

RESOLUTION NO. 2024-02

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SANTA ANA APPROVING CONDITIONAL USE PERMIT NO. 2024-01 AS CONDITIONED TO ALLOW A DRIVE-THROUGH FACILITY FOR THE PROPERTIES LOCATED AT 2101 AND 2109 E. SANTA CLARA AVENUE, COLLECTIVELY KNOWN AS 2101 E. SANTA CLARA AVENUE (APN: 396-261-26 AND 396-261-38)

BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF SANTA ANA AS FOLLOWS:

**Section 1.** The Planning Commission of the City of Santa Ana hereby finds, determines, and declares as follows:

- A. Donald Ellis with Stream Realty Partners (applicant), representing SRP Stater Bros, LLC, a Texas Limited Liability Company (property owner) is requesting approval of Conditional Use Permit (CUP) No. 2024-01 to allow drive-through window service for an eating establishment in the Arterial Commercial (C5) zoning district at 2101 and 2109 E. Santa Clara Avenue, collectively known as 2101 E. Santa Clara Avenue.
- B. Santa Ana Municipal Code (SAMC) Section 41-424.5(e) requires approval of a CUP for eating establishments with drive-through window service.
- C. Pursuant to SAMC Section 41-638, the Planning Commission is authorized to review and approve the CUP for this project as set forth by the Santa Ana Municipal Code.
- D. On February 26, 2024, the Planning Commission held a duly noticed public hearing for CUP No. 2024-01.
- E. The Planning Commission of the City of Santa Ana has considered the information and determines that the following findings, which must be established in order to grant CUP No. 2024-01, for drive-through window service, have been established as required by SAMC Section 41-638.
  1. That the proposed use will provide a service or facility, which will contribute to the general wellbeing of the neighborhood or community.

The eating establishment with drive-through window service will provide a service to persons that are working or residing in the area. The project will redevelop underutilized lots with a new eating establishment with a contemporary design that includes neutral/dark color palette and tones along the outer facades, which would involve materials such as plaster/stucco, aluminum, and

metals. The project will include aesthetically pleasing features, such as landscaping with a variety of plant materials including trees, shrubs, vines, grasses, and groundcover. Landscaped planter areas will be constructed along the northern, western, and southern site perimeter and would provide decorative screening and a buffer between the proposed uses and the adjacent uses, in addition to being placed centrally within the surface parking lot and adjacent to the drive-through.

2. That the proposed use will not, under the circumstances of the particular case, be detrimental to the health, safety, or general welfare of persons residing or working in the vicinity.

The drive-through will not be detrimental to the health, safety or welfare of those residing or working in the vicinity. The drive-through was designed and intended to generate the least amount of community impacts as possible. An analysis of the site access and site circulation determined that the site plan provides adequate spaces for vehicles to maneuver through the project site and drive-through. In addition, a drive-through evaluation was provided which was intended to determine if the circulation plan provides adequate on-site drive-through storage capacity to accommodate the peak on-site vehicle demands. The analysis determined that the dual drive-through lanes exceed the City's stacking requirements and will allow for a storage capacity of approximately 16 cars, which is sufficient capacity to accommodate average and peak vehicle demands for the project without disrupting drive aisles or on-site parking spaces.

The drive-through operation is also designed to generate minimal noise impacts as the speaker boards are located towards the rear of the site (north elevation), away from the closest residential units, and are oriented towards the existing shopping center. Any potential noise generated from the idling of vehicles or the drive-through speakers will not impact the closest residential uses as they are approximately 250 feet away to the south. The site has been designed to include a large landscape area which will help buffer light and noise impacts to the residential uses. Moreover, the site design will include 24-inch box trees and large shrubs planted along the southern property line to create a visual buffer between the drive-through lanes.

3. That the proposed use will not adversely affect the present economic stability or future economic development of properties surrounding the area.

The drive-through will not adversely affect the economic stability or future economic development of properties in the surrounding

area. The site is currently underutilized and occupied by vacant single-family residences, and the new building will establish a commercial use of the property. An eating establishment with drive-through service will provide an additional service and eating opportunities for the area and will provide a commercial business that generates sales tax revenue for the City. In addition, the McDonald's will generate new and permanent employment opportunities in favor of the economic growth and stability of the City.

4. That the proposed use will comply with the regulations and conditions specified in Chapter 41 for such use.

The use complies with the regulations and conditions in Chapter 41 including building heights, yards, parking and landscaping. A condition of approval has been added to the conditional use permit for a property maintenance agreement to be recorded against the property, which will ensure that the property and all improvements are properly maintained.

5. That the proposed use will not adversely affect the General Plan of the city or any specific plan applicable to the area of the proposed use.

The approval of the project will be consistent with the General Plan land use designation of General Commercial (GC). The project would provide an added amenity to the existing commercial shopping center and would promote a land use that enhances the City's economic fiscal viability and mitigates any potential impacts to the surrounding community. The after-hours operations will contribute to the viability of the site creating a business environment that is safe and attractive. Moreover, the project has been designed to be consistent with several goals and policies of the General Plan as discussed below.

- Goal LU-2: Land Use Needs – Provide a balance of land uses that meet Santa Ana's diverse needs
  - Policy 2.2 Capture Local Spending – Encourage a range of commercial uses to capture a greater share of local spending and offer a range of employment opportunities.
  - Policy 2.6 Encourage Investment – Promote rehabilitation of properties and encourage increased levels of capital investment to create a safe and attractive environment.
  - Policy 2.7 Business Incubator – Support land use decisions that encourage the creation, development, and retention of business in Santa Ana

The project is consistent with Goal LU-2 and Policies 2.2, 2.6, and 2.7, as it will allow for additional service to Santa Ana residents and visitors, thereby positively contributing to the economic viability of the area by promoting local spending, offering employment opportunities, and providing a safe workplace. In addition, the applicant is making an investment to rehabilitate the site to allow for a safe and attractive establishment by expanding the commercial center and improving the circulation throughout. Lastly, the project would also preserve the character of the existing commercial area and promotes the rehabilitation of properties by proposing to remove a blighted and underutilized land use to create a safe and attractive environment.

- Goal LU-3: Compatibility of Uses – Preserve and improve the character and integrity of existing neighborhoods and districts.
  - Policy 3.4 Compatible Development – Ensure that the scale and massing of new development is compatible and harmonious with the surrounding built environment.
  - Policy 3.7 Attractive Environment – Promote a clean, safe, and creative environment for Santa Ana’s residents, workers, and visitors.

The project is consistent with Goal LU-3 and Policies 3.4 and 3.7, as the improvements would preserve the character of the existing commercial area. The scale and massing of the new project is compatible with the existing commercial center, as consideration was given to scale, massing, and architecture of the project to ensure that it complements the existing buildings within the surrounding development. Moreover, the project would include aesthetically pleasing features, such as landscaping with a variety of plant materials including trees, shrubs, vines, grasses, and groundcover, which would further help enhanced the viability of the commercial center, would create a harmonious environment, and would help promote a clean and safe environment for Santa Ana’s residents, workers, and visitors.

- Goal EP-1: Job Creation and Retention – Foster a dynamic local economy that provides and create employment opportunities for all residents in the City.
  - Policy 1.2 Attract Business – Promote new and retain existing job-producing businesses that provide living-wage employment opportunities.

The project is consistent with Goal EP-1 and Policy 1.2, as the

improvements would help generate additional economic growth and stability in the City by further activating underutilized parcels and helping generate property and sales tax revenue. Furthermore, the project would help create a job-producing establishment thereby providing employment opportunities to Santa Ana residents.

- Goal EP-3: Business Friendly Environment – Promote a business friendly environment where businesses thrive and build on Santa Ana’s strengths and opportunities.
  - Policy 3.7 Facilitating Investment – Promote a solution-based customer focus in order to facilitate additional development and investment in the community.
  - Policy 3.8 Comprehensive Analysis of Land Use – Pursue a balance of fiscal and qualitative community benefits when making land use decisions.

The project would be consistent with Goal EP-3 and Policies 3.7 and 3.8, as it provides for redevelopment of existing underutilized single-family residences and promotes a new eating establishment that would provide services to the community. Moreover, the project would help create a friendly business environment and help the overall commercial center to enhance their business offerings and compete with nearby commercial centers. Lastly, by working on an improved site design with the applicant, staff ensured that that project provided a high level of community investment for residents, workers, and visitors in the area.

**Section 2.** Pursuant to the requirements of the California Environmental Quality Act (CEQA), as amended (Section 21000 et. seq. of the Public Resources Code) and in accordance with the State CEQA Guidelines (Title 14, Section 15000 et. seq. of the California Code of Regulations), an Initial Study and Mitigated Negative Declaration (IS/MND) has been prepared for the project. The purpose of the IS/MND is to describe the project and to provide an evaluation of potential environmental impacts associated with the project’s construction and operation. Moreover, the IS/MND evaluates the potential environmental impacts of project implementation; includes significance determinations from the environmental analyses; identifies regulatory requirements to be incorporated into the project; and sets forth mitigation measures that will lessen or avoid potentially significant project impacts on the environment.

The IS/MND determined that the proposed project would have no impact, or less than significant impacts with mitigation measures, in all topics outlined in the CEQA Environmental Checklist. Possible impacts identified in the IS/MND include those related to Cultural Resources, Geology and Soils, Hazards and Hazardous Materials, Tribal Cultural Resources, and Mandatory Findings of Significance. With implementation of mitigation measures (MM) listed below, all potential impacts would be less than significant.

- MM CUL-1: Prior to issuance of the grading permit, the Applicant shall retain an Orange County-certified archaeologist to observe grading activities within previously undisturbed soils, and to salvage and catalogue archaeological resources as necessary.
- MM GEO-1: Prior to commencement earthmoving activities, the Applicant shall retain a qualified Orange County-certified Paleontologist for on-call services in the event of a discovery of paleontologically sensitive rock formations during ground disturbance activities.
- MM HAZ-1: Any additional materials discovered during demolition activities shall be collected and analyzed prior to removal or disturbance of materials.
- MM HAZ-2: Prior to demolition, all asbestos containing materials (ACMs) and asbestos containing construction materials (ACCMs) shall be removed from the structures at the Project site.
- MM TCR-1: Prior to commencement of ground disturbing activities, the Applicant shall retain a Native American Monitor.
- MM TCR-2: Upon discovery of any Tribal Cultural Resource Objects, all construction activities in the immediate vicinity shall cease.
- MM TCR-3: Upon discovery of any human remains and associated funerary or ceremonial objects, actions pursuant to Public Resource Code 5097.98 and Health and Safety Code 7050.5 shall occur.

The IS/MND's analysis determined that the above-mentioned environmental categories would cause no substantial adverse change to the environment with the inclusion of the enforceable mitigation measures, that would be adopted by the City.

#### *Historic or Cultural Significance*

Two built environment resources over 45 years old were identified within the project site: 2101 and 2109 Santa Clara Avenue. The properties were recorded and evaluated for historical significance on the appropriate set of State of California Department of Parks and Recreation (DPR) Forms in consideration of California Register of Historic Resources (CRHR) and local City designation criteria and integrity requirements. Both properties were found not eligible under all state and local designation criteria due to a lack of significant historical associations and architectural merit. No historical resources were identified within the project site as a result of this study. Therefore, with respect to built environment resources, the project will have a less than significant impact on historical resources under CEQA.

#### *Traffic Impacts*

The project specific Transportation Analysis conducted a traffic signal warrant analysis to determine the potential need for installation of a traffic signal at an otherwise unsignalized intersection, including at the intersection of the Driveway 1 (located along Santa Clara Avenue) and Santa Clara Avenue, and the intersection between Tustin Avenue and Driveway 2 (located along Tustin Avenue).

As concluded by the Transportation Analysis, the addition of project traffic would not trigger the City of Santa Ana's significance criteria, and no traffic signal is warranted for either intersection. In addition, the Transportation Analysis performed a drive-through analysis to determine if the proposed circulation plan provided adequate on-site drive-through storage capacity to accommodate the peak on-site vehicle demand. Ultimately, the drive-through analysis

suggested that the project would provide stacking accommodations for approximately 16 vehicles within the drive-through, and there would be sufficient capacity to accommodate average and peak vehicle demands for the project.

The IS/MND's Notice of Intent (NOI) was posted to the County Clerk on January 12, 2024, for the required 20-day public comment period, which ended on February 1, 2024. The NOI was also mailed out to all properties within a 1,000-foot radius of the project site. The IS/MND was made available for public view at the City Hall Planning counter, Santa Ana Library in the Civic Center and on the City website. As of this printing, no comments or communications from the public have been received on the IS/MND. Based on this analysis, a Notice of Exemption, Environmental Review No. 2023-16 will be filed for this project.

**Section 3.** This Resolution shall not be effective unless and until the City Council Ordinance for Amendment Application No. 2024-01 is adopted and become effective. If said ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, or otherwise does not go into effect for any reason, then this Resolution shall be null and void and have no further force and effect.

**Section 4.** The Applicant shall indemnify, protect, defend and hold the City and/or any of its officials, officers, employees, agents, departments, agencies, authorized volunteers, and instrumentalities thereof, harmless from any and all claims, demands, lawsuits, writs of mandamus, referendum, and other proceedings (whether legal, equitable, declaratory, administrative or adjudicatory in nature), and alternative dispute resolution procedures (including, but not limited to arbitrations, mediations, and such other procedures), judgments, orders, and decisions (collectively "Actions"), brought against the City and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, that challenge, attack, or seek to modify, set aside, void, or annul, any action of, or any permit or approval issued by the City and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof (including actions approved by the voters of the City) for or concerning the project, whether such Actions are brought under the Ralph M. Brown Act, California Environmental Quality Act, the Planning and Zoning Law, the Subdivision Map Act, Code of Civil Procedure sections 1085 or 1094.5, or any other federal, state or local constitution, statute, law, ordinance, charter, rule, regulation, or any decision of a court of competent jurisdiction. It is expressly agreed that the City shall have the right to approve the legal counsel providing the City's defense, and that Applicant shall reimburse the City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. City shall promptly notify the Applicant of any Action brought and City shall cooperate with Applicant in the defense of the Action.

**Section 5.** The Planning Commission of the City of Santa Ana, after conducting the public hearing, hereby approves Conditional Use Permit No. 2024-01, as conditioned in Exhibit A, attached hereto and incorporated herein, for the project located at 2101 and 2109 E. Santa Clara Avenue, collectively known as 2101 E. Santa Clara Avenue. This decision is based upon the evidence submitted at the above-referenced hearing, including but not limited to: The Request for Planning Commission Action dated February 26, 2024, and exhibits attached thereto; and the public testimony, written and oral, all of which are incorporated herein by this reference.

ADOPTED this 26th day of February 2024 by the following vote.

- AYES: Commissioners: Carl Benninger, Manuel J. Escamilla, Jennifer Oliva,  
Alan Woo (4)
- NOES: Commissioners: Isuri Ramos (1)
- ABSENT: Commissioners: Christopher Leo, Bao Pham (2)
- ABSTENTIONS: Commissioners:



Jennifer Oliva  
Vice Chairperson

APPROVED AS TO FORM:  
Sonia R. Carvalho, City Attorney

By: Laura A. Rossini  
Laura A. Rossini  
Chief Assistant City Attorney

CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, Nuvia Ocampo, Recording Secretary, do hereby attest to and certify the attached Resolution No. 2024-02 to be the original resolution adopted by the Planning Commission of the City of Santa Ana on February 26, 2024.

Date: 2/12/2024



Nuvia Ocampo  
Recording Secretary  
City of Santa Ana



## EXHIBIT A

### **Conditions of Approval for Conditional Use Permit No. 2024-01**

Conditional Use Permit (“CUP”) No. 2024-01 for drive-through window service is approved subject to compliance, to the reasonable satisfaction of the Planning Manager, with applicable sections of the Santa Ana Municipal Code, the California Administrative Code, the California Building Standards Code, and all other applicable regulations. In addition, they shall meet the following conditions of approval:

The Applicant must remain in compliance with all conditions listed below throughout the life of the conditional use permit. Failure to comply with each and every condition may result in the revocation of the conditional use permit.

1. The Applicant must comply with all conditions and requirements of the Development Review Committee for the Development Project (DP) No. 2022-06.
2. Any amendment to this conditional use permit must be submitted to the Planning Division for review. At that time, staff will determine if administrative relief is available or if the conditional use permit must be amended.
3. Prior to the issuance of a Building Permit, the Applicant shall submit a landscape and irrigation plan for the entire site to the Planning Division for review and approval. The landscape and irrigation shall comply with the zoning district's landscape standards, the Water Efficient Landscape Ordinance (WELO), and the Citywide Design Guidelines. The landscape plan shall also include block wall details, and note application of anti-graffiti coating.
4. All landscaping shall be installed per the approved landscape and irrigation plan. In addition, all landscaping shall be evergreen, be required to be maintained throughout the lifetime of the CUP, and shall be required to be maintained in a healthy manner. Moreover, any unhealthy or dead landscaping shall be required to be removed and replaced in-kind.
5. Prior to the issuance of a Certificate of Occupancy, the Applicant shall construct a new minimum six-foot decorative block wall along the western property line with anti-graffiti coating and a flat wall cap, or resurface the existing block wall with smooth stucco, anti-graffiti coating and a flat wall cap. In no case shall a double-wall be constructed or permitted along any property line.
6. Decorative pavers, or an acceptable alternative design deemed appropriate by Planning Division staff, shall be required to be installed at all driveways of the existing commercial shopping center, including existing and proposed, and any subject to reciprocal access agreements with the subject property.
7. At any time that vehicle stacking extends beyond the entrance to the drive through facility, the restaurant shall provide field staff as reasonably required to expedite drive-through operations, assist with onsite parking, and prevent vehicles from blocking

onsite parking spaces, drive aisles, the ingress and egress easement onto adjacent properties, and/or queuing onto Bristol Street. A stacking plan illustrating vehicle stacking management in parking areas shall be posted and maintained onsite.

8. Violations of the Conditional Use Permit as contained in Section 41-647.5 of the Santa Ana Municipal Code will be grounds for permit suspension and/or revocation as described in Section 41-651 of the Santa Ana Municipal Code.
9. The business shall post in a conspicuous location at the entry to the building the contact information for the responsible onsite manager, including full name, phone number, and emergency or backup phone number, in case of noise and related operational complaints.
10. Prior to the issuance of a Building Permit, a Property Maintenance Agreement shall be recorded against the property. The agreement will be subject to review and applicability by the Planning and Building Agency, the Community Development Agency, the Public Works Agency, and the City Attorney to ensure that the property and all improvements located thereupon are properly maintained. Applicant (and the owner of the property upon which the authorized use and/or authorized improvements are located if different from the Applicant) shall execute a maintenance agreement with the City of Santa Ana which shall be recorded against the property and which shall be in a form reasonably satisfactory to the City Attorney. The maintenance agreement shall contain covenants, conditions and restrictions relating to the following:
  - a. Compliance with operational conditions applicable during any period(s) of construction or major repair (e.g., proper screening and securing of the construction site; implementation of proper erosion control, dust control and noise mitigation measure; adherence to approved project phasing etc.);
  - b. Compliance with ongoing operational conditions, requirements and restrictions, as applicable (including but not limited to hours of operation, security requirements, the proper storage and disposal of trash and debris, enforcement of the parking management plan, and/or restrictions on certain uses);
  - c. Ongoing compliance with approved design and construction parameters, signage parameters and restrictions as well as landscape designs, as applicable;
  - d. Ongoing maintenance, repair and upkeep of the property and all improvements located thereupon (including but not limited to controls on the proliferation of trash and debris on or about the property; the proper and timely removal of graffiti; the timely maintenance, repair and upkeep of damaged, vandalized and/or weathered buildings, structures and/or improvements; the timely maintenance, repair and upkeep of exterior paint, parking striping, lighting and irrigation fixtures, walls and fencing, publicly accessible bathrooms and bathroom fixtures, landscaping and related landscape improvements and the like, as applicable);

- e. If Applicant and the owner of the property are different (e.g., if the Applicant is a tenant or licensee of the property or any portion thereof), both the Applicant and the owner of the property shall be signatories to the maintenance agreement and both shall be jointly and severally liable for compliance with its terms;
- f. The maintenance agreement shall further provide that any party responsible for complying with its terms shall not assign its ownership interest in the property or any interest in any lease, sublease, license or sublicense, unless the prospective assignee agrees in writing to assume all of the duties, obligations and responsibilities set forth under the maintenance agreement;
- g. The maintenance agreement shall contain provisions relating to the enforcement of its conditions by the City and shall also contain provisions authorizing the City to recover costs and expenses which the City may incur arising out of any enforcement and/or remediation efforts which the City may undertake in order to cure any deficiency in maintenance, repair or upkeep or to enforce any restrictions or conditions upon the use of the property. The maintenance agreement shall further provide that any unreimbursed costs and/or expenses incurred by the City to cure a deficiency in maintenance or to enforce use restrictions shall become a lien upon the property in an amount equivalent to the actual costs and/or expense incurred by the City; and
- h. The execution and recordation of the maintenance agreement shall be a condition precedent to the issuance of final approval for any construction permit related to this entitlement.