



The Valley of the Sun's Premier Advocacy Group
for Responsible Development

September 22, 2022

Nana Appiah, Development Services Department Director
Rachel Prelog, Assistant Planning Director
Kellie Rorex, Senior Planner
City of Mesa
55 North Center Street
Mesa, Arizona 85211-1466

Transmitted Via Email

Dear Ms. Appiah, Prelog, and Rorex:

On behalf of Valley Partnership, its 350 Company Partners and almost 2,000 Members advocating for responsible development, we are writing to express concern about the City's proposal to prohibit drive through facilities in new development and redevelopment projects within the City.

While specific draft text amendment language does not seem to have been made public, the City's Special Projects website "Drive-Thru Text Amendment" subsection recommends the following changes:

- Prohibit drive-thrus in the Neighborhood Commercial (NC) zoning district (currently requires a Special Use Permit [SUP])
- Require a Conditional Use Permit in the Limited Commercial LC zoning district (currently a permitted use)
- Groupings – No more than 2 drive-thru facilities located adjacent to one another or at an intersection unless approved by a CUP. No more than 2 drive-thru facilities within a group commercial
- Consider establishing minimum building square footages for drive-thru restaurants
- Distinguish a drive-thru window from a pickup window

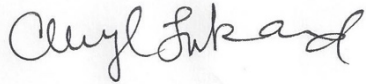
At this time, it does not appear that a text amendment including these provisions would solve any known problem that exists across the City – though the regulation would broadly affect all areas of Mesa.

In fact, implementation of these measures would likely create new and avoidable challenges, including the need for additional surface parking to meet current and future demand, concentrated drive through traffic queueing through a constricted number of locations, and lost sales revenue to the City.

Should there be aesthetic or operational challenges being experienced at drive through facilities in Mesa and the City wishes to prevent those in future developments, Valley Partnership recommends working with the industry on refining the City's design guidelines to address these specific concerns. Instead of simply prohibiting or making inclusion of drive through facilities a more difficult process, we offer the opportunity to work with the industry to improve the design and functionality of future drive through facilities in a way that addresses the City's concerns, whatever they may be.

We look forward to discussing this with you further. Please reach out to Alisa Lyons at 480-593-6214 for further discussions regarding the proposed text amendment.

Sincerely,

A handwritten signature in black ink, appearing to read "Cheryl Lombard". The signature is written in a cursive, flowing style.

Cheryl Lombard
President & CEO

Cc: The Honorable John Giles and Members of the Mesa City Council

From: [Jeff Kost](#)
To: [Nana Appiah](#)
Cc: [Sean Lake](#); [Bob Klepinger](#); [Rachel Prelog](#); [Mark Freeman](#); [Katie Brown](#); [Kellie Rorex](#); [Development Service Admin Team](#); [district2@mesaaz.com](#)
Subject: Re: Zoning Code Text Amendments Temporary Use Permits, Drive-thru Regulations, Outdoor Eating Area
Date: Friday, August 19, 2022 1:02:17 PM
Attachments: [image003.png](#)
[image004.png](#)

Great, thank you Nana. Once you have a date, time and location selected for this meeting please email me the details.

Jeff Kost

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From: Nana Appiah <Nana.Appiah@mesaaz.gov>
Sent: Thursday, August 18, 2022 5:28:16 PM
To: Jeff Kost <jeff@glenwood.com>
Cc: Sean Lake <sean.lake@pewandlake.com>; Bob Klepinger <bob@glenwood.com>; Rachel Prelog <Rachel.Prelog@mesaaz.gov>; Mark Freeman <markafreeman2003@yahoo.com>; Katie Brown <Katie.Brown@mesaaz.gov>; Kellie Rorex <Kellie.Rorex@MesaAZ.gov>; Development Service Admin Team <DevelopmentServiceAdminTeam@MesaAZ.gov>; district2@mesaaz.com <district2@mesaaz.com>; Kellie Rorex <Kellie.Rorex@MesaAZ.gov>
Subject: RE: Zoning Code Text Amendments Temporary Use Permits, Drive-thru Regulations, Outdoor Eating Area

Jeff,

We are planning another neighborhood meeting and, again, inviting all the developers in our database as well as the general public. Please send me any developer's contact that informed did not receive information about the last two meetings. We will also publish the next meeting date and time on our website. Please contact me if you have any questions.

Thanks,
Nana Appiah, PhD, AICP
Development Services Department Director
City of Mesa
55 N Center St
P. O. Box 1466
Mesa, AZ 85211-1466
Phone: 480.644.2181
Email: Nana.Appiah@mesaaz.gov

From: Jeff Kost <jeff@glenwood.com>
Sent: Thursday, August 18, 2022 3:26 PM
To: Nana Appiah <Nana.Appiah@mesaaz.gov>

Cc: Sean Lake <sean.lake@pewandlake.com>; Bob Klepinger <bob@glenwood.com>; Rachel Prelog <Rachel.Prelog@mesaaz.gov>; Mark Freeman <markafreeman2003@yahoo.com>; Katie Brown <Katie.Brown@mesaaz.gov>; Kellie Rorex <Kellie.Rorex@MesaAZ.gov>; Development Service Admin Team <developmentsserviceadminteam@mesaaz.gov>; district2@mesaaz.com

Subject: Re: Zoning Code Text Amendments Temporary Use Permits, Drive-thru Regulations, Outdoor Eating Area

Good afternoon Nana. Sorry for the delay in responding to your email below. As I have spoken to numerous developers, brokers and businesses in the community; the majority of us were unaware of these community meetings that you are referring to. How were these community meetings advertised? How well attended were they by the development community, commercial businesses and real estate professionals?

Will the City of Mesa be opening up further discussions/meetings regarding the proposed text amendments for the overall professional community/businesses to discuss and provide feedback in an open and positive setting? The City of Mesa's proposed text amendments will negatively impact the City of Mesa tax basis and be the downfall of future ground up growth/redevelopment of commercial real estate & business in the City of Mesa.

I recommend that the City of Mesa utilizes the economic development department at the City of Mesa to create a list of commercial developers, commercial brokers and commercial businesses that are active or have developed in the City of Mesa and overall community.

Please advise, thank you.

Jeffrey Kost



4360 E. Brown Road, Suite #106
Mesa, AZ 85205
O 480-775-4650
C 480-225-9963

From: Nana Appiah <Nana.Appiah@mesaaz.gov>

Date: Tuesday, August 9, 2022 at 9:54 AM

To: Jeff Kost <jeff@glenwood.com>

Cc: Sean Lake <sean.lake@pewandlake.com>, Bob Klepinger <bob@glenwood.com>, Rachel Prelog <Rachel.Prelog@mesaaz.gov>, Mark Freeman <markafreeman2003@yahoo.com>, Katie Brown <Katie.Brown@mesaaz.gov>, Kellie Rorex <Kellie.Rorex@MesaAZ.gov>

Subject: RE: Zoning Code Text Amendments Temporary Use Permits, Drive-thru Regulations, Outdoor Eating Area

Hi jeff,

Thanks for your inquiry and interest. As of now, we've had two community

meetings that included the development community and are reviewing feedback from those meetings. We are going to incorporate the feedback on the proposed text and post it online to solicit additional responses. I'm happy to discuss any feedback you can provide.

Thanks again for your interest. I look forward to hearing from you.

Sincerely,

Nana Appiah, PhD, AICP
Development Services Department Director
City of Mesa
55 N Center St
P. O. Box 1466
Mesa, AZ 85211-1466
Phone: 480.644.2181
Email: Nana.Appiah@mesaaz.gov

From: Jeff Kost <jeff@glenwood.com>
Sent: Tuesday, August 9, 2022 6:03 AM
To: Nana Appiah <Nana.Appiah@mesaaz.gov>
Cc: Sean Lake <sean.lake@pewandlake.com>; Bob Klepinger <bob@glenwood.com>; Rachel Prelog <Rachel.Prelog@mesaaz.gov>; Mark Freeman <markafreeman2003@yahoo.com>; Katie Brown <Katie.Brown@mesaaz.gov>
Subject: Re: Zoning Code Text Amendments Temporary Use Permits, Drive-thru Regulations, Outdoor Eating Area

Good morning Nana- Following up on the email chain below. Will the City of Mesa be having a special neighborhood meeting or special open meeting inviting citizens and the commercial development community to discuss the proposed text amendments prior to scheduling the text amendments for P&Z and City Council approval/voting?

Thank you

My best,

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From: Jeff Kost <jeff@glenwood.com>
Sent: Wednesday, August 3, 2022 5:09 PM
To: Nana Appiah <Nana.Appiah@mesaaz.gov>
Cc: Sean Lake <sean.lake@pewandlake.com>; Bob Klepinger <bob@glenwood.com>; Rachel Prelog <Rachel.Prelog@mesaaz.gov>; Mark Freeman <markafreeman2003@yahoo.com>; Katie Brown <Katie.Brown@mesaaz.gov>

Subject: Re: Zoning Code Text Amendments Temporary Use Permits, Drive-thru Regulations, Outdoor Eating Area

Great thank you Nana. I am aware of other companies and citizens in Mesa's development community that would like to participate in such a discussion. How do you want to proceed to provide an opportunity for them to discuss and brainstorm as well?

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From: Nana Appiah <Nana.Appiah@mesaaz.gov>

Sent: Wednesday, August 3, 2022 4:57 PM

To: Jeff Kost <jeff@glenwood.com>

Cc: Sean Lake <sean.lake@pewandlake.com>; Bob Klepinger <bob@glenwood.com>; Rachel Prelog <Rachel.Prelog@mesaaz.gov>; Mark Freeman <markafreeman2003@yahoo.com>; Katie Brown <Katie.Brown@mesaaz.gov>

Subject: RE: Zoning Code Text Amendments Temporary Use Permits, Drive-thru Regulations, Outdoor Eating Area

Jeff,

I will be glad to discuss the proposed text changes with you. Please let me know your availability.

Sincerely,

Nana Appiah, PhD, AICP
Development Services Department Director
City of Mesa
55 N Center St
P. O. Box 1466
Mesa, AZ 85211-1466
Phone: 480.644.2181
Email: Nana.Appiah@mesaaz.gov

From: Jeff Kost <jeff@glenwood.com>

Sent: Wednesday, August 3, 2022 4:02 PM

To: Mark Freeman <markafreeman2003@yahoo.com>

Cc: Sean Lake <sean.lake@pewandlake.com>; Nana Appiah <Nana.Appiah@mesaaz.gov>; Bob Klepinger <bob@glenwood.com>

Subject: Re: Zoning Code Text Amendments Temporary Use Permits, Drive-thru Regulations, Outdoor Eating Area

Mark: Thank you for sending this over. After reviewing these proposed Zoning Code Text Amendments, we definitely recommend that the City taps the breaks and opens up this proposal to the development community for feedback prior to City of Mesa P&Z and City Council voting. We clearly see some aspects of this proposal that will significantly hurt the commercial development

industry specific to the City of Mesa and unilaterally devalue commercial property related to the Prop 207 Waiver Disclosure Statement. If these Text Amendments are put into place, we also see a clear path to significant future tax basis being reduced for the City as these amendments are contrary to the current and future needs of commercial user's business models and their related customer base (i.e. the citizens of Mesa).

We would be happy to discuss this further at a City run "Neighborhood meeting or advertised open study session for commercial businesses/commercial real estate professionals/citizens/etc"

Please let us know your thoughts on having the development community participate in shaping these text amendments to make it a win-win for all. We take pride in what we develop and own in the City of Mesa and we absolutely appreciate and recognize what you do for the City and community as well. Looking forward to hearing back from you.

My best,

Jeffrey Kost



4360 E. Brown Road, Suite #106
Mesa, AZ 85205
O 480-775-4650
C 480-225-9963

From: Mark Freeman <markafreeman2003@yahoo.com>

Date: Wednesday, July 20, 2022 at 8:40 PM

To: Bob Klepinger <bob@glenwood.com>, Jeff Kost <jeff@glenwood.com>

Cc: Sean Lake <sean.lake@pewandlake.com>

Subject: Zoning Code Text Amendments Temporary Use Permits, Drive-thru Regulations, Outdoor Eating Area

Here is a presentation that we received last week, please look it over. Thanks

Sent from my iPad

From: [Nana Appiah](#)
To: [Rachel Prelog](#); [Kellie Rorex](#); [Sarah Steadman](#)
Cc: [Lori Collins](#)
Subject: FW: City of Mesa | Drive-Thru Ordinance
Date: Thursday, August 11, 2022 3:57:26 PM

FYI-

Nana Appiah, PhD, AICP
Development Services Department Director
City of Mesa
55 N Center St
P. O. Box 1466
Mesa, AZ 85211-1466
Phone: 480.644.2181
Email: Nana.Appiah@mesaaz.gov

From: Melissa Hollenbeck <Melissa.Hollenbeck@mesaaz.gov> **On Behalf Of** Councilmember Spilsbury
Sent: Thursday, August 11, 2022 3:21 PM
To: Nana Appiah <Nana.Appiah@mesaaz.gov>
Subject: Fwd: City of Mesa | Drive-Thru Ordinance

FYI

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From: Diane Scappaticci <diane@dpcrc.com>
Sent: Thursday, August 11, 2022 5:16:49 PM
To: Mayor <mayor@mesaaz.gov>; CityManager <COMmanager@Mesaaz.gov>; District 1 <District1@mesaaz.gov>; District 2 <District2@mesaaz.gov>; District 3 <District3@mesaaz.gov>; District 4 <District4@mesaaz.gov>; District 5 <District5@mesaaz.gov>; District 6 <District6@mesaaz.gov>
Cc: Walt Brown <walt@dpcrc.com>
Subject: City of Mesa | Drive-Thru Ordinance

WARNING: This email came from an External Sender – Use caution when clicking links, opening attachments, or responding to requests for information.

Mayor John Giles

Chris Brady, City Manager

Members of Mesa City Council:

Councilmember Mark Freeman, District 1

Councilmember Julie Spilsbury, District 2

Councilmember Francisco Heredia, District 3

Vice Mayor Jenn Duff, District 4

Councilmember David Luna, District 5

Councilmember Kevin Thompson, District 6

Good afternoon,

I am writing to express my deep concern regarding the proposed Drive-Thru Ordinance that the City of Mesa is projected to adopt towards the latter part of this year. As I understand it, this Drive-Thru Ordinance would be responsible for the following:

1. Remove Drive-Thru uses from the list of "Permitted" uses in commercially zoned land and require a "Use Permit" for Drive-Thru's. The Use Permit would require a neighborhood meeting, planning board hearing and City Council public hearing.
2. Commercially zoned property would NOT have a vested right to a drive-thru as a permitted use as they do now.
3. Many existing Drive Thru's would become a "Non Conforming Use". Any damage by fire, etc, could inhibit or even prohibit redevelopment of the Drive-Thru without City Council approval.
4. Developers would NOT have a protected right to a Drive-Thru, unless they have an unexpired site plan approved.
5. No more than 2 Drive-Thru's located adjacent to one another
6. When there are 2 Drive-Thru's adjacent to each other, a 3rd drive-thru cannot be placed within 750 ft.
7. No more than 2 Drive-Thru's in a group commercial center
8. No more than 2 Drive-Thru's at an intersection

The impact that this planned ordinance would have on all commercially zoned property within the boundaries of the City of Mesa would be

extremely damaging to all future development and redevelopment, and is counter to the requirement of the next generation of users that will occupy these developments post Covid 19.

As the CEO, Founder and Designated Broker of Diversified Partners, LLC (www.dpcr.com), I have been involved in all facets of the commercial real estate industry for over 26 years. I have developed over 7 million square feet of retail properties located throughout the country and, over the last two plus years, have seen a major shift in the retail model with many tenants opting for considerably smaller boxes with the addition of a drive-thru, largely due to the COVID-19 pandemic and of late, the shortage of labor.

Dining room closures and social distancing skyrocketed the use of drive-thru ordering systems by tenants, who are concerned with the health and safety of their patrons and employees, and vice versa. A report by Bluedot released late summer 2020, revealed that three in four Americans are visiting drive-thru's as often, or more often, than pre-pandemic. Compared to a report they released at the start of the pandemic, this figure represents a 43% increase in drive-thru use since April 2020. Fast food chains are not the only venues associated with drive-thrus. Independent restaurants are also adopting non-traditional drive-thru ordering systems. After indoor dining was limited or banned in many areas of the country, restaurateurs' livelihoods were threatened. The makeshift drive-thru's they devised in their parking lots during the restrictions proved to be successful business tool for them. The one service model that has come out of the pandemic looking more important than ever, has been the drive-thru.

In addition to health and safety concerns, consumers are continuously looking for convenience and time-saving methods. Drive-thru's are all

about convenience as customers can order, pay and receive their food (or even prescriptions) all without leaving their vehicles. The ease and quickness of the drive-thru is a primary selling point for hungry customers who want food almost instantaneously. Capacity is also increased by utilizing drive-thru ordering systems as restaurants can serve many more people than could fit in their dining rooms at any given time.

The drive-thru model itself has evolved. Drive-thrus are now being architecturally designed to integrate into retail shopping centers in a much more aesthetically appealing way and in ways that do not interfere with the flow of ingress and egress traffic. In many cases, drive-thru's can add character to building elevations by breaking up longer buildings particularly when one or more of the drive lanes are in the middle of the building.

For the reasons listed above and many more, I cannot stress enough the importance of the drive-thru to business owners, consumers, developers and the local economy. If the Mesa City Council so insists on this highly restrictive and detrimental ordinance, they will most likely face the repercussion of the industry taking future commercial retail endeavors to other parts of the Valley. As such, Mesa's economy would suffer immensely as would its residents as many of the cutting edge restaurants would bypass the city limits. This would be particularly impactful in areas in the city that could benefit from redevelopment.

On behalf Diversified Partners as well as other developers and retailers, and restaurateurs doing or contemplating doing business within the City of Mesa, I implore you not to move forward with this ordinance.

Respectfully,

Walt Brown, Jr.
CEO/Founder/Designated Broker

DIVERSIFIED PARTNERS, LLC

7500 E. McDonald Drive, Ste. 100A

Scottsdale, AZ 85250

Direct: 480-383-8160

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VJ Crismon, LLC

6609 N Scottsdale Rd, Suite 102 Scottsdale, AZ 85250 Ph: 480.675.8588 Fax: 480.945.3498

November 1, 2022

Mayor John Giles
Councilmember Jenn Duff
Councilmember Kevin Thompson
Councilmember Julie Spilsbury
Councilmember Mark Freeman
Councilmember Francisco Heredia
Councilmember David Luna
Mr. Chris Brady
Mr. Nana Appiah
Mr. Jabjiniak

City of Mesa
55 North Center Street
Mesa, Arizona 85211

Re: Drive-Thru Text Amendment

Dear Mayor Giles, Councilmembers, and Messrs. Brady, Appiah and Jabjiniak:

In May, 2000 our small group of “family and friends” purchased 106 acres at the southeast corner of Crismon and Southern. In 2004 we sold the Mountain Vista Medical center their hospital site. We have been patient owners; installing Hampton Ave. and portions of Crismon, Southern and Cheshire. We retained the major street retail frontage sites (in LC District) for future development. In late July, 2022 we encountered proposed zoning ordinance changes which would affect us strongly. We were not given notice similar to the notice we provide neighbors when our site has activity. We are trying to catch up with a fast moving train: namely the desire to have this issue decided at the December Council Meeting. Our concerns are:

- On the retail portion of our property, demand has been virtually all for food service with drive thru operations. NO SIT-DOWN RESTAURANTS HAVE EXPRESSED SERIOUS INTEREST. This trend has continued for 15 years.
- The proposed zoning ordinance, as drafted, would have a severe detrimental economic impact on us. We could not sell any more drive thru sites due to arbitrary restrictions of their number. The imposition of Council Use Permit requirement is both an impediment and an indicator of likely applicant failure since we already exceed the proposed limits.
- The configuration of our property, or of any property, directs how it might be used. The numeric restriction of how many drive-thru operations by site size is arbitrary in our opinion. Additionally, if each one of the cases needs to go through CUP; the Council and P & Z Commission will have increasingly clogged schedules.
- In essence, the imposition of these important restrictions, after our property already has vested zoning, causes hardship. Several of the City's proposed adjustments are acceptable; like the distance to residential zoning. But restrictions on the number and proximity of drive thru facilities to each other are not.

I urge the Council to slow this zoning ordinance change. Let us spend more time so the process doesn't create such strong winners and losers.

Thanks for your consideration.

Vance H. Marshall

President

cc: Ms. Melissa Randazzo
Ms. Rachel Prelog
Ms. Kellie Rorex



November 9, 2022

Dear City of Mesa Staff and Council:

My name is Michael Mugel and I own a shopping center redevelopment company by the name of Red Mountain Group (RMG).

RMG has successfully been redeveloping shopping centers (250 retail redevelopments now) for the past 31 years in over 25 states in our country.

I am an expert in shall we say the art of the re-development of shopping centers.

How do I succinctly put all my 31 years of shopping center redevelopment experience into just a few words?

I want to convey to all of you that you are about to cause quite a bit of economic and community harm unintentionally to your city of Mesa, Az. Please consider the following:

-Drive Thru (DT) restaurants are an integral part of a neighborhood, promotional or community shopping center. I say integral because communities (as proven by Covid) want, demand and need the ease of navigating today's more and more complex world.

Whether driving thru a facility for picking up coffee, picking up family meals, pharmacy for pickups when sick, banking activities, drive thru dry cleaners, drive thru dairies like Alta Dena, new users like Salads to Go, Smog Checks, Car Washes, etc etc. etc. drive thrus are a large, large part of any and every quality community and its standards.

Also, please don't forget drive thru concepts provide 100's of 1,000's of jobs in this country, create careers thru franchising and lastly create huge sales taxes for all the cities that they operate in.

-DT restaurant pad users have almost nothing in common with Full Service Dining (FSD) restaurant users when considering the requirements of their actual physical plants. DT are small, small land parcels and FSD require very large parcels of land.

DT and FSD tenants do not compete for space. These tenants actually exist beautifully together in literally 10's of 1,000's of shopping centers in and around our country.

-Therefore, DT/FSD users are absolutely NOT mutually exclusive uses. As re-developers and landlords, we rarely, if ever, need to choose between a drive thru retailer or a full sit-down restaurant retailer.

-Fact: Today's national and regional FSD restaurants demand/need a "special place", a retail regional hub location to locate themselves in. Restaurants want "SYNERGY" today. FSD's will not open new stores where high levels of community energy does not exist. FSD's believe other retailers sales are critical to the success of driving high levels of revenue for themselves.

Think Power Centers (WalMart, Ross, Marshalls, Home Goods, etc.), think larger Neighborhood centers (Sprouts, Fry's with several other anchor tenants i.e. PetSmart) and think Lifestyle centers (Movie theater anchors, entertainment anchors, bars, restaurants and a faux urban setting/street scene).

Traffic, traffic, traffic! Full Sit-Down restaurants again want "SYNERGY".

FSD's use the huge "draw" of these bigger box retail shopping centers and entertainment shopping center assets to more easily achieve big individual store level revenue effectively "goosing" their sales (this along with easing their marketing expenses (costs) for their stores)

You rarely see today's an FSD's go off on their "own" in a freestanding location in an aged community with no large, retail synergy to draw from.

Conversely, Drive Thru users DO NOT require this large retail synergy!

DT's can occupy space in strip centers, freestanding alone, office parks, out in front of industrial/business units, Hotels, apartment complexes, Etc., Etc.

And, FSD restaurants again usually look at the larger, regional shopping centers with larger tenants so that they can count the overabundance of parking that usually exists in these centers towards their use allowing for theses FSD's to have lower rent structures. In other words, FSD's business plans do not allow for these users to pay the freight of the higher rents, small parcels of land allowed for in the business plans of the DT restaurants.

Therefore, with most DT parcels being physically too small, with too little land, not enough parking and too expensive for the typical FSD restaurant user then why legislate the DT use away?

-Lastly, and maybe most importantly, most cities are unfamiliar with the art of true shopping center ownership and redevelopment.

Fact: Drive Thru restaurants ability to pay much, much higher per square foot rents allows developers and owners of shopping center properties the ability to subsidize the lower paying rents of today's value oriented, "B" big box retailers!

Yep, these small, DT restaurant users actually allow (subsidize) these big box retailers to exist in many, many second generation shopping centers across this country.

Please think Hobby Lobby, Burlington, WSS Shoes, Ross, Big Lots, Dollar Tree, Family Dollar etc.

These tenants can only pay cheap, cheap rents per square foot as their "value" oriented business plans do not allow for them to pay higher rents as they do not have the profit margins to do so.

Why is this important?

Because when first generation, AAA tenant turnover occurs in most shopping centers then the re-leasing of those larger big box spaces can become a major, major challenge for owners and developers should they not be able to absorb the lower paying, "B" tenant rent structures.

The "Big Rents" of the Drive thru restaurants actually allow for the "balancing of the ledger" so that proper retail property redevelopment can take place when that first-generation big box tenant leaves.

Turn off the ability to lease to drive thrus users and you will be creating the horribly unintended consequence of more shopping centers going back to lenders, properties sitting fallow or partially occupied for years which can then of course allow for more homelessness, crime and other unwanted situations.

Many cities across the country after having halted drive thru users have experienced these facts only to then reverse this legislation so that a thriving retail base could exist in their communities.

Of course there are many, many other reasons why a city will NEVER EVER be able to legislate a full sit-down restaurant into existence (older under developed retail base, lack of density of population, age of population, income of population, household income, race, education levels, etc.) however the above facts represent my experiences as an operator in the shopping center business for the past 31 years doing business all over this country.

From my perspective, if a restaurant retailer wants to be in a particular city then that restaurant retailer opens a new store in that city..... PERIOD.

There is nothing a city can do legislate a tenant's desire to open a store and do business in that particular city.

The simple fact is restaurant tenants DO NOT, "not go" into a city because drive thru retailers took a pad or "beat them out of a certain piece of real estate." That is just silly math and a bunch of hooley really.

After redeveloping 08 shopping centers a year for the past 30 years I kind of think of owning shopping centers is a bit like conducting a symphony..... all instrumental players must play together (all retail users not some) and all players must be in tune (our retail tenant mix).

We need ALL retail users to succeed as a community not some.

City of Mesa Officials, if you want you a symphony of restauranteurs to exist in your city (quality chef driven restauranteurs along with other national and regional restaurant brands) then do what every other city in the country is doing and has done for decades now.....create a space, a very "Special Sense of Place"...that will absolutely rebrand your city as a "Next Generation" city that restauranteurs will recognize that's the "Place to Be" and then you and your constituents will have more restaurants in your city than you could ever imagine all without passing any legislation!

It's not about legislating Drive Thru restaurants...it's about creating special community spaces.

Thank you,
Michael Mugel
Red Mountain Group
CEO

-

October 28, 2022

Via Email Only

Mayor John Giles
Councilmember Jenn Duff
Councilmember Kevin Thompson
Councilmember Julie Spilsbury
Councilmember Mark Freeman
Councilmember Francisco Heredia
Councilmember David Luna
Mr. Chris Brady
Mr. Nana Appiah
Mr. Jabjiniak

City of Mesa
55 North Center Street
Mesa, Arizona 85211

Re: Drive-Thru / Pick-Up Window Text Amendments

Dear Mayor Giles, Councilmembers, and Messrs. Brady, Appiah and Jabjiniak:

I am writing to share my concerns regarding the proposed Drive-Thru and Pick-Up Window Text Amendment. The draft that has been circulated to the development community includes several new requirements related to the drive-thru and pick-up lanes, many of which are appropriate and consistent with similar high quality municipalities. However, the rigidity of certain requirements without the ability to allow Staff to reduce a standard if mitigation measures or engineering studies support such reduction will tie Mesa's hands and prevent development and redevelopment within the City.

Further, the addition of a Council Use Permit requirement in the NC and LC zone creates an overly burdensome and subjective process when an SUP could instead be utilized in order to accomplish the City's Purpose, as stated in Staff presentations, of addressing noise, odor, lights, safety and preserving the integrity of commercial centers.

Finally, adding stipulated maximum numbers of drive-thru uses based on adjacency and acreage is not found in any other municipality in the Valley or in any of the jurisdictions throughout the various states that we have developed in for over three decades. The numbers appear to be arbitrarily contrived and limitations such as these are highly inconsistent with market trends and consumer requirements (particularly in this post-COVID environment) for convenient means to obtain meals without having to leave a vehicle. Good development does not require absolutes such as these, and are not found in the municipalities surrounding Mesa.

2390 East Camelback Road, Suite 410, Phoenix, AZ 85016
phone 602.808.8600 fax 602.808.9100 evgre.com

Development | Services | Investments



Evergreen

I implore you to consider the short and long term impacts that these changes will have on the viability of new quality developments in Mesa, and to work with the restaurant and development community to negotiate modifications the proposed Text Amendment.

Regards,



Laura Ortiz
President
Evergreen Devco, Inc.

cc: Ms. Melissa Randazzo (via email)
Ms. Rachel Prelog (via email)
Ms. Kellie Rorex (via email)





7500 E. McDonald Drive
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Scottsdale, AZ 85250
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October 31, 2022

Mayor John Giles
Councilmember Jenn Duff
Councilmember Kevin Thompson
Councilmember Julie Spilsbury
Councilmember Mark Freeman
Councilmember Francisco Heredia
Councilmember David Luna
Mr. Chris Brady
Mr. Nana Appiah
Mr. Jabjiniak

City of Mesa
55 North Center Street
Mesa, Arizona 85211

Re: Drive-Thru Text Amendment

Dear Mayor Giles, Councilmembers, and Messrs. Brady, Appiah and Jabjiniak:

I am writing to express my profound concern regarding Mesa's proposed Drive-Thru Text Amendment. The position that Mesa has taken in assuming that, if they restrict fast-food restaurants in their City, there would be a simultaneous increase in higher quality sit-down restaurants, is purely illogical reasoning as there is no correlation between the two.

As someone who has developed millions of square feet of retail in Arizona and continues to be active in doing so, and a developer who has an intimate understanding of the market and the current trends, the following are some suggestions that I can offer:

- Eliminating and/or greatly restricting food and beverage opportunities by restricting drive-throughs is counter to your resident's preferences and market trends, particularly post-COVID.

- As you study this further, differentiate between end cap or mid cap drive-throughs in a multi-tenant setting versus stand-alone fast food.
- The better idea is to design a site plan whose elevations, juxtaposition of the buildings, landscaping, and canopies helps camouflage the stacking & drive-through components rather than restricting them. In many cases, multi-tenant buildings can achieve better character with drive-throughs to break down the building's scale.
- Many full-service, "sit-down" restaurants are now requiring pick-up windows which should not have any restriction and should be accommodated with limited vehicle stacking requirements.
- If you are going to look at the separation between drive-throughs and adjacent residents it should be measures from the order board or drive-through window not the distance from a drive aisle itself.
- Draconian and arbitrary restrictions as being contemplated will severely limit commercial growth both in stand-alone retail and mixed-use settings, limit needed revitalization in some of the most blighted areas, and represent a "taking" of the value of said commercial property within the City limits.

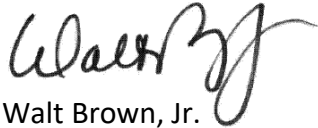
If part of Mesa's thought process is that fast-food restaurants and drive-throughs are not aesthetically appealing or are noise inducing, the City should look to enhancing the design and performance standards within the Mesa Zoning Ordinance and make this a planning exercise not a political endeavor by dictating its preferences to consumers and businesses.

Additionally, Mesa's requirements/restrictions regarding CUPs for drive-throughs in the NC and LC districts will not deter the underlying demand for fast-food restaurants and, again, turns a design endeavor into a political preference. However, what it will be successful in is increasing the burden on the City Council and its agendas with a flood of drive-through restaurant cases, hearings, and debates in the foreseeable future.

I cannot stress enough the importance of drive-throughs and pick-up windows to business owners, consumers, developers and the local economy. If the Mesa City Council so insists on this highly restrictive and detrimental ordinance, they will most likely face the repercussion of the industry taking future commercial retail endeavors to other parts of the Valley and having your residents dine and shop outside the City limits. As such, Mesa's economy would suffer immensely as would its residents as many of the cutting-edge restaurants would bypass the City limits. This would be particularly impactful in areas in the City that could benefit from redevelopment.

On behalf Diversified Partners, as well as other developers and retailers, and restaurateurs doing or contemplating doing business within the City of Mesa, I urge you to heed the restaurant and development communities and enter into a meaningful dialogue to produce reasonable standards that accomplish aesthetic goals of the City.

Regards,

A handwritten signature in black ink, appearing to read "Walt Brown, Jr.", written in a cursive style.

Walt Brown, Jr.
Owner, CEO & Designated Broker

cc: Ms. Melissa Randazzo
Ms. Rachel Prelog
Ms. Kellie Rorex

September 21, 2022

City Manager Brady and Planning Department,

Several members of our team listened to the study session on July 11, 2022, where staff presented a proposed text amendment imposing changes to drive-thru uses to the City Council. As a company who has developed multiple properties in the City of Mesa, the proposed Ordinance changes are concerning given the current users demands within the industry. In our post covid world, many restaurants require drive-thru options for their customers. This stretches well beyond traditional "fast food restaurants" to best in class users such as Federal Pizza or Shake Shack, as many citizens embrace this convenience.

The stated intent of the proposed amendment to the Zoning Ordinance is to "protect the Urban Form and preserve the integrity of neighborhoods." These restrictions seem to make more sense in the Downtown Core, however not as blanket regulatory changes applicable to every zoning commercial zoning category in the City.

We look forward to reviewing a draft of the text when it is available. We understand that many community stakeholders have asked for a copy of the proposed text and thus far the text is not available. Once the text is available, we are hopeful that community stakeholders and restaurant owners/operators will have 30-45 days to review and comment on the proposed text before a second Open House or Neighborhood Meeting is scheduled.

Thanks in advance for your time. I am hopeful we can work together on an amendment that makes sense for everyone while still allowing for desirable local, regional and national food users to continue to expand in the City of Mesa.

Respectfully,



Chris Hake
Senior Vice President, Director of the SW Region
Thompson Thrift

From: robin@sketcharchitecturecompany.com
To: [Special Projects](#)
Subject: Proposed Zoning Amendments for Drivethru's
Date: Monday, September 26, 2022 10:50:30 AM

To whom it may concern,

I was not able to attend the public meeting on the 21st but would like to have my concerns/comments entered into the public record for the meeting of the 27th. Our firm does a significant amount of work in Mesa and our clients are very concerned about the proposed changes to the Zoning Ordinance. I am not an attorney however I believe these changes as proposed, could diminish the value of properties and therefor would be a violation of Proposition 207.

Requiring a Use Permit for any/all new drive thru uses is good policy. It is important to protect existing properties from the deleterious impacts of drive thru uses including noise and traffic. Any new drive thru use should be strictly vetted to ensure vehicle cueing and associated noise from the vehicles, the speaker/call box, and associated impacts to neighbors are addressed. However, if a use can be shown to meet all the required modifications, it should be approved.

Limiting the number of drive thru's is not the solution. Creating explicit standards for new drive thru's and making sure that new proposals for new drive thru's conform to them is the solution.

Those standards could include:

- Mandate limits on hours of operations
- Increasing cueing distance from the service window to the ordering location and from the ordering location to the entry of the drive thru lane
- Increase visual screening of vehicle cue from neighboring properties and from the right of way using planting and physical structures
- Implement a noise ordinance specific to vehicle and patrons while in the drive thru cue
- Mandate the location of vehicle cueing to be a minimum distance from residential uses
- Require drive thru lighting to be fully shielded from bleeding off site

Thank you for the work you do to make Mesa open for business while protecting the rights of property owners to reap the economic opportunities available to them.

Robin

Michael Robin Benning, AIA NCARB AICP
Project Architect

Sketch
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September 23, 2022

VIA EMAIL

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Development Services Department Director
Nana.appiah@mesaaz.gov

Rachel Prelog
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Kellie Rorex
Senior Planner
Kellie.rorex@mesaaz.gov

City of Mesa
55 North Center Street
P.O. Box 1466
Mesa, Arizona 85211-1466

Re: Supplement to Objections Drive Through Text Amendments to the Mesa Zoning Ordinance

Dear Mesa Planning Staff:

As I mentioned in my letter of September 21, 2022, this firm represents a number of developers including Evergreen Development, Vestar, Pederson Group and Diversified Partners (“Developers”), in connection with their opposition to the text amendments to the Mesa Zoning Ordinance (“MZO”) proposed to ban, limit and restrict the development of drive through facilities in Mesa (the “Drive Through Text Amendments”).

We attended the public Zoom meeting you conducted on September 21st and were impressed with the robust discussion about the proposed changes to the MZO. We noted that none of the 63 participants spoke in favor of the Drive Through Text Amendments. Many of those who spoke in opposition to the Drive Through Text Amendments during the hour-long meeting agreed with and expanded upon the points I made in my letter of September 21st.

The Developers continue to oppose the Drive Through Text Amendments and I am writing to supplement that correspondence with a new ground for objection; namely, that the Drive

Through Text Amendments could violate Arizona's Private Property Rights Protection Act (the "PPRPA") and subject the City to liability from private property owners whose land values have been diminished by their enactment.

The PPRPA includes A.R.S. § 12-1134, which creates a statutory cause of action for a property owner whose "existing rights to use, divide, sell or possess private real property are reduced by the enactment or applicability of any land use law enacted after the date the property is transferred to the owner and such action reduces the fair market value of the property . . ." A.R.S. § 12-1134(A). The Drive Through Text Amendments change the MZO and therefore clearly qualify as "land use laws."

To the extent the Developers own real property in Mesa, their rights to develop that property will be reduced and diminished as a direct result of the Drive Through Text Amendments. Comments from some of the public participants at the Zoom meeting on September 21st underscore the fact that property values will surely be negatively affected by the Drive Through Text Amendments. One commenter noted that the restaurants that he represents will bypass Mesa altogether if the Drive Through Text Amendments are enacted, because having a drive through facility is an integral part of his clients' operations and profit model. Another developer commented that infill parcels in Mesa will remain vacant if drive throughs are restricted or banned because some smaller parcels cannot be developed to productive use without a drive through option. These comments demonstrate that allowing property owners to seek a Council Use Permit for a drive through will not cure the problem because developers will simply decide not to locate in Mesa. This self-selection will have a negative impact on the value of the commercial property owned by the Developers.

The PPRPA does not apply to land use laws that "limit or prohibit a use or division of real property for the protection of the public's health and safety, including rules and regulations relating to fire and building codes, health and sanitation, transportation or traffic control, solid or hazardous waste, and pollution control." A.R.S. § 12-1134(B)(1). But, as we pointed out in our earlier correspondence, the City has not presented any evidence that the Drive Through Text Amendments will promote the health, safety and welfare of Mesa residents. Case law interpretations of the PPRPA are few, but one of the seminal cases, which applies the PPRPA to a Sedona ordinance banning short term rentals, notes that the government bears the burden of proving "that the law was enacted for the principal purpose of protecting the public's health and safety before the exemption can apply." *Sedona Grand, LLC vs. City of Sedona*, 627 Ariz. Adv. Rep. 13, 18-19, 270 P.3d 864, 869-70 (App. 2012). Moreover, the *Sedona Grand* Case holds that to qualify for the exemption stated in A.R.S. § 12-1134(B)(1), "the City must provide evidence beyond mere "legislative assertion" to carry the burden that the Act assigns to it." *Id.* at 870.

At the September 21st Zoom meeting, you said that you had studied similar enactments in other cities in the Valley and around the country, but we did not hear anything specific. If the Drive Through Text Amendments are based on empirical evidence that drive throughs harm the

environment or nearby residents, please share that evidence so we may consider whether this information implicates the applicability exception referenced in A.R.S. § 12-1134(B)(1).

The Drive Through Text Amendments will reduce the value of specific commercial properties in Mesa. And this fact will expose the City to potential liability under the PPRPA. For this reason, and for all the reasons stated in my letter of September 21, 2022, the Developers urge you to reconsider the adoption of the Drive Through Text Amendments.

Thank you again for your time and attention to the Developers' objections.

Sincerely,

BEUS GILBERT McGRODER PLLC



Paul E. Gilbert

Current Regulation	City Proposed Regulation	Developer Proposed Changes
<p>MZO § 11-6-2 (Use Tables for Commercial Districts)</p> <p><i>Banks and Financial Institutions with pick-up window facilities are permitted in the LC</i></p>	<p>SUP will be required in LC</p>	<p>Banks and Financial Institutions with pick-up windows in LC zoning should remain permitted and not require an SUP</p> <p>Also, need clarification on drive-thrus associated with Pharmacy use (either freestanding building or as part of a larger use/grocer). Similar to Banks and Financial Institutions, new regulations (SUP or otherwise) should not be added in any of the zoning districts</p>
<p>MZO § 11-6-2 (Use Tables for Commercial Districts)</p> <p><i>Restaurants with drive through facilities require an SUP in NC and MX</i></p> <p><i>Restaurants with drive through facilities are permitted in LC and GC</i></p>	<p>CUP will be required in NC and LC</p>	<p>Restaurants with drive-thrus in NC should continue to require an SUP, and should remain permitted in LC without a CUP</p> <p>However, if the drive-thru building in an LC zone is within 300' of a residential zone (measured from drive-thru lane or building, whichever is closer, to the property boundary of the residentially zoned property that is currently used for residential uses) when not separated by an arterial street, railroad, or when part of a larger commercial shopping center and not separated by a commercial building from the residentially zoned property that exceeds 10,000 s.f., then an SUP will be required (this language is from Queen Creek's Code)</p>

Current Regulation	City Proposed Regulation	Developer Proposed Changes
<p>MZO § 11-6-2 (Use Tables for Commercial Districts)</p> <p><i>Restaurants with pick up window facilities are not regulated</i></p>	<p>will require an SUP in NC, LC and MX</p>	<p>Restaurants with pick-up windows in NC should require an SUP, but should be permitted in LC and MX without an SUP</p> <p>However, if the drive-thru building in an LC zone is within 300' of a residential zone (measured from drive-thru lane or building, whichever is closer, to the property boundary of the residentially zoned property that is currently used for residential uses) when not separated by an arterial street, railroad, or when part of a larger commercial shopping center and not separated by a commercial building from the residentially zoned property that exceeds 10,000 s.f., then an SUP will be required (this language is from Queen Creek's Code)</p>

Current Regulation	City Proposed Regulation	Developer Proposed Changes
<p>MZO § 11-31-18: DRIVE-THRU FACILITIES</p>	<p>A 100-foot distance must be provided between the drive-thru or pick-up lane and any residential use or residentially zoned property. Distance measured from the far edge of the drive-thru or pick-up lane and the property line containing the residential use or residentially zoned property.</p> <p>A 50-foot distance must be provided between the entry to a drive-thru lane or pick-up lane and a <i>cross access drive aisle</i>. Distance measured from the center of the cross-access drive aisle to the entry of the drive-thru or pick-up lane.</p> <p>A 50-foot distance must be provided between the entry to a drive-thru lane or pick-up lane and a <i>street access driveway</i>. Distance measured from the street access drive face of curb to the entry of the drive-thru or pick up lane at either a landscape buffer, or other feature as determined through site plan review.</p>	<p>We can accept the new requirements so long as the applicant will be permitted to rebut these standards based on the individual circumstances of each site through Site Plan Review process, with language comparable to existing language in 11-31-18 D which provides for an alternate standard “where physical site conditions prevent such configuration”. Staff is asked to propose language for the revised ordinance draft that is clear that these standards may be modified through the Site Plan Review process as described above.</p>

Current Regulation	City Proposed Regulation	Developer Proposed Changes
MZO § 11-31-18	<p>Drive-thru Facility Regulations [all new regulations]</p> <p>1. Location. Drive-thru facilities must be development according to the following standards unless approved through a Council Use Permit.</p> <p>a. A maximum of two drive-thru facilities are permitted to be located adjacent to one another.</p> <p>b. When there are two drive-thru facilities adjacent to each other, a third drive-thru facility may not be placed within 750 feet of either of those two facilities.</p> <p>c. When located within a group commercial, office or industrial development (Group C-I-O):</p> <p>i. No more than two drive-thru facilities for Group C-I-O sites less than 10-acres in area.</p> <p>ii. No more than four drive-thru facilities for Group C-I-O sites 10 to 30 acres in area.</p> <p>iii. No more than six drive-thru facilities for Group C-I-O sites 31 acres or more in area.</p>	<p>Opposed to all new regulations in this section.</p> <p>Adjacency restrictions (including the 750’ requirement) are not found in other cities, do not take into account each site’s size, configuration, street frontage and unique characteristics, and further do not account for site layout requirements of the anchors.</p> <p>Cap on number of drive-thru facilities is not found in other cities and is arbitrary. The built environment can be protected, as it is elsewhere, through the implementation of the design standards in Mesa’s existing Code along with some of the refinements contained within this document.</p> <p>If Mesa does impose maximum limitations, then it should be clear that the maximums only relate to drive-thru restaurants (and not include Banks or Financial Institutions or pharmacies). Further, the numbers should be revised as shown below:</p> <p>i. Up to 6 acres = 3</p> <p>ii. 6-10 acres = 4</p> <p>iii. 10-20 acres = 5</p> <p>iv. 20-30+ acres = 6</p>

Current Regulation	City Proposed Regulation	Developer Proposed Changes
MZO § 11-31-18	Provide an architecturally compatible shade structure and a raised pedestrian path for facilities in which employees take orders outside of the eating establishment.	The need for a shade structure should be determined by restaurant operator and not dictated by the City.
MZO § 11-31-18	<p>Pick-up Window Facility Regulations.</p> <p>Pick-up window facilities are only permitted at establishments with a minimum 1,000 square feet of gross floor area and are allowed one pickup lane.</p>	This appears to be targeted at specific end users and needs to be eliminated.

From: [Mike Leonard](#)
To: [Rachel Prelog](#); [Nana Appiah](#); [Chris Brady](#); [CityManager](#)
Subject: Drive Thru amendment
Date: Wednesday, September 21, 2022 3:19:03 PM
Attachments: [image001.png](#)
[image002.png](#)

WARNING: This email came from an External Sender – Use caution when clicking links, opening attachments, or responding to requests for information.

To whom it may concern –

I have heard about the proposed text amendment to limit drive thrus in Mesa. I am very concerned about the impact on proposed and existing commercial centers in mesa. Our proposed tenants and buyers are favoring development with the inclusion of drive thrus post covid. I look forward to listening to the hearing tomorrow evening. Could a member of your staff please send me a copy of the text as soon as it is available. We would like time to review and comment once the text is available.

Please feel free to contact me with any additional info or questions as well.

Regards,



Mike Leonard
Managing Partner
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VJ Properties, Inc.

6609 N Scottsdale Rd, Suite 102, Scottsdale AZ 85250 Ph: 480.675.8588 Fax: 480.945.3498

October 30, 2022

Mayor John Giles
Councilmember Jenn Duff
Councilmember Kevin Thompson
Councilmember Julie Spilsbury
Councilmember Mark Freeman
Councilmember Francisco Heredia
Councilmember David Luna
Mr. Chris Brady
Mr. Nana Appiah
Mr. Jabjiniak

City of Mesa
55 North Center Street
Mesa, Arizona 85211

Re: Drive-Thru Text Amendment

Dear Mayor Giles, Councilmembers, and Messrs. Brady, Appiah and Jabjiniak:

Hello. I am a long time property owner that has spent much energy in order to own LC land for retail development. Specifically, my partner, family and I have owned land on, and adjacent to, the campus of Mountain Vista Hospital. We sold them their land in 2004 and have worked to rezone our land to LC to allow flexibility for hospital amenities.

We believe we have been good citizens and community members.

1. We have worked to and funded the improvement of Southern Ave during the hospital construction.
2. We have funded and completed the construction of Hampton Avenue (a 10 year Special Improvement District ending 2017) which included the improvement of both Crismon Road and Chesire Road.
3. We have worked faithfully with the hospital for the future of the Campus Development, actively working with them for 17 years. The hospital has repeatedly asked for amenities for their employees and guests and that is the direction we pursued. The executives are aware of and support, Drive Thru users coming onto campus.

Further, the City Ordinance as first proposed by the City has now been further modified! The first iteration entailed LC moving to a SUP required where such SUP is currently **NOT** required. Bad enough.

Yet, the most recent revisions added another layer, changing the initial, proposed SUP requirement to a more burdensome and costly CUP!

All the while, after the increased costs and energy it is still left to a subjective vote on our fate. Unfair!

Respectfully, if this Ordinance is passed it will diminish 20 years of preparation thus making it more difficult to develop. The proposed process will take longer, be more costly for the users and will result in a reduced property value. We would not have invested in Mesa had we known of these risks.

If there is an ongoing true public concern with DT's then it seems the broad brush regarding all locations is unwarranted. This seems to be a site specific design requirement and should not be an impact on all property owners. Ours is not abutting residential, we are in a travel corridor and the public has asked for DTs, not sit down restaurants. In our history of ownership, we have had only 1 interest from a sit down. It did not move forward.

From our discussions with users and the community, the food industry and public are more favorable to DTs for convenience and life scheduling.

**I ask that Staff work in greater detail with the public to find a common ground that does not damage values nor increase the burdens on development, users and more so, will not take up valuable City time in future appeals.

Best regards

Jeffrey M. Lanes
VJ Properties, Inc.
Principal

Cc: Ms. Melissa Randazzo
Ms. Rachel Prelog
Ms. Kellie Rorex

BEUS GILBERT MCGRODER

PLLC

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September 21, 2022

VIA EMAIL

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City of Mesa
55 North Center Street
P.O. Box 1466
Mesa, Arizona 85211-1466

Re: Drive Through Text Amendments to the Mesa Zoning Ordinance

Dear Mesa Planning Staff:

This firm represents a number of prominent developers including Evergreen Development, Vestar, Pederson Group and Diversified Partners (“Developers”), in connection with their opposition to the text amendments to the Mesa Zoning Ordinance (“MZO”) proposed to ban, limit and restrict the development of drive through facilities in Mesa (the “Drive Through Text Amendments”). The Developers oppose the Drive Through Text Amendments on a number of practical and legal grounds, as described below.

A. The Drive Through Text Amendments

Information about the proposed Drive Through Text Amendments is posted to the City’s website on the Development Services Department’s Special Projects webpage (the “Special Projects Webpage”). City staff has posted excerpts from the City Council’s February 24, 2022, City Council Study Session (the “February Study Session”), during which you discussed the possibility of banning or limiting drive through facilities in certain commercial zoning districts in Mesa. During the February Study Session, the topic was introduced by Mr. Appiah and Ms.

Prelog, and Ms. Prelog noted that staff review the City's built environment and try to develop initiatives that will improve residential neighborhoods.

You suggested that the City should ban drive throughs in the Neighborhood Commercial ("NC") district and require a Special Use Permit ("SUP") for drive throughs in the Limited Commercial ("LC") district. You also proposed that the City should limit the number of drive throughs within 600 feet of an intersection to two or three, unless the developer secures a Council Use Permit ("CUP").

Some Council Members felt strongly that drive throughs for fast food restaurants are undesirable, even while acknowledging that many constituents want specific business users whose drive through facilities are prominent, such as Dutch Bros. Other Council Members wanted to preserve the options and flexibility in the zoning code to allow drive through facilities where they are appropriate. Some Council Members noted that drive through facilities are convenient, and that a distinction should be made between fast food restaurant drive throughs and bank and pharmacy drive throughs.

On June 29, 2022, City staff, this time Ms. Prelog and Kellie Rorex, held a public informational meeting to discuss the Drive Through Text Amendments, among other proposed zoning code text amendments (the "Informational Meeting"). At the Informational Meeting, Ms. Prelog and Ms. Rorex answered questions from the public about the proposed Drive Through Text Amendments. In answer to a question about the need for them, Ms. Prelog admitted that she is unaware of any other Valley cities or towns that are considering similar measures, and that City staff was not aware of any studies or scholarly works that support the notion that drive through facilities are harmful to residential neighbors or harm the environment.

On July 11, 2022, the Council met again in a Study Session, discussed the matter, and directed staff to proceed with the Drive Through Text Amendments.

To date, the City has not shared the actual text of the Drive Through Text Amendments. However, our understanding is that the proposed text amendments will do all of the following:

1. Prohibit drive throughs in the NC District, where they are now allowed with an SUP;
2. Require an SUP for a drive through in the LC District, where they are now permitted;
3. Prohibit more than two drive throughs adjacent to each other without a CUP;
4. Prohibit a third drive through within 750 feet of two other drive throughs that are adjacent to each other without a CUP;

5. Prohibit more than two drive throughs in a commercial group center without a CUP; and
6. Prohibit more than two drive throughs at an intersection without a CUP.

B. The Drive Through Text Amendments Are Not A Proper Exercise of the City's Police Power.

Because zoning is a police power, all exercises of zoning authority must be designed to protect or promote the “health, morals, safety, and general welfare of the community.” *Village of Euclid, Ohio vs. Ambler Realty Co.*, 272 U.S. 365, 395 (noting the unconstitutionality of zoning that does not protect the general public welfare) (1926). In other words, lawmakers cannot enact a zoning measure out of personal animus, because they dislike a particular use or user, or simply prefer a different use or user.

Before the City Council addresses a perceived zoning issue with legislation like the Drive Through Text Amendments, the City must have some evidence that the proposed law will benefit the public. City Staff's responses to questions at the informational meeting demonstrate that there are no other Valley cities or towns considering similar text amendments. The City has not conducted or reviewed any studies concluding that drive through facilities are deleterious to the community. To enact the Drive Through Text Amendments without such evidence is not a valid exercise of police power.

C. Current Development Realities and Dining Trends Militate Against Enactment of the Drive Through Text Amendments.

The COVID-19 pandemic changed how people dine out. Specifically, trends and tastes in dining moved away from sit-down restaurants and in the direction of pick-up and drive through options. Recent analysis of the restaurant industry indicates that the trend toward pick-up and drive through dining options is here to stay, and expanding.

Moreover, restaurants with drive throughs and pick up windows are no longer only for fast food. Restaurants with healthier and higher quality food options, such as Panera and Salad N Go, are flourishing. Convenience food restaurant apps are also increasing the number of drive through and drive up customers at restaurants.

Finally, drive through and pick up facilities open up possibilities for convenience foods for the elderly and those with mobility challenges who are unable to walk from a parking space into a restaurant. Reducing the number of drive throughs will have negative consequences for those residents.

D. The Drive Through Text Amendments Are Not Drafted to Address the Real Problem.

The discussion at the February and July Study Sessions focused on the unattractiveness of fast-food restaurant drive throughs. But the Drive Through Text Amendments will not affect these already existing eyesores. Instead, the Drive Through Text Amendments cut a wide swath that will prohibit pharmacy and bank drive throughs as well as newer, more innovative restaurant users of drive throughs from establishing themselves in Mesa.

Banning drive throughs in certain zoning districts could also have negative climate impacts. If drive throughs are not available, then consumers may turn to the food delivery services that are flourishing, which could generate more traffic than using a drive through. Also, if drive throughs are eliminated, more people will need surface parking at convenience food restaurants, and large fields of surface parking are also unattractive.

E. More Robust Design Standards and Performance Criteria Should Be Enacted Instead of the Drive Through Text Amendments.

The Drive Through Text Amendments are a blunt instrument that the Mayor and Council should not employ while there are other means to address the issues identified by Council and staff. Section 11-31-18 of the MZO already sets some design and performance standards for mitigating the perceived negative effects of drive through facilities. These regulations could be supplemented and strengthened, rather than enacting the draconian Drive Through Text Amendments that ban and limit drive throughs.

For example, the City could improve the design standards for vehicle stacking; impose a decibel limit on sounds and a lumens limit on light emitted from menu and ordering boards; or require more landscaping around drive through facilities. If the City seeks to eliminate large expanses of surface parking, the parking requirements for commercial uses with a drive through or pick up window should be reduced.

Thank you for your time and attention to reviewing and considering the Developers' objections to the Drive Through Text Amendments set forth in this letter.

Very truly yours,

BEUS GILBERT McGRODER PLLC



Paul E. Gilbert

PEG:vl