Future-Focused Land Use
    - Transportation is evolving, with increased adoption of EVs and alternative fuels.
    - Instead of prioritizing fossil fuel infrastructure, we should be incentivizing mixed-use developments, grocery stores, and transit-friendly businesses that better serve our growing population.

I urge the Council to approve this amendment to ensure Denver's growth reflects our shared commitment to public health, sustainability, and smart land use planning.

Thank you for your time and consideration. Please let us know if there is anything we can do to assist in this effort.

With gratitude,

Megan Williams & Aaron Connell

District 4 Residents

Michael P. Merrion
4345 XAVIER STREET
DENVER, COLORADO 80212

February 18, 2025

Denver City Council
City and County of Denver
1437 Bannock Street, Room 450
Denver, CO 80202

Re: Comments on Bill CB24-1866

City Council:

For the last 50 years I have been, and still am, a resident of the City and County of Denver (District 1). I have also practiced law as a business and tax attorney in the City and County of Denver for more than 40 years. In that time, I have had the pleasure of working with many entrepreneurs and business owners to structure business opportunities which ensure successful start-ups, mutually beneficial business operations, and the minimalization of conflicts in the community. All of which makes Denver a stronger community.

While the residents of this City are the heart of the community, small business is the blood and breath which provide the oxygen needed to keep this city viable as a community. Without a healthy and robust business community, this city which we call home could not exist for long.

I am here primarily to address the potential injury and injustice that will be imposed on the owners of the property under consideration if CB24-1866 is passed in its present form. This property is a prime section of real estate located on the corner of Colorado Boulevard at Evans. It is a major intersection of South Denver and is the center of commerce for the community.

I have represented the owners of this property in one form or another for the past 30 years. In the last 10 years I have watched as this family expended hundreds of thousands of dollars in an attempt to develop this property into a commercially viable addition to the University Hills community. I have also watched as those plans have been thwarted at every turn. The owners have attempted to partner with major national developers with plans for housing, commercial office space, hotels or retail stores without success. As has been explained to the owners by these national developers, for most of these applications, the property would need extensive infrastructure upgrades, such as sewer or electric, costing millions of dollars before the property could be considered economically suitable for development.

While the owners had hoped that they could provide the community with an economically feasible development opportunity, without assistance from the City or other outside financiers, the opportunities for the development of this property appear to be extremely limited.

In August of last year, the owners entered into a contract with QuikTrip to develop the property. QuikTrip is a company which operates more than 800 stores in seven states. This is a convenience store chain which is known for its clean facilities, friendly service and quality products. In addition to providing quality products and services, the stores also offer gasoline and EV charging facilities.

The retroactive application of CB24-1866 will effectively terminate this contract after both parties have expended a significant amount of money in full reliance on the current rules and regulations and the good faith efforts of both parties as well as the City and County of Denver thus far.

While I certainly want to express my concerns over the extremely negative impact CB24-1866 will have on the owners of this property if the law is applied retroactively, especially after the significant investment that the owners have already invested in the success of this development. I am equally concerned about the message that this bill sends to the larger business and investment community.

Businesses do not just appear or grow on trees: fully funded and ready to open their doors to commerce. Entrepreneurs and those with the vision and determination to strike-out and build something worthwhile in the community must necessarily plan well in advance. But developing properties and funding businesses takes capital and businesses must rely on the ability to attract investment at a level that most of our local entrepreneurs do not have access to.

Investors and financiers do not like unpredictability. They want to know that the rules will not change under their feet once they have committed to expend substantial amounts of money on a project. What drives investors and financiers is predictability and the assurance that the risks associated with the investment have been minimized or are at least known and controllable. Without that assurance, any hope of obtaining any reasonable financial backing for a business or development project will instantly evaporate: leaving properties such as this Colorado & Evans corner unsuitable for development.

That said, I am quite certain that the University Hills community would much rather have the property developed into a useful commercial enterprise than to be utilized by default as a homeless encampment.

As I said before, in my practice as a tax and business attorney, I have had the pleasure and opportunity to work with many businesses in the City and County of Denver. Sadly, the business climate seems to have changed in recent years and I have seen more and more businesses and developers decline to work within the city because of expensive bureaucratic delays, the high cost of compliance, the unpredictability of the local economy: and now, the unpredictability of the impact of local laws. In fact, in recent years I have had several significant businesses actually sell their properties and move their operations out of Denver and relocate to adjacent counties which are more cooperative and present less risk.

As a business attorney and a resident of Denver, this concerns me greatly. As a city, we can not afford to stimulate an exodus of businesses due to a gradual layering of additional unanticipated costs and bureaucracy. The potential retroactive application of the type of restrictions contained in CB24-1866 sends an insidious message to the business community that investment within the City and County of Denver carries with it a heightened risk of forfeiture due to an underlying lack of respect for the property rights of its citizens.

While we, as a city, certainly want to provide assistance to those in our community experiencing homelessness or requiring assistance in providing the basic necessities of life, we cannot afford to do so at the expense of the businesses which employ our citizens. There has to be a balance. And we cannot afford to alienate investment in Denver by shifting the floor out from under the feet of owners and investors once they have already committed to a legal and acceptable course of investment.

There is a reason that the US and Colorado constitutions bar the passage of ex-post facto laws.

An ex-post facto law is a law that retroactively changes the legal consequences or status of actions that were committed, or relationships that existed, before enactment of the law. At its heart, such a law violates the basic principles of "due process" under the Fifth Amendment to the US Constitution which prohibits the government from depriving any person of *"life, liberty, or property, without due process of law."*

Similarly, the "Takings Clause" contained in the Fifth amendment to the US Constitution prohibits the taking of private property for public use without just compensation. The Supreme Court of the United States has held that a retroactive law that deprives a person of a vested property right can constitute an illegal taking under the Takings Clause. A violation of the Takings Clause can invalidate the government action at issue, or entitle the property owner to compensation. *Eastern Entreprises, v. Apfel, 524 U.S. 498 (1998).*

Finally, the Colorado Constitution prohibits laws that impair the obligations of private contracts except where the law is reasonably and necessary to serve an important public purpose. In this instance, I can find little indication that the retroactive application of CB24-1866 serves an important public purpose, when the property in question has been found to be commercially unsuitable for any other type of development.

The protections afforded these types of property rights under the US and Colorado constitutions should not be challenged in a caviler manner. To do so invites, at the least, time consuming and expensive litigation: which, I'm certain will be the ultimate result of the passage of CB4-1866 in its present form.

But more importantly, in my mind, it starts this great city on a slippery slope of what can only be described as ill advised and injudicious interference in private commerce after-the-fact, and sends a message to the business community that an investment in Denver carries with it substantial risk which cannot be minimized by careful advanced planning.

Please do not close the door on the ability of our citizens to court substantial financial investment in our city's future by passing CB24-1866 in its present form.

I thank you for your time.

Very truly yours,

Michael P. Merrion

MPM/lcm

100120250218a

Reference #
15497641

Public Hearings

I am speaking/writing on (select one): / Hablo/Escribo sobre (seleccione uno):
24-1866 & 24-1867: An ordinance amending the Denver Zoning Code, concerning gas stations and an ordinance amending Chapter 59 (Zoning) of the Denver Revised Municipal Code relating to limitations for certain automotive uses. / 24-1866 y 24-1867: Una ordenanza para modificar el Código de Zonificación de Denver en relación con las estaciones de servicio, y una ordenanza para modificar el Capítulo 59 (Zonificación) del Código Municipal Revisado de Denver sobre limitaciones para ciertos usos automotrices.

First Name / Nombre
William

Last Name / Apelido
Harris

I am a resident of: / Soy residente del:
District 4 / Distrito 4

I am... / Estoy...
FOR the item / a FAVOR del artículo

My testimony: / Mi testimonio:
Dear Denver City Council,
I am writing to express my strong support for the proposed amendment to restrict the construction of new gas stations in residential areas of Denver. This amendment is crucial for safeguarding public health, promoting environmental sustainability, and fostering responsible urban development.
Why This Amendment Matters:
1) Protecting Community Health:
Gas stations emit benzene vapors, a known carcinogen. Even with modern vapor recovery systems, the risk of exposure remains significant, particularly when stations are in close proximity to residential areas.

The proximity of gas stations to homes increases the risk of exposure to harmful pollutants like particulate matter and volatile organic compounds (VOCs), which can lead to respiratory issues,

cancer, and other health concerns, especially among vulnerable populations such as children, the elderly, and those with pre-existing health conditions.
There's also the danger of accidents like fires or explosions, which, though rare, could have catastrophic effects in densely populated areas.
2) Aligning with Denver’s Sustainability Goals:
Cities like Louisville, Broomfield, and Sacramento have already implemented similar restrictions, leading the way in reducing reliance on fossil fuels. Denver should follow this example to promote cleaner energy alternatives and reduce carbon footprints.
This amendment supports Denver's own strategic plans, such as Blueprint Denver and the Comprehensive Plan 2040, which focus on reducing pollution, rehabilitating contaminated land, and enhancing pedestrian-friendly urban environments.
3) Preventing Oversaturation & Prioritizing Smarter Development:
With 180 operational gas stations and 318 closures, Denver has seen a clear shift in demand. An oversupply of gas stations not only leads to economic inefficiency but also occupies land that could be better used for housing, parks, or other community-enhancing facilities.
By preventing the clustering of gas stations, we can avoid the degradation of neighborhood aesthetics and functionality, ensuring areas remain safe and livable.
4) Encouraging Thoughtful, Future-Focused Land Use:
The trend towards electric vehicles and alternative fuels suggests a diminishing need for traditional gas stations. We should be planning for this shift by encouraging developments that support multi-modal transportation, local commerce, and community wellness.
Promoting mixed-use developments and transit-oriented businesses will better serve Denver's growing and evolving population, fostering a sustainable urban landscape.
I strongly urge the Council to adopt this amendment to ensure that Denver's growth aligns with our collective commitments to public health, environmental sustainability, and intelligent land use planning.
Thank you for considering this critical issue. Please let us know if there is any way we can support further in this endeavor.
With gratitude,
William Harris

Finish Time

2025-02-16 11:00:46

Reference #
15500186

Public Hearings

I am speaking/writing on (select one): / Hablo/Escribo sobre (seleccione uno):
24-1866 & 24-1867: An ordinance amending the Denver Zoning Code, concerning gas stations and an ordinance amending Chapter 59 (Zoning) of the Denver Revised Municipal Code relating to limitations for certain automotive uses. / 24-1866 y 24-1867: Una ordenanza para modificar el Código de Zonificación de Denver en relación con las estaciones de servicio, y una ordenanza para modificar el Capítulo 59 (Zonificación) del Código Municipal Revisado de Denver sobre limitaciones para ciertos usos automotrices.

First Name / Nombre
Margaret

Last Name / Apelido
Torsell-Kriete

I am a resident of: / Soy residente del:
District 4 / Distrito 4

I am... / Estoy...
FOR the item / a FAVOR del artículo

My testimony: / Mi testimonio:
My family is in favor of 1866 and 1867 because Denver already has 180 active stations, and 318 have closed because demand is shifting. As electric vehicles, mixed-use development, and public transit expand, we need to plan for the city we're becoming. Thank you

Finish Time
2025-02-17 15:25:56

Reference #
15501782

Public Hearings

I am speaking/writing on (select one): / Hablo/Escribo sobre (seleccione uno):
24-1866 & 24-1867: An ordinance amending the Denver Zoning Code, concerning gas stations and an ordinance amending Chapter 59 (Zoning) of the Denver Revised Municipal Code relating to limitations for certain automotive uses. / 24-1866 y 24-1867: Una ordenanza para modificar el Código de Zonificación de Denver en relación con las estaciones de servicio, y una ordenanza para modificar el Capítulo 59 (Zonificación) del Código Municipal Revisado de Denver sobre limitaciones para ciertos usos automotrices.

First Name / Nombre
Allen

Last Name / Apelido
Lampert

I am a resident of: / Soy residente del:

I am... / Estoy...
AGAINST the item / en CONTRA del artículo

My testimony: / Mi testimonio:
I am against the amendment because imposing restrictions limiting do use of zoned property is not legal in my opinion, and certainly can be very negative for the property owner. If a restriction is implied, then it should be considered on, and after the date of the adoption of the proposed limiting restrictions. If restrictions are imposed, then the measuring facility should be measured via direct automotive access from one site to the other and not a radius from property line to property line.

Finish Time
2025-02-18 09:24:41

Reference #
15501785

Public Hearings

I am speaking/writing on (select one): / Hablo/Escribo sobre (seleccione uno):
24-1866 & 24-1867: An ordinance amending the Denver Zoning Code, concerning gas stations and an ordinance amending Chapter 59 (Zoning) of the Denver Revised Municipal Code relating to limitations for certain automotive uses. / 24-1866 y 24-1867: Una ordenanza para modificar el Código de Zonificación de Denver en relación con las estaciones de servicio, y una ordenanza para modificar el Capítulo 59 (Zonificación) del Código Municipal Revisado de Denver sobre limitaciones para ciertos usos automotrices.

First Name / Nombre
Robin

Last Name / Apelido
Nicholson

I am a resident of: / Soy residente del:
District 9 / Distrito 9

I am... / Estoy...
AGAINST the item / en CONTRA del artículo

My testimony: / Mi testimonio:
In addition to be being constitutionally questionable, this proposed amendment violates land owners' rights, use by rights, zoning, and the 'rushed' nature of the proposal is sure to complicate future developement.

Finish Time
2025-02-18 09:58:04

Reference #
15502001

Public Hearings

I am speaking/writing on (select one): / Hablo/Escribo sobre (seleccione uno):
24-1866 & 24-1867: An ordinance amending the Denver Zoning Code, concerning gas stations and an ordinance amending Chapter 59 (Zoning) of the Denver Revised Municipal Code relating to limitations for certain automotive uses. / 24-1866 y 24-1867: Una ordenanza para modificar el Código de Zonificación de Denver en relación con las estaciones de servicio, y una ordenanza para modificar el Capítulo 59 (Zonificación) del Código Municipal Revisado de Denver sobre limitaciones para ciertos usos automotrices.

First Name / Nombre
Grant

Last Name / Apelido
Maves

I am a resident of: / Soy residente del:
I don't know / No sé mi número de distrito

I am... / Estoy...
AGAINST the item / en CONTRA del artículo

My testimony: / Mi testimonio:
Please share with the board that they are overstepping their bounds and need to stop eliminating gas stations and other retail uses in the city of Denver. these uses produce a tremendous amount of tax revenue that pay for our roads, our schools, our systems. Additionally, these uses provide services that are needed in our community. If you dont allow them in Denver, they will go to the surrounding towns and so will the money that they consumer is spending.

Finish Time
2025-02-18 10:16:15

Reference #
15502137

Public Hearings

I am speaking/writing on (select one): / Hablo/Escribo sobre (seleccione uno):
24-1866 & 24-1867: An ordinance amending the Denver Zoning Code, concerning gas stations and an ordinance amending Chapter 59 (Zoning) of the Denver Revised Municipal Code relating to limitations for certain automotive uses. / 24-1866 y 24-1867: Una ordenanza para modificar el Código de Zonificación de Denver en relación con las estaciones de servicio, y una ordenanza para modificar el Capítulo 59 (Zonificación) del Código Municipal Revisado de Denver sobre limitaciones para ciertos usos automotrices.

First Name / Nombre
Daniel

Last Name / Apelido
Frank

I am a resident of: / Soy residente del:
District 5 / Distrito 5

I am... / Estoy...
AGAINST the item / en CONTRA del artículo

My testimony: / Mi testimonio:
I'm not against the limitations on gas stations. However, I am against making these restrictions retroactive!! This should only be imposed going forward.

Finish Time
2025-02-18 10:49:46

Reference #
15502138

Public Hearings

I am speaking/writing on (select one): / Hablo/Escribo sobre (seleccione uno):
24-1866 & 24-1867: An ordinance amending the Denver Zoning Code, concerning gas stations and an ordinance amending Chapter 59 (Zoning) of the Denver Revised Municipal Code relating to limitations for certain automotive uses. / 24-1866 y 24-1867: Una ordenanza para modificar el Código de Zonificación de Denver en relación con las estaciones de servicio, y una ordenanza para modificar el Capítulo 59 (Zonificación) del Código Municipal Revisado de Denver sobre limitaciones para ciertos usos automotrices.

First Name / Nombre
Kyle

Last Name / Apelido
Underwood

I am a resident of: / Soy residente del:
I don't know / No sé mi número de distrito

I am... / Estoy...
AGAINST the item / en CONTRA del artículo

My testimony: / Mi testimonio:
I don't understand why we would consider such a limitation. This will simply guarantee that outdated assets, that are dirty, crime ridden and poorly managed continue to operate. By allowing new competition to enter the market, the community will received updated facilities, cleaner and safer environments for the residents offering a better experience for everyone. This will also allow for a repurposing of the outdated and poorly run facilities into something more productive for the community. It makes no sense to create legislation that harms our citizens by preventing competition and letting the top performers, who meet the community need, thrive. I don't understand why we would ever try to protect dangerous, dirty and poorly run businesses creating a harmful environment.

Finish Time
2025-02-18 10:57:47

Reference #
15502405

Public Hearings

I am speaking/writing on (select one): / Hablo/Escribo sobre (seleccione uno):
24-1866 & 24-1867: An ordinance amending the Denver Zoning Code, concerning gas stations and an ordinance amending Chapter 59 (Zoning) of the Denver Revised Municipal Code relating to limitations for certain automotive uses. / 24-1866 y 24-1867: Una ordenanza para modificar el Código de Zonificación de Denver en relación con las estaciones de servicio, y una ordenanza para modificar el Capítulo 59 (Zonificación) del Código Municipal Revisado de Denver sobre limitaciones para ciertos usos automotrices.

First Name / Nombre
Bruce

Last Name / Apelido
Rau

I am a resident of: / Soy residente del:
I don't know / No sé mi número de distrito

I am... / Estoy...
AGAINST the item / en CONTRA del artículo

My testimony: / Mi testimonio:
Members of City Council, thank you for the opportunity to speak to the proposed ordinance and for the city's prior engagement with me on this issue. My partner Bob Sanderman and I own two parcels at the interaction of 42nd and Picadilly on the eastern edge of Green Valley Ranch. One of these properties was proposed for a gas station and subject to an application submitted in August/September of 2024 and which was under contract to sell to a gas station operator from the spring of 2024. In addition, our partnership has been actively processing engineering applications on the site since August of 2023 with the intent of selling the site for this use.
The proposed ordinance has delayed a planned closing of the sale in 2024 and if enacted as proposed would mpact our ability to sell the property and substantially ireduce its value. This would result in a significant financial impact to each of us as individuals and property owners in the City of Denver.
I am in opposition to the ordinance as drafted for two reasons as provided in previous discussions with the city. If either of these two issues were addressed, I would support the

ordinance.
First, the retroactive enactment date of May is unfair to the significant investment made in the property, applications and engineering and the then private contracts to sell the property under the existing zoning. I would like to request that the city council modify the effective date to the date the ordinance is passed. This limited adjustment would allow the project on our property to proceed.
Secondly, as drafted, the ordinance creates setbacks from protected zone districts like residential districts. As an unintended consequence, city owned property that cannot and will not be developed as residential but is still zoned residential requires the same setback. Modifying the ordinance to exclude setbacks from property that is not currently and will not be residential would resolve this issue.
In the various presentations by the city on this proposed ordinance, Green Valley Ranch was identified as one of the few areas in the city that had need for additional gas stations. This property is located on the far east edge of Green Valley nearly two miles from any vacant or properly zoned property in Denver that could be developed as a gas station. It is also worth noting that a new interchange is under construction at Picadilly Road and I-70 to the south and that new interchanges at 48th and E470 and 38th and E470 are nearly complete. There is significant demand and no services in Denver in this area and this demand will grow substantially as these interchanges open.
Thank you for your time and consideration.

Finish Time
2025-02-18 14:55:19

Keith M. Edwards
keith.edwards@hbcboulder.com

February 17, 2025

Via E-Mail

Denver City Council
1437 Bannock Street, Room 451
Denver, Colorado 80202
dencc@denvergov.org

Amanda P. Sandoval (amanda.sandoval@denvergov.org; district1@denvergov.org)
Kevin Flynn (kevin.flynn@denvergov.org)
Jamie Torres (jamie.torres@denvergov.org; district3@denvergov.org)
Diana Romero Campbell (diana.romerocampbell@denvergov.org; district4@denvergov.org)
Amanda Sawyer (amanda.sawyer@denvergov.org; DenverCouncil5@denvergov.org)
Paul Kashmann (paul.kashmann@denvergov.org)
Flor Alvidrez (flor.alvidrez@denvergov.org; district7@denvergov.org)
Shontel M. Lewis (shontel.lewis@denvergov.org; district8@denvergov.org)
Darrell Watson (darrell.watson@denvergov.org; district9@denvergov.org)
Chris Hinds (chris.hinds@denvergov.org; district10@denvergov.org)
Stacie Gilmore (Stacie.gilmore@denvergov.org)
Serena Gonzales-Gutierrez (serena.gonzales-gutierrez@denvergov.org; G-Gutierrez.atlarge@denvergov.org)
Sarah Parady (sarah.parady@denvergov.org; ParadyAtLarge@denvergov.org)

Denver Mayor's Office
Mayor Mike Johnston (mayorsoffice@denvergov.org)
1437 Bannock Street
Denver, Colorado 80202

City & County of Denver City Attorney
Kerry C. Tipper (kerry.tipper@denvergov.org)
201 W. Colfax, Suite 704
Denver, Colorado 80202

Re: *Unconstitutional Application of City Council Bill 24-1866/Gas Station Limitations Text Amendments*

Dear Council Members, Mayor Johnston, and Ms. Tipper:

This firm represents Stephen D. Tebo who does business as Tebo Properties, a sole proprietorship. Mr. Tebo owns several properties in the City of Denver, including a parcel located at 12225 E. 39th Avenue (the "Tebo Property"). Mr. Tebo opposes, and urges the City Council to reject, the currently pending amendment to the Denver Zoning Code set forth in Council Bill CB24-1866 (the "Amendment"). The Amendment, if adopted, would prohibit the development of gas stations within a quarter mile of any existing gas station or light-rail transit station. While the announced policy goals of the Amendment—to promote the development of affordable housing on and near transit corridors—may be laudable, enforcement of the Amendment is more likely to generally deter development of properties in the City rather than achieve the professed policy goals while arbitrarily and illegally impacting the vested rights of several property owners.

Moreover, the City's stated intent to apply the Amendment retroactively to any site development plans submitted after May 13, 2024, renders the Amendment an unconstitutional taking of the Tebo Property and numerous other properties throughout the City. Mr. Tebo and QuikTrip Corporation ("QuikTrip") are parties to that certain Ground Lease Agreement, dated February 13, 2023 (as amended from time to time, the "Ground Lease"). Under the terms of the ground lease, QuikTrip will develop a portion of the Tebo Property into a gas station with an associated convenience store, including the construction of both on-site and off-site civil improvements.

After executing the Ground Lease in early 2023, QuikTrip submitted a site development application to the City in March 2023 for concept review of the portion of the Tebo Property subject to the Ground Lease. As of November 2024, the City granted concept approval to QuikTrip's application. However, despite submission in March 2023 and approval of the application, the City has informed QuikTrip that it intends to apply the Amendment and deny further approval or consideration of QuikTrip's application.

This letter follows correspondence from QuikTrip's counsel, David Foster of Foster Graham Milstein & Calisher, LLP, dated October 15, 2024,[1] December 16, 2024,[2] and February 14, 2025.[3] In Mr. Foster's prior correspondence, he and his co-counsel outlined the legal authorities that apply to the City's proposed passage, application, and enforcement of the

[1] Sent to the City and County of Denver City Attorney, Attention: Kerry C. Tipper.
[2] Sent to the City and County of Denver City Attorney's Office, Attention Katie McLoughlin and Adam Hernandez.
[3] Sent to City Council members.

Amendment. Mr. Tebo agrees with Mr. Foster's analysis of the relevant law, and Mr. Foster's prior correspondence is incorporated herein.

Mr. Tebo writes separately to address the specific constitutional violations that will arise with respect to the Tebo Property should the City proceed with passage and retrospective application of the Amendment.

A. The Tebo Property and the Ground Lease.

The Tebo Property is an approximately 10.5-acre property located just to the south of I-70 on the corner of 39th Street and Peoria Street. Zoned for general industrial uses in zoning district I-B), for many years, the Tebo Property has been the location of a Chrysler parts distribution center. The Tebo Property is one of many surrounding properties south of I-70 zoned for light or general industrial uses. Other businesses in the area include storage facilities, auto-part and construction supply distributors, and cannabis dispensaries. Approximately .1 to .15 miles south of the Tebo Property (on the other side of 39th Street), there is a Phillips 66 fuel station and a Valero fuel station (one on each side of Peoria Street).

Over the years, Mr. Tebo has considered options for further development or use of the Tebo Property, but few have been economically viable due to the zoning, proximity to I-70, and other site-specific limitations. However, in 2020, Mr. Tebo began discussions with QuikTrip regarding the redevelopment of a portion of the property to be used as a fuel station and associated convenience store (the "QuikTrip Parcel"). These early discussions led to the drafting and execution of the Ground Lease in February 2023.

Both before and after execution of the Ground Lease, Mr. Tebo invested substantial effort and amounts towards the planned development. For example, he negotiated with his existing tenant at the property, he assisted with the preparation and submission of site plans and related materials, and he worked to revise and refine these plans in light of City comments. Moreover, Mr. Tebo has restricted the use of the Tebo Property for nearly two years in reliance upon the planned development of the QuikTrip Parcel.

Pursuant to the terms of the Ground Lease, QuikTrip's obligations under the Ground Lease are contingent upon obtaining approvals for all entitlements required for the planned development and construction. If QuikTrip is unable to obtain such approvals because of application of the Amendment, it may terminate the Ground Lease in its entirety.

Mr. Tebo stands to lose millions of dollars if the Ground Lease is terminated due to the retroactive application of the Amendment. The Ground Lease not only entitles Mr. Tebo to receive rent for use of the QuikTrip Parcel during the lease term, it also requires QuikTrip to perform, at

Quiktrip's cost, development tasks for both the QuikTrip Parcel and other portions of the Tebo Property. The Ground Lease and the development of the QuikTrip Parcel will greatly increase the market value of the Tebo Property. Mr. Tebo estimates the difference in property value if such development is prohibited to be between $3 million and $4 million.

B. The Amendment Will Attach New Disabilities to the Tebo Property, Impair Contractual Relationships, and Deny Economically Viable Uses of the Tebo Property.

There can be no question that the City intends to apply the Amendment retroactively as the City has repeatedly stated as such, including in published materials regarding the Amendment. There can also be no question that retroactive application of the Amendment attaches new disabilities for Mr. Tebo and the Tebo Property as it will impose development limitations that did not exist when Mr. Tebo purchased the property, when he entered into the Ground Lease, or when applications to develop the property were submitted to, and (partially) approved by, the City. This is a violation of Article II, section 11 of the Colorado Constitution. *See, e.g.*, *City & Cnty of Denver v. Denver Buick*, 347 P.2d 919, 930-31 (Colo. 1959).

The retroactive application of the Amendment will also violate Article II, section 11, of the Colorado Constitution because it will unreasonably and unnecessarily cause a substantial impairment to Mr. Tebo's pre-existing contractual relationship with QuikTrip. As set forth above, if the City denies QuikTrip's site development application by enforcing the Amendment, QuikTrip will terminate the Ground Lease entirely.

Though it is true that enforcement of a law does not violate the Colorado Constitution where the law is reasonable and necessary to serve an important public purpose, enforcement of the Amendment is not reasonable or necessary to serve the stated public purposes. As set forth on the City website, the stated public purpose behind the Amendment is to prioritize "sustainable development with affordable housing on and near transit corridors by significantly limiting where new gas stations can be established."[4]

Prohibiting the construction of a new gas station on the Tebo Property will not support the development of affordable housing. As described above, the Tebo Property sits in the middle of numerous properties zoned for general industrial use, not residential use. There are already two gas stations in operation just across 39th Street from the planned QuikTrip Parcel. Although preventing the planned development on the QuikTrip Parcel will cause substantial damages to both

[4] https://denvergov.org/Government/Agencies-Departments-Offices/Agencies-Departments-Offices-Directory/Community-Planning-and-Development/Denver-Zoning-Code/Text-Amendments/Proposed-Regulations-for-New-Gas-Stations

Mr. Tebo and QuikTrip, it will not result in the development of affordable housing in or around the Tebo Property as such development would be prohibited by the zoning laws.

Even if existing zoning laws did not prohibit residential development at the Tebo Property, the location of the Tebo Property—sandwiched in between I-70 and existing gas stations—nonetheless deters residential development at the site. If anything, prohibiting the construction of new gas stations in areas of the City *already zoned for and providing such uses* will encourage development of new gas stations in other areas of the City where gas stations are not currently located. Rather than encourage development of affordable housing, the Amendment will actually encourage development of gas stations in new areas that could otherwise be used for affordable residential uses.

Most problematic for the City, enforcement of the Amendment will constitute both a taking of Mr. Tebo's property and a violation of his due process rights as his property rights will be arbitrarily and irrationally restricted while the rights of other similarly situated property owners will not. *See, e.g.*, *Sundheim v. Bd. of Cnty Comm'rs*, 904 P.2d 1337 (Colo. App. 1995).

Retroactive enforcement of the Amendment unquestionably denies Mr. Tebo of an economically viable use of his property. More to the point, it unreasonably interferes with his investment-backed expectations when he purchased the Tebo Property as well as when he entered into the Ground Lease. When he purchased the Tebo Property, it was, as it is now, zoned for general industrial uses and located in close proximity to a gas station. When he purchased the Tebo Property, he reasonably expected that his use of the Tebo Property could include development and operation of a gas station. There was no reason for him to expect that simply proximity to existing gas stations would preclude otherwise permissible uses of his property in the future.

Additionally, proximity to existing gas stations is an arbitrary and capricious standard upon which to limit a property owner's otherwise permissible uses of his property based upon the City's stated policy goals. The Amendment does not alter the zoning of the Tebo Property. Nor does it alter the zoning of other similarly situated properties in the general area. All these properties will continue to be zoned for general industrial, not residential uses. Yet, the Amendment will entirely prohibit the development of a gas station on Mr. Tebo's property, while it will not prohibit the development of gas stations on other industrially zoned properties as little as a few hundred feet to the east of the Tebo Property that happen to be further than a quarter mile away from existing gas stations. Thus, the Amendment is not reasonably or suitably tailored to its stated goals of encouraging development of affordable housing. To the contrary, it arbitrarily and unfairly restricts Mr. Tebo's ability to develop a gas station on his property while other virtually identical property owners are not so restricted, which is a violation of Mr. Tebo's constitutional rights and an improper taking of his property without adequate compensation.

For the reasons outlined herein and in Mr. Foster's prior correspondence, Mr. Tebo urges City Council members to vote against the proposed Amendment. Not only will it fail to achieve its stated goals, it will subject the City to liability to Mr. Tebo and other similarly situated property owners whose properties are unfairly targeted by the Amendment's arbitrary land use limitations. At a minimum, the City Council should abandon its stated intentions to apply the Amendment retroactively to applications submitted after May 13, 2024, but before enactment of the Amendment as this retroactive application of the Amendment also violates Mr. Tebo's constitutional rights.

Mr. Tebo hopes that further action to protect his vested rights is not necessary, but he reserves all rights and remedies he may have related to the Tebo Property and the Amendment.

Sincerely,

Keith M. Edwards

Dear Denver City Council,

I am writing in strong support of the proposed amendment to limit where new gas stations can be built in Denver. This amendment is a necessary step to align our city's development with public health, environmental protection, and responsible urban planning.

Why This Amendment Matters:

1. Protecting Community Health
    - Gas stations release benzene vapors, a known carcinogen. While modern vapor recovery systems help, benzene exposure still poses long-term risks.
    - Placing gas stations too close to homes increases residents' exposure to harmful air pollutants, affecting vulnerable groups like children and seniors.
2. Aligning with Denver's Sustainability Goals
    - Cities like Louisville, Broomfield, and Sacramento have already taken action to limit gas station expansion. Denver should follow suit to encourage cleaner energy alternatives.
    - Limiting gas station growth supports Blueprint Denver and the Comprehensive Plan 2040, which emphasize reducing pollution, cleaning up contaminated sites, and prioritizing pedestrian-friendly urban design.
3. Preventing Oversaturation & Prioritizing Smarter Development
    - Denver already has 180 retail gas stations, while 318 have closed, reflecting shifts in demand.
    - The amendment prevents unnecessary clustering of gas stations, which inhibits housing and retail development.
    - A buffer from residential areas ensures that neighborhoods remain safe and livable.
4. Encouraging Thoughtful, Future-Focused Land Use
    - Transportation is evolving, with increased adoption of EVs and alternative fuels.
    - Instead of prioritizing fossil fuel infrastructure, we should be incentivizing mixed-use developments, grocery stores, and transit-friendly businesses that better serve our growing population.

I urge the Council to approve this amendment to ensure Denver's growth reflects our shared commitment to public health, sustainability, and smart land use planning.

Thank you for your time and consideration. Please let us know if there is anything we can do to assist in this effort.

With gratitude,

Marta Burton

FOSTER GRAHAM MILSTEIN & CALISHER, LLP
ATTORNEYS AT LAW

Brownstein

December 16, 2024

David Wm. Foster
david@fostergraham.com

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

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[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:
Carolynne White
6C35CD5DC1F142C...
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

FOSTER GRAHAM MILSTEIN & CALISHER, LLP
ATTORNEYS AT LAW

Brownstein

October 15, 2024

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

David Wm. Foster david@fostergraham.com

Carolynne C. White cwhite@bhfs.com

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 withing 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

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[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

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GMC BHFS Letter to Denver City Attorney - as Station Text Amendments [FINAL 10.16.24]

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FOSTER GRAHAM MILSTEIN & CALISHER, LLP
ATTORNEYS AT LAW

360 South Garfield Street
6th Floor Denver, CO 80209
T 303-333-9810 F 303-333-9786

fostergraham.com

February 14, 2025

SENT VIA EMAIL: stacie.gilmore@denvergov.org; kevin.flynn@denvergov.org; Amanda.Sawyer@denvergov.org; Amanda.sandoval@denvergov.org; Jamie.torres@denvergov.org; Diana.Romerocampbell@denvergov.org; Paul.Kashmann@denvergov.org; flor.alvidrez@denvergov.org; shontel.lewis@denvergov.org; darrell.watson@denvergov.org; Chris.Hinds@denvergov.org; Serena.gonzales-gutierrez@denvergov.org; Sarah.Parady@denvergov.org; dencc@denvergov.org

Denver City Council
1437 Bannock Street, Room 451
Denver, CO 80202

RE: COUNCIL BILL NO. CB24-1866/Gas Station Limitations Text Amendments

Dear Council President Sandoval and Members of the Council:

This firm represents QuikTrip Corporation ("QuikTrip"). QuikTrip develops and operates gas stations in the City and County of Denver (the "City"). QuikTrip is under contract to purchase three pieces of real property and to lease another property (the "Four Properties") all within the City to develop into gas stations. In March 2023, October 2023[1], July 2024 and August 2024, QuikTrip submitted applications to the City to develop the Four Properties into gas stations. The City granted Concept Approval for the March 2023 application on November 20, 2024, and for the July 2024 application on September 23, 2024.

The City is considering passing an amendment to the Denver Zoning Code (the "Code"), set forth in Council Bill No. CB24 (the "Amendment") on February 18, 2025. The Amendment prevents the development of gas stations within a quarter mile of an existing gas station and within a quarter mile of a light-rail transit station. Despite the fact that the proposed language for this bill was not even publicized until November 7, 2024, and will not be voted on and possibly enacted until February 18, 2025, the City, surprisingly, intends to apply the Amendment retroactively to May 13, 2024, and

[1] Despite these submittal dates, the City is treating the March 2023 and October 2023 applications as if they were submitted on May 20, 2024 and December 20, 2024 respectively.

apply the ban on gas stations within a quarter mile of an existing gas station or light-rail station to all applications submitted after May 13, 2024.

The retroactive application of the Amendment means that the Amendment would be applied to QuikTrip's applications for the Four Properties, and because those properties are within a quarter mile of an existing gas station and/or light-rail station, QuikTrip's applications will be denied. Even the two applications for which the City has already granted Concept Approval will be denied. Thus, the retroactive application of the Amendment will destroy QuikTrip's contractual and property rights.

Enactment of the Amendment and its retroactive application to May 13, 2024, violates Article II, Section 11 of the Colorado Constitution, which prohibits ex post facto and retrospective laws. Moreover, the retroactive application of the Amendment would also constitute: (1) an impairment of a contract under Article II, Section II and (2) a taking under Article II, Section 15, which would require the City to pay QuikTrip millions of dollars for its losses.

I. Retroactive Application of the Amendment Violates the Colorado Constitution

Article II, Section 11 of the Colorado Constitution prohibits laws that are *ex post facto*, impair contracts or retrospective. It states that "no *ex post facto* law, nor law impairing the obligation of contracts, or retrospective in its operation . . . shall be passed by the General Assembly."[2]

The Colorado Supreme Court has ruled that a retroactive law violates the Colorado Constitution if (1) the municipality intended to have the ordinance operate retroactively and (2) the ordinance impairs a vested right or creates a new obligation, imposes a new duty or attaches a new disability.

The Amendment meets the two-part test. The City intends for the Amendment to apply retroactively to applications submitted after May 13, 2024 even though the earliest the Amendment will be approved is February 18, 2025. Second, the Amendment clearly creates new disabilities for QuikTrip. QuikTrip has already spent hundreds of thousands of dollars that will be wasted if the Amendment is applied and the applications denied.

In fact, the Colorado Supreme Court has already ruled that applying a zoning regulation retroactively to an already pending application violates Article II, Section 11 of the Colorado Constitution. The Colorado Supreme Court ruled that land use applications, like QuikTrip's applications for the Four Properties, must be considered under the zoning law in force at the time of the application and that retroactive application of a new zoning law to an application already submitted violates Article II,

[2] Colo. Const. art. II, § 11.

Section 11 of the Colorado Constitution.[3] The Colorado Supreme Court's ruling in *Denver Buick* clearly demonstrates that the retroactive application of the Amendment violates the Colorado Constitution.

Even assuming the pending ordinance doctrine is viable in Colorado, that doctrine would not save the Amendment. Under that doctrine, the Amendment could only be retroactively applied to a date when the appropriate City department began actively pursuing the ordinance.[4] The City could not have begun pursuing the ordinance before the City and the public knew the terms of the ordinance.[5] The terms of the Amendment were not known, nor published, in May 2024 and thus the doctrine would not allow the City to retroactively apply the Amendment to May 13, 2024.

II. The Amendment Violates the Contracts Clause

As noted above, the Colorado Constitution prohibits laws that impair the obligations of contracts. The Colorado Supreme Court has established a three-part inquiry to determine whether a law violates the Constitutional prohibition against impairing contracts. To show a law violates the Constitution, a party must show: (1) it is a party to a contractual relationship; (2) the change in law impairs that contractual relationship; and (3) the impairment is substantial. If the three prongs are met, the impairment may still be constitutional if the law is reasonable and necessary to serve an important public purpose.[6] When considering whether a law is necessary to serve the purpose, there must be some nexus between the law's enactment and the achievement of the public purpose.[7]

Here, there can be no doubt that the Amendment violates the Constitution. QuikTrip is a party to four contracts, the sole purpose of which was for QuikTrip to purchase or lease property so it could develop gas stations. Indeed, QuikTrip's sole business is the development of gas stations. Thus, preventing QuikTrip from developing gas stations on the Four Properties would impair the entire contract. The contractual impairment is substantial, as QuikTrip will lose hundreds of thousands of dollars it has already spent in reliance on the Code and millions of dollars it would earn in the future. Moreover, at the time that QuikTrip entered into the contracts, the law was not foreseeable and disrupts QuikTrip's expectations, thereby making the impairment substantial.[8]

[3] *City & Cnty. of Denver v. Denver Buick, Inc.*, 347 P.2d 919, 930-31 (Colo. 1959), *overruled on other grounds*, *Stroud v. City of Aspen*, 532 P.2d 720 (Colo. 1975).
[4] *Village at Greely, Inc. v. Hopper*, 917 P.2d 350, 357 (Colo. App. 1996).
[5] *Crittenden v. Hasser*, 585 P.2d 928 (Colo. App. 1978).
[6] *School District No. 1 in the City and County of Denver v. Masters*, 413 P.3d 723 (Colo. 2018).
[7] *Nollan v. California Coastal Comm'n*, 483 U.S. 825 (1987).
[8] *In re Estate of Dewitt*, 54 P.3d 849 (Colo. 2002).

Lastly, the law is not reasonable and necessary to serve an important public purpose. The stated purposes for the law include promoting low-income housing and inducing pedestrian transportation instead of vehicular transportation. Even assuming these are important public purposes, the Amendment will have no effect on generating these outcomes. Barring gas stations from these areas will in no way ensure, or even incentivize, low-income housing projects on those properties. In fact, there is no evidence to suggest that barring only a gas station on those properties, but allowing other mixed-use, will somehow cause the owners or developers to construct low-income housing. Nor is there any evidence that shows barring gas stations at properties within a quarter mile of another gas station or light rail station will somehow cause people to walk instead of drive.

III. The Amendment Constitutes a Taking

The Colorado Constitution provides that "private property shall not be taken or damaged, for public or private use, without just compensation." [9] While generally takings claims are asserted by property owners, because QuikTrip is under contract to purchase three of the properties, it has standing to assert a takings claim.[10]

There are three ways to show a taking: (1) the land regulation does not substantially advance a legitimate state interest; (2) the regulation denies the owner of the economically viable use of the land; and (3) if the land remains economically viable, the economic impact of the regulation goes too far by interfering with reasonable investment-backed expectations.[11]

Here, the Amendment constitutes a taking because the regulation does not substantially advance a legitimate state interest and it goes too far. As explained above, there must be a nexus between the regulation and the achievement of the state interest and the Amendment will have no effect on generating the stated purposes of promoting low-income housing and pedestrian transportation.[12] Consequently, the regulation constitutes a taking.

Moreover, while the land may retain some economically viable purpose, the regulation goes too far because it completely destroys the reasonable investment-backed expectations of both QuikTrip and the property owners. The contracts were entered into before the City gave any notice to QuikTrip

[9]Colo. Const. art. II, § 15.
[10] *Nollan v. California Coastal Comm'n*, 483 U.S. 825 (1987); *Toll Bros. Inc. v. Township of Readington*, 555 F.3d 131 (3rd Cir. 2009).
[11] *Animas Valley Sand & Gravel, Inc. v. Board of Cnty. Com'rs of the County of La Plata*, 38 P.3d 59, 64-65 (Colo. 2001).
[12] *Nollan v. California Coastal Comm'n*, 483 U.S. 825 (1987).

and the property owners. Moreover, QuikTrip has spent hundreds of thousands of dollars already on these projects and stands to lose millions of dollars in revenues. Similarly, the property owners stand to lose millions of dollars if they lose the sale contracts because gas stations cannot be developed on the properties. The owners have already spent money, and restricted their properties, under the contracts for significant time, and they will lose not only millions of dollars in lost time revenue, but will also lose millions of dollars as their properties will decrease in value.

IV. Conclusion

We urge the City Council not to approve the Amendment with a retroactive effective date of May 13, 2024, and if the City Council does approve the restrictions, we ask that the City Council make those restrictions applicable as of February 18, 2025, and that they apply only to applications submitted after that date.

If the City Council persists in approving the Amendment with its retroactive application date of May 13, 2024, the City Council will be forcing QuikTrip, and likely the owners, to litigate with the City the validity of the Amendment to preserve the substantial investment QuikTrip has made in the City. Although it hopes it will not be necessary to exercise them, QuikTrip reserves all rights and remedies.

Sincerely,

David Wm. Foster

Brownstein

Brownstein Hyatt Farber Schreck, LLP
303.223.1100 main
675 Fifteenth Street, Suite 2900
Denver, Colorado 80202

February 14, 2025

Carolynne C. White
Attorney at Law
303.223.1197 direct
cwhite@bhfs.com

VIA EMAIL

Denver City Council
1437 Bannock Street, Room 451
Denver, CO 80202

RE: COUNCIL BILL NO. CB24-1866 & 1867/Gas Station Limitations Text Amendments

Dear President Sandoval and Members of Council:

Our client, 5500 E YALE LLC (the "Owner"), owns the property located at 5500 E. Yale Avenue, Denver, CO 80222, and is under contract with QuikTrip for development of a gas station and convenience store (the "Project"). QuikTrip leads the convenience store industry in providing fresh food, EV charging stations and safe restroom access.

We write now to share our concerns regarding the retroactive application of the proposed gas station text amendments (the "Amendments") to the Denver Zoning Code (the "Code"), as currently drafted, and stress that the definition of "Exempt Application" unfairly and unlawfully singles out our client. To avoid these impacts, we ask City Council to make the Amendments effective for all applications as of the date the ordinance is passed by City Council.

QuikTrip's concept review application for the Project was accepted on October 23, 2023. At the time, no City employee communicated even the slightest hint that impactful changes were forthcoming. Nor was there any publicly available information so indicating. During the May 13, 2024, Budget and Policy Committee Meeting, three City Councilmembers, Sawyer, Romero-Campbell, and Kashmann, presented research and seven different proposals regarding potential Code text amendments related to gas stations. QuikTrip was later informed that its application was deemed "inactive" as of May 17, 2024. Community Planning and Development ("CPD") staff deemed the application closed because of the elapsed time period between QuikTrip's receipt of initial review comments and its subsequent response. However, QuikTrip did not intend to withdraw or abandon this application. Quite the opposite, during this time period QuikTrip and Owner were actively pursuing development alternatives for the property. QuikTrip's resubmitted application was given a submittal date of December 20, 2024.

Section 2(4) of the Council Bill No. CB24-1866 (the "Bill") specifically references this exact circumstance: "If an Exempt Application is withdrawn, or an Exempt Application's approved site development plan expires, then any new site development application submitted for the same property must comply with the Denver Zoning Code then in effect." The language of Section 2(4) is not standard in City Council ordinances.

We believe that only the Project and one other pending application submitted by QuikTrip have these same facts. Thus, it is not possible to conclude anything other than the Bill is targeted specifically to exclude certain projects from development, including that of our client's.

The Amendments Cannot Retroactively Apply as Proposed

As explained below, the Amendments, if adopted, cannot have an effective date of May 13, 2024. Rather, the Amendments' earliest possible effective date is much later, and potentially not until the date the ordinance is passed by City Council.

Article II, Section 11 of the Colorado Constitution prohibits *ex post facto* and retrospective laws. Specifically, it provides that "[n]o *ex post facto* law, nor law 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."[1] For example, the Colorado Supreme Court has explained in the context of municipal land use ordinances that applicants under review for a land use decision are entitled to have their application considered under the zoning law in force at the time of the application.[2] The Colorado Supreme Court has developed a two-part inquiry to determine whether an ordinance is retrospective in operation. First, there must be a determination that the legislative intent of the municipality is to have the ordinance operate retroactively.[3] 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**."[4]

The Amendments meet both parts of the test. Various public review documents, as well as statements by City Council proponents, make clear that the Amendments are intended to retroactively apply to applications not under concept review by May 13, 2024. This date does not represent a point at which our client – or any other fuel station applicant or any member of the public – was informed about the specifics of the Amendments, or even that the proposal would move forward.

[1] Colo. Const. art. II, § 11 (emphasis added).
[2] *City & Cnty. of Denver v. Denver Buick, Inc.*, 347 P.2d 919, 930–31 (Colo. 1959), *overruled on other grounds*, *Stroud v. City of Aspen*, 532 P.2d 720 (Colo. 1975).
[3] *City of Golden v. Parker*, 138 P.3d 285, 290 (Colo. 2006).
[4] *Id.* at *290* (emphasis added).

The Amendments further create significant new disabilities for our client. If the Owner or QuikTrip had known that the property would become ineligible for the Project many months after concept review submittal, neither party would have invested the significant time and sums of money on legal fees, development application fees and consultants spent to date.

Moreover, to the extent the pending ordinance doctrine even applies,[5] under that doctrine the Amendments could have an effective date only as far back as when the appropriate city department began actively pursuing it.[6] Courts have reasoned that under the pending ordinance doctrine an ordinance may have an earlier effective date than the date the ordinance passes if the applicant knew the status of the pending legislation.[7] As described above, our client did not learn the specifics of the Amendments, or even that such a proposal would move forward, until long after May 13, 2024. It was unclear as of May 13, 2024, which of the several proposals, if any, City Council would pursue.

The Amendments are Special Legislation and Unlawful

Section 2(4) of the Bill creates a carveout to the definition of "Exempt Application." An applicant that submitted a concept review application on or before May 13, 2024 and whose project would otherwise be exempt from the Amendments must comply if the application is withdrawn and a new site development application is submitted for the same property. As noted above, this nontypical language specifically targets the Owner and QuikTrip.

Article V, Section 25 of the Colorado Constitution prohibits special legislation aimed at any corporation, association, or individual. "A statute violates the prohibition against special legislation if it creates an illusory class or one "'that is drawn so that it will never have any members other than those targeted by the legislation.'"[8] While the Amendments are crafted to appear as an ordinance of general application, Section 2(4) of the Bill has created an illusory class because the defined "class" is so logically and factually restricted as only being applicable to two projects. It is, therefore, unconstitutional.

The 5500 E. Yale Avenue property has been the subject of much community attention, more recently related to the proposed gas station and convenience store, but also as the City's proposed site for a micro-community in 2023. A casual observer might interpret the City's efforts to block the Project as a way to avoid further difficult discussions about the future of this property.

[5] The Colorado Supreme Court has yet to determine the applicability of the pending ordinance doctrine in Colorado. *City of Aspen v. Marshall*, 912 P.2d 56, 61 (1996).
[6] *Villa at Greely, Inc. v. Hopper*, 917 P.2d 350, 357 (Colo. App. 1996).
[7] *Nat'l Advertising Co. v. City and Cnty. of Denver*, 912 F.2d 405, 413 (Colo. App. 1990).
[8] *Snook v. Joyce Homes, Inc.*, 215 P.3d 1210, 1214 (Colo. App. 2009) (quoting *People v. Canister*, 110 P.3d 380, 384 (Colo. 2005)).

Conclusion

For the above reasons, if City Council determines to adopt the Bill, we urge City Council to amend it to make the Amendments as of the actual effective date of the ordinance. All pending applications in the queue as of the effective date should be reviewed by the City without regarding the ordinance, according to the regulatory framework in place as of the date of the applications' submittal.

In the absence of a revision to remedy this constitutional deficiency, it is likely that litigation will be required to determine the legal effective date of the ordinance. The Owner reserves all rights and remedies in equity, under the law, and under contract without waiver.

Sincerely,

BROWNSTEIN HYATT FARBER SCHRECK

Carolynne C. White

DATE	NAME	CONTACT INFORMATION	COMMENT
2.12.2025	David Fisherman	david.i.fishman@gmail.com	Is the Denver City Council Willing to Destroy Democracy, Undermine Public Trust, and Trample the Principles of Capitalism with This Unconstitutional Power Grab? How can the Denver City Council justify pushing through a retroactive zoning amendment that flagrantly violates both state and federal constitutional protections, undermining trust in government and the rule of law? This proposal not only betrays property owners who relied on existing laws but also sends a chilling message to every business considering investment in Denver: your rights can be erased overnight. The Colorado Supreme Court has made it crystal clear—retroactive zoning laws are unconstitutional. Yet, this Council intends to move forward with amendments that apply rules retroactively to projects submitted under the current code. Is this how Denver promotes fairness—by changing the rules mid-game and punishing those who followed them? This isn't just a legal misstep—it's an assault on capitalism itself. Retroactive laws destroy business confidence, sabotage economic growth, and turn every property investment into a gamble against political whims. Worse, it erodes public faith in the democratic process—if laws can be rewritten after the fact, why would anyone trust their government? Does the Council care that this proposal will drag Denver into costly lawsuits, waste taxpayer dollars, and cripple future development? Is the Council prepared to own the damage—both legal and economic—that will follow? Or will it respect the Constitution, honor business investments, and reject this reckless power play?

2.12.2025	Ken Murphy	austingemini@hotmail.com	sense and increases both costs and burdens on we the citizens. The various burdens and taxes/fees that you have placed on us through the years has had negative and painful effects. Through failed policies and needless burdensome regulations (like this one being proposed), over the years Denver has clearly declined in livability. We are walking in the footsteps of other failed cities with similar policies like Seattle, LA, Portland, and San Francisco. The comparison and negative effects is easy to see, and this proposed regulation is another example that we the citizens will suffer from. I urge you to let simple capitalism with supply-&-demand decide what is necessary, not you dictating where resources/station are needed, requiring that existing stations not expand unless they have the costly burden (which will be passed on to us) for installing EV charging stations, making precious space allocated to parking/charging EVs, making us drive further for gas stations, and increase traffic congestion as we hunt for gas stations. It is interesting that the proposal specifically targets gas stations, not the excessive number of pot-shops or bars, but gas stations. I recognize that some are attempting to sell this burden onto the citizens under the guise of “affordable housing” and “walkability,” but the market (not you) will determine where housing will be built; we have seen the detrimental effect when you encourage densely populated apartment complexes in areas with limited resources like grocery stores and roads (and now possibly gas stations), increased the difficulty of driving and road-rage in the city by taking up valuable road space to accommodate bike lanes that are virtually unused, and the walkability sell with this proposal is laughable as I myself have to walk in the street to get to a bus stop.

2.12.2025	Naomi Neal	naomifneal@gmail.com	Dear Denver City Council Members, I am writing to express my deep frustration and disbelief over the proposed ordinance that would ban new gas stations retroactively and prohibit them within a quarter-mile of existing ones. This ordinance favors older gas stations while shutting out new competition—competition that helps keep prices fair and gives residents better choices. It's no secret that when businesses don't have to compete, consumers pay the price. This ordinance will reduce options, raise costs at the pump, and leave neighborhoods with fewer convenient services. Beyond the direct impact on fuel prices, this proposal unfairly harms landowners who have invested in developing their properties. By retroactively restricting gas station development, the city is devaluing their land and limiting how they can use it—all to protect entrenched businesses that don't want competition. Many of the new gas stations being planned are not just about fuel; they provide high-quality food, fresh produce, and other necessities that many neighborhoods rely on. By blocking these businesses, the Council is actively making it harder for people to access affordable food and everyday essentials. Denver's City Council should embrace affordability and consumer choice —not enacting arbitrary bans that hurt working families, small businesses, and landowners. I urge you to reconsider this misguided ordinance and instead focus on policies that expand access to essential services, not restrict them. Please do the right thing and amend this ordinance before it does lasting harm to our communities

2.16.2025	Tom Riggs	riggs.tom.denver@gmail.com	I am confused by the City's inconsistent rationale for zoning code changes. Specifically: A: With the updated parking space requirements that would eliminate parking minimums, CPD in the 12/09/24 announcement on their web page mentions multiple times that this change allows for the "market" to determine the number of parking spaces a development would construct (from the announcement: "based on market conditions" and "this is a market-based solution"). It also mentions "administrative burden" in calculating minimums. "No longer have to spend hundreds of hours calculating..." B: With the gas station zoning amendment, there is no mention of letting the market determine where new gas stations would be built. If the market deems a need for a gas station location, shouldn't the City - including CPD and City Council - allow this? And the proposal also mentions not allowing existing gas stations add additional pumps. What? Why not continue to allow the market to be able to determine if additional new pumps are needed? Wouldn't this new prohibition also add a measurable "administrative burden" of "hundreds of hours calculating..." on the City? It does not seem "equitable" to inconsistently use a "market-based" justification for zoning change proposals. Let the market determine 1 thing; don't let the market determine another thing. Same with the workload burden argument - "it's too much work" in 1 case, yet "we'll take on more work" in another case. QUESTIONS: Does CPD agree that there is an inconsistency here? Why so? Thanks for the attention and response. Tom 720-255-7711
2.11.2025	Pete Dikeou	pete@dikeou.com	Where in the text amendment or code does it allow existing gas stations to remain? Are existing gas stations allowed to be remodeled (new petroleum tanks, new fill stations, overhangs, etc.)?

HATCH RAY OLSEN CONANT LLC

Robert W. Hatch, II
rhatch@hatchlawyers.com

February 14, 2025

SENT VIA EMAIL: dencc@denvergov.org
Denver City Council
1437 Bannock Street, Room 451
Denver, CO 80202

RE: COUNCIL BILL NO. CB24-1866/Gas Station Limitations Text Amendments

Dear Council President Sandoval and Members of Council:

This firm represents Z Portfolio, LLC ("Z Portfolio"). On August 7, 2024, Z Portfolio entered into a contract to sell its property located at Colorado and Evans (the "Property"), which is in the City and County of Denver (the "City"). QuikTrip intends to develop a gas station on the Property and submitted an application to the City on August 28, 2024.

The City is considering passing an amendment to the Denver Zoning Code (the "Amendment"), set forth in Council Bill No. CB24-1866 on February 18, 2025. The Amendment prevents the development of gas stations within a quarter mile of an existing gas station and within a quarter mile of a light-rail transit station. Despite the fact that the proposed language for this bill was not even publicized until November 7, 2024, and will not be voted on and possibly enacted until February 18, 2025, the City, surprisingly, intends to apply the Amendment retroactively to May 13, 2024, and apply the ban on gas stations within a quarter mile of an existing gas station or light-rail station to all applications submitted after May 13, 2024.

The retroactive application of the Amendment would mean the Amendment would be applied to QuikTrip's applications for the Property, and because the Property is within a quarter mile of an existing gas station and/or light-rail station, QuikTrip's application will be denied. If the application is denied, Z Portfolio's contract with QuikTrip will terminate.

Enactment of the Amendment and its retroactive application to May 13, 2024 violates Article II, Section 11 of the Colorado Constitution, which prohibits *ex post facto* and retrospective laws. Moreover, the retroactive application of the Amendment would also constitute: (1) an impairment of a contract under Article II, Section 11; and (2) a taking under Article II, Section 15, which would require the City to pay Z Portfolio millions of dollars for its losses.

Retroactive Application of the Amendment Violates the Colorado

Article II, Section 11 of the Colorado Constitution prohibits laws that are *ex post facto*, that impair contracts or are retrospective. It states that "no *ex post facto* law, nor law impairing the obligation of contracts, or retrospective in its operation . . . shall be passed by the General Assembly."[1]

The Colorado Supreme Court has ruled that a retroactive law violates the Colorado Constitution if: (1) the municipality intended to have the ordinance operate retroactively; and (2) the ordinance impairs a vested right or creates a new obligation, imposes a new duty or attaches a new disability.[2]

The Amendment meets the two-part test. The City intends for the Amendment to apply retroactively to applications submitted after May 13, 2024 even though the earliest the Amendment will be approved is February 18, 2025. Second, the Amendment clearly creates new disabilities for Z Portfolio. Z Portfolio's Property has been tied up under contract with QuikTrip for the express purpose of developing a gas station. If QuikTrip's application is denied the contract is terminated, and Z Portfolio will need to find a new buyer which will take considerable time. Z Portfolio will lose millions of dollars in the time value of money and will lose millions of dollars as the value of its property will decrease.

The Colorado Supreme Court has already ruled that applying a zoning regulation retroactively to an already pending application violates Article II, Section 11 of the Colorado Constitution. The Colorado Supreme Court ruled that land use applications, like QuikTrip's applications for the Property, must be considered under the zoning law in force at the time of the application and that retroactive application of a new zoning law to an application already submitted violates Article II, Section 11 of the Colorado Constitution.[3] The Colorado Supreme Court's ruling in *Denver Buick* clearly demonstrates that the retroactive application of the Amendment violates the Colorado Constitution.

Even assuming the pending ordinance doctrine is viable in Colorado, that doctrine would not save the Amendment. Under that doctrine, the Amendment could only be retroactively applied to a date when the appropriate City department began actively pursuing the ordinance.[4] The City could not have begun pursuing the ordinance before the City and the public knew the terms of the ordinance.[5] The terms of the Amendment were not known, nor published, in May 2024 and thus the doctrine would not allow the City to retroactively apply the Amendment to May 13, 2024.

The Amendment Violates the Contracts Clause

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[1] Colo. Const. art. II, § 11.
[2] *Aurora Pub. Sch. v. A.S.*, 531 P.3d 1036 (Colo. 2023); *In re Estate of DeWitt*, 54 P.3d 849 (Colo. 2002).
[3] *City & Cnty. of Denver v. Denver Buick, Inc.*, 347 P.2d 919, 930-31 (Colo. 1959), *overruled on other grounds*, *Stroud v. City of Aspen*, 532 P.2d 720 (Colo. 1975).
[4] *Village at Greely, Inc. v. Hopper*, 917 P.2d 350, 357 (Colo. App. 1996).
[5] *Crittenden v. Hasser*, 585 P.2d 928 (Colo. App. 1978).

As noted above, the Colorado Constitution prohibits laws that impair the obligations of contracts. The Colorado Supreme Court has established a three-part inquiry to determine whether a law violates the Constitutional prohibition against impairing contracts. To show a law violates the Constitution, a party must show: (1) it is a party to a contractual relationship; (2) the change in law impairs that contractual relationship; and (3) the impairment is substantial. If the three prongs are met, the impairment may still be constitutional if the law is reasonable and necessary to serve an important public purpose.[6] When considering whether a law is necessary to serve the purpose, there must be some nexus between the law's enactment and the achievement of the public purpose.[7]

Here, there can be no doubt that the Amendment violates the Constitution. Z Portfolio is a party to a contract with QuikTrip, the sole purpose of which was for QuikTrip to purchase the Property and develop a gas station thereon. Thus, preventing QuikTrip from developing a gas station would cause the contract to terminate and thereby impair the entire contract. Moreover, the contractual impairment is substantial, as Z Portfolio will lose millions of dollars in the time value of money from having the Property tied up under the contract and will lose further millions of dollars from the decrease in value of the Property. Moreover, at the time that Z Portfolio entered into the contract, the law was not foreseeable and disrupts Z Portfolio's expectations, thereby making the impairment substantial.[8]

Lastly, the law is not reasonable and necessary to serve an important public purpose. The stated purposes for the law include promoting low-income housing and inducing pedestrian transportation instead of vehicular transportation. Even assuming these are important public purposes, the Amendment will have no effect on generating these outcomes. Barring gas stations from these areas will in no way ensure, or even incentivize, low-income housing projects on those properties. In fact, there is no evidence to suggest that barring only a gas station on those properties, but allowing other mixed-use, will somehow cause the owners or developers to construct low-income housing. Nor is there any evidence that shows barring gas stations at properties within a quarter mile of another gas station or light rail station will somehow cause people to walk instead of drive.

The Amendment Constitutes a Takings

The Colorado Constitution provides that "private property shall not be taken or damaged, for public or private use, without just compensation."[9] There are three ways to show a taking: (1) the land regulation does not substantially advance a legitimate state interest; (2) the regulation denies the owner of the economically viable use of the land; and (3) if the land remains economically viable, the economic impact of the regulation goes too far by interfering with the reasonable investment-backed expectations.[10]

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[6] *School District No. 1 in the City and County of Denver v. Masters*, 413 P.3d 723 (Colo. 2018).
[7] *Nollan v. California Coastal Comm'n*, 483 U.S. 825 (1987).
[8] *In re Estate of Dewitt*, 54 P.3d 849 (Colo. 2002).
[9] Colo. Const. art. II, § 15.
[10] *Animas Valley Sand & Gravel, Inc. v. Board of Cnty. Com'rs of the County of La Plata*, 38 P.3d 59, 64-65 (Colo. 2001).

Here, the Amendment constitutes a taking because the regulation does not substantially advance a legitimate state interest. As explained above, there must be a nexus between the regulation and the achievement of the state interest and the Amendment will have no effect on generating the stated purposes of promoting low-income housing and pedestrian transportation.[11] Consequently, the regulation constitutes a taking.

Moreover, even if the land retains some economically viable purpose, the regulation goes too far because it destroys the reasonable investment-backed expectations of Z Portfolio. The contract was entered into before the City gave any notice to Z Portfolio of the proposed Amendment. Moreover, Z Portfolio will lose millions of dollars as a result of the Amendment barring a gas station and causing the contract to terminate.

Conclusion

I urge the City Council not to approve the Amendment with a retroactive effective date of May 13, 2024, and if the City Council does approve the restrictions, we ask that the City Council make those restrictions applicable as of February 18, 2025 and that they apply only to applications submitted after that date.

If the City Council persists in approving the Amendment with its retroactive application date of May 13, 2024, the City Council will force QuikTrip and owners like Z Portfolio to litigate the validity of the Amendment. Z Portfolio reserves all rights and remedies.

Sincerely,

HATCH RAY OLSEN CONANT LLC

By: Robert W. Hatch, II BYKP

Robert W. Hatch, II

[11] *Nollan v. California Coastal Comm'n*, 483 U.S. 825 (1987).

cc: stacie.gilmore@denvergov.org; kevin.flynn@denvergov.org; Amanda.Sawyer@denvergov.org; Amanda.sandoval@denvergov.org; Jamie.torres@denvergov.org; Diana.Romerocampbell@denvergov.org; Paul.Kashmann@denvergov.org; flor.alvidrez@denvergov.org; shontel.lewis@denvergov.org; darrell.watson@denvergov.org; Chris.Hinds@denvergov.org; Serena.gonzales-gutierrez@denvergov.org; Sarah.Parady@denvergov.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

February 18, 2025

Dear City Council,
Thank you for the opportunity to speak today, and thank you to Councilmembers Kashmann, Sawyer, and Romero Campbell for bringing forward this gas station text amendment.

This amendment responds directly to concerns raised by Denver residents who have watched with frustration as prime transit corridor locations are overwhelmed by the lack of infrastructure. By requiring quarter-mile spacing between stations and prohibiting them near transit stops, we can preserve these valuable corridors for development that fits Denver's objectives cited in Blueprint Denver and Comprehensive Plan 2040. As Councilmember Sawyer noted, citizens have been reaching out asking "What is going on here?" when they see yet another gas station going up where other development is needed.

While we've heard vocal opposition from a small but influential group of property owners and developers, their arguments about food deserts and reduced competition don't hold water. Gas prices are mainly driven by global oil production - and we're drilling more oil than ever before in the U.S. - with only a minor impact from local retail competition.

The EPA and state air quality regulators continue to document significant vapor emissions from gas stations, including benzene and other volatile organic compounds that impact local air quality. In Denver, where we already face serious air quality challenges, adding more gas stations in close proximity to homes and businesses only compounds these issues. The 300-foot buffer in this amendment isn't just about traffic safety - it's about protecting our residents' health and our air quality.

Let me be clear - these measured restrictions still allow for thoughtful gas station development while prioritizing housing, safety, and community-serving businesses in our neighborhoods. I urge you to support this amendment as a step toward the more livable, walkable Denver we all want to see.

Megan Williams, Aaron Connell, Celeste Parenjape, and Eastgate RNO