

RESOLUTION NUMBER R- 312130

DATE OF FINAL PASSAGE JAN 14 2019

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO GRANTING PLANNED DEVELOPMENT PERMIT NO. 1824217 TO IN-N-OUT BURGER, PROJECT NO. 449166.

WHEREAS, IN-N-OUT BURGERS, a California corporation, Owner/Permittee, filed an application with the City of San Diego for a Planned Development Permit No. 1824217 to construct site improvements with a deviation to setbacks known as the In-N-Out Burger project (Project), located at 4375 Kearny Mesa Road, and legally described as: Parcel 5 of Parcel Map No. 17213 in the City of San Diego, County of San Diego, State of California, filed in the Office of the County Recorder of San Diego County, September 16, 1993, as File No. 1993-0611252 of Official Records; and

WHEREAS, the 1.027-acre project site is in the IL-3-1 Zone, the Airport Environs Overlay Zone, the Airport Influence Area (MCAS Miramar Area 2 and Montgomery Field Review Area 1), the ALUCP Noise Contour (65-75 CNEL), the Montgomery Field Overflight Notification Area, and Montgomery Field Safety Zone 1 within the Kearny Mesa Community Plan; and

WHEREAS, on February 14, 2018, the City of San Diego, as Lead Agency, through the Development Services Department, made and issued an Environmental Determination that the project is exempt from the California Environmental Quality Act [CEQA] (Public Resources Code section 21000 et. seq.) under CEQA Guideline sections 15305 (a) and 15311 (b) and there was no appeal of the Environmental Determination filed within the time period provided by San Diego Municipal Code Section 112.0520; and

WHEREAS, on November 8, 2018, the Planning Commission of the City of San Diego considered Planned Development Permit No. 1824217, and pursuant to Resolution No. 4986-PC, voted to recommend approval of the Permit; and

WHEREAS, under Charter section 280(a)(2) this resolution is not subject to veto by the Mayor because this matter requires the City Council to act as a quasi-judicial body and where a public hearing was required by law implicating due process rights of individuals affected by the decision and where the Council was required by law to consider evidence at the hearing and to make legal findings based on the evidence presented; and

WHEREAS, the matter was set for public hearing on January 14, 2019, testimony having been heard, evidence having been submitted, and the City Council having fully considered the matter and being fully advised concerning the same; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that it adopts the following findings with respect to Planned Development Permit No. 1824217:

I. PLANNED DEVELOPMENT PERMIT – SAN DIEGO MUNICIPAL CODE

(SDMC) Section 126.0605

A. Findings for all Planned Development Permits

1. The proposed development will not adversely affect the applicable land use plan. The 1.027-acre project site is located at 4375 Kearny Mesa Road, southeast of the State Route (SR)-163 freeway on-ramp at the end of Armour Street. The irregularly-shaped project site abuts the freeway transversely and is surrounded by commercial uses to the north and west. The project site is in the IL-3-1 Zone and designated for General Commercial uses within the Kearny Mesa Community Plan (Plan). The site is developed with the In-N-Out Burger drive-thru and dine-in restaurant, approved through Building Permit No. B-001609-91 in 1991.

The Plan's Commercial Element has a primary goal of revitalizing retail areas by "improving motor vehicle, bicycle, and pedestrian circulation on and off site and by improving the aesthetic quality of retail development." The project will implement this goal to improve motor vehicle circulation by reorganizing the drive-thru queue at the In-N-Out Burger project site. The existing site allows 13 vehicles to queue, where drive-thru restaurants of similar size of the In-N-Out project require queuing for five (5) vehicles per the San Diego Municipal Code (SDMC). The proposed site configuration allows 19 vehicles to queue and removes or reduces the potential for any off-site queueing by reorganizing the site and the placement of new driveways farther from the freeway on-ramp. Upgrades also include a new truncated dome curb ramp at the intersection and the installation of landscaping throughout the Project, improving public safety and improving the aesthetic quality of the development, meeting the revitalization goal of the Plan. Therefore, the proposed development will not adversely affect the applicable land use plan.

2. The proposed development will not be detrimental to the public health, safety, and welfare. The project site is located within a developed, urban commercial area of the City. An In-N-Out Burger drive-thru and dine-in restaurant currently operates at the site, approved through Building Permit No. B-001609-91 in 1991.

The project includes site improvements which shall comply with all applicable building, mechanical, electrical, fire code, and development regulations necessary to avoid adverse impacts upon the health, safety and general welfare of the public. The project shall comply with the permit conditions in effect for the subject property and other regulations and guidelines pertaining to the subject property pursuant to the SDMC, State and Federal laws.

In addition to on-site construction improvements, the project includes the construction of new City-standard driveways and accessible curb ramp with truncated domes adjacent to the project site. These improvements will benefit public safety and welfare by providing improvements to pedestrian pathways and increasing pedestrian access while limiting pedestrian/vehicle conflicts. Therefore, the proposed development will not be detrimental to the public health, safety, and welfare.

3. The proposed development will comply with the regulations of the Land Development Code including any proposed deviations pursuant to Section 126.0602(b)(1) that are appropriate for this location and will result in a more desirable project than would be achieved if designed in strict conformance with the development regulations of the applicable zone, and any allowable deviations that are otherwise authorized pursuant to the Land Development Code. The project complies with all regulations of the Land Development Code with the approval of one deviation as allowed through a Planned Development Permit. The project requests a deviation to the IL-3-1 Zone regulations to allow nine (9) parking spaces to encroach into a front yard setback. The IL-3-1 Zone regulations allow up to a 5-foot encroachment (or 15 feet from the property line) and the project proposes an approximately 10-foot encroachment (or 4'-3" from the property line) at the front yard abutting Kearny Mesa Road.

The irregularly-shaped project site abuts the freeway transversely and is surrounded by commercial uses to the north and west. The proposal would change the configuration of the driveways to be farther from the on-ramp, and is utilizing the irregularly-shaped project site to allow additional queuing during the busiest times. The driveways are configured to maximize queuing on-site, remove or reduce queuing in the right-of-way, and reorganize the site to allow additional parking for the In-N-Out Burger restaurant. Queuing for the drive-thru will be

increased as allowed by the irregularly-shaped site and placement of driveways. One entrance-only driveway will be located at the southern portion of the site, a two-way driveway at the middle, and an exit-only driveway located nearest the on-ramp. The deviation is necessary to place the entrance-only driveway farthest from the on-ramp while maintaining a 24-foot-wide drive-isle along the narrow portion of the irregularly-shaped lot.

The deviation is also necessary for the parking spaces located near the drive through window to maintain their current location and to be restriped to City standard/accessible spaces. The original parking configuration was approved in 1991, under the M-1A Zone designation that allowed parking to encroach 10 feet from the public right-of-way. The existing parking spaces proposed to be restriped require a deviation to the current IL-3-1 Zone to maintain their location. Some of these spaces are designated for employee parking because backup space is limited. Employees generally use these spaces outside of the busiest hours of operation, so the deviation to maintain the existing encroachment at this location is appropriate.

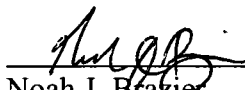
The deviation proposed is appropriate for the proposed development because it allows for a more efficient use of the site, it is safer for the public and patrons, and it results in a more desirable project than if it were to strictly adhere to the regulations. If the project were to be designed in strict conformance to the development regulations of the IL-3-1 Zone, the restaurant would be under-parked, site ingress and egress would be unsafe, and site circulation would be inefficient. During its busiest times, queuing for the drive-thru has entered into the right-of-way and has created a safety hazard. The proposed development will comply with the regulations of the Land Development Code including the proposed deviation pursuant to SDMC Section 126.0602(b)(1) that is appropriate at this location and, with approval of the requested deviation, a more desirable project is achieved than would be achieved if designed in strict conformance with

the development regulations of the applicable zone, and any allowable deviations that are otherwise authorized pursuant to the Land Development Code.

The above findings are supported by the minutes, maps and exhibits, all of which are incorporated herein by this reference.

BE IT FURTHER RESOLVED, that Planned Development Permit No. 1824217 is granted to IN-N-OUT BURGERS, Owner/Permittee, under the terms and conditions set forth in the attached permit which is made a part of this resolution.

APPROVED: MARA W. ELLIOTT, City Attorney

By  _____
Noah J. Brazier
Deputy City Attorney

NJB:nja
12/17/18
Or. Dept: DSD
Doc. No.: 1894221

Attachment: Planned Development Permit No. 1824217

RECORDING REQUESTED BY
CITY OF SAN DIEGO
DEVELOPMENT SERVICES
PERMIT INTAKE, MAIL STATION
501

WHEN RECORDED MAIL TO
CITY CLERK
MAIL STATION 2A

INTERNAL ORDER NUMBER: 24006247

SPACE ABOVE THIS LINE FOR RECORDER'S USE

PLANNED DEVELOPMENT PERMIT NO. 1824217

IN-N-OUT BURGER – PROJECT NO. 449166

CITY COUNCIL

This Planned Development Permit No. 1824217 (Permit) is granted by the City Council of the City of San Diego to IN-N-OUT BURGERS, a California corporation, Owner/Permittee, pursuant to San Diego Municipal Code [SDMC] section 126.0602. The 1.027-acre site is located at 4375 Kearny Mesa Road in the IL-3-1, Airport Environs Overlay, Airport Influence Area (MCAS Miramar Area 2 and Montgomery Field Review Area 1), ALUCP Noise Contour (65-75 CNEL), the Montgomery Field Overflight Notification Area, and Montgomery Field Safety Zone 1 Overlay Zones within the Kearny Mesa Community Plan. The project site is legally described as Parcel 5 of Parcel Map No. 17213 in the City of San Diego, County of San Diego, State of California, filed in the Office of the County Recorder of San Diego County, September 16, 1993, as File No. 1993-0611252 of Official Records.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner/Permittee to construct site improvements with a deviation to setbacks described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated _____, on file in the Development Services Department.

The project shall include:

- a. Site improvements including new parking spaces, new driveways, new concrete pavement and new drive-thru for 19 vehicles;
- b. A deviation to allow nine parking spaces located within the front yard setback, 4'-3" from the property line;
- c. Landscaping (planting, irrigation and landscape related improvements);
- d. Off-street parking; and

- e. Public and private accessory improvements determined by the Development Services Department to be consistent with the land use and development standards for this site in accordance with the adopted community plan, the California Environmental Quality Act [CEQA] and the CEQA Guidelines, the City Engineer's requirements, zoning regulations, conditions of this Permit, and any other applicable regulations of the SDMC.

STANDARD REQUIREMENTS:

1. This permit must be utilized within thirty-six (36) months after the date on which all rights of appeal have expired. If this permit is not utilized in accordance with Chapter 12, Article 6, Division 1 of the SDMC within the 36-month period, this permit shall be void unless an Extension of Time has been granted. Any such Extension of Time must meet all SDMC requirements and applicable guidelines in effect at the time the extension is considered by the appropriate decision maker. This permit must be utilized by _____.
2. No permit for the construction, occupancy, or operation of any facility or improvement described herein shall be granted, nor shall any activity authorized by this Permit be conducted on the premises until:
 - a. The Owner/Permittee signs and returns the Permit to the Development Services Department; and
 - b. The Permit is recorded in the Office of the San Diego County Recorder.
3. While this Permit is in effect, the subject property shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the appropriate City decision maker.
4. This Permit is a covenant running with the subject property and all of the requirements and conditions of this Permit and related documents shall be binding upon the Owner/Permittee and any successor(s) in interest.
5. The continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.
6. Issuance of this Permit by the City of San Diego does not authorize the Owner/Permittee for this Permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Endangered Species Act of 1973 [ESA] and any amendments thereto (16 U.S.C. § 1531 et seq.).
7. The Owner/Permittee shall secure all necessary building permits. The Owner/Permittee is informed that to secure these permits, substantial building modifications and site improvements may be required to comply with applicable building, fire, mechanical, and plumbing codes, and State and Federal disability access laws.

8. Construction plans shall be in substantial conformity to Exhibit "A." Changes, modifications, or alterations to the construction plans are prohibited unless appropriate application(s) or amendment(s) to this Permit have been granted.

9. All of the conditions contained in this Permit have been considered and were determined necessary to make the findings required for approval of this Permit. The Permit holder is required to comply with each and every condition in order to maintain the entitlements that are granted by this Permit.

If any condition of this Permit, on a legal challenge by the Owner/Permittee of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable, or unreasonable, this Permit shall be void. However, in such an event, the Owner/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new permit without the "invalid" condition(s) back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the proposed permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo, and the discretionary body shall have the absolute right to approve, disapprove, or modify the proposed permit and the condition(s) contained therein.

10. The Owner/Permittee shall defend, indemnify, and hold harmless the City, its agents, officers, and employees from any and all claims, actions, proceedings, damages, judgments, or costs, including attorney's fees, against the City or its agents, officers, or employees, relating to the issuance of this permit including, but not limited to, any action to attack, set aside, void, challenge, or annul this development approval and any environmental document or decision. The City will promptly notify Owner/Permittee of any claim, action, or proceeding and, if the City should fail to cooperate fully in the defense, the Owner/Permittee shall not thereafter be responsible to defend, indemnify, and hold harmless the City or its agents, officers, and employees. The City may elect to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification. In the event of such election, Owner/Permittee shall pay all of the costs related thereto, including without limitation reasonable attorney's fees and costs. In the event of a disagreement between the City and Owner/Permittee regarding litigation issues, the City shall have the authority to control the litigation and make litigation related decisions, including, but not limited to, settlement or other disposition of the matter. However, the Owner/Permittee shall not be required to pay or perform any settlement unless such settlement is approved by Owner/Permittee.

CLIMATE ACTION PLAN REQUIREMENTS:

11. Owner/Permittee shall comply with the Climate Action Plan (CAP) Consistency Checklist stamped as Exhibit "A." Prior to issuance of any construction permit, all CAP strategies shall be noted within the first three (3) sheets of the construction plans under the heading "Climate Action Plan Requirements" and shall be enforced and implemented to the satisfaction of the Development Services Department.

AIRPORT REQUIREMENTS:

12. Prior to the issuance of any construction permits, the Owner/Permittee shall grant and record an avigation easement to the City of San Diego as the operator of Montgomery Field Municipal Airport for the purposes of aircraft operations, noise and other effects caused by the operation of aircraft, and for structure height if the same would interfere with the intended use of the easement. The Owner/Permittee shall use the avigation easement form provided by the City of San Diego.

13. Prior to submitting construction plans to the City for review, the Owner/Permittee shall place a note on all building plans indicating that an avigation easement has been granted across the property to the airport operator. The note shall include the County Recorder's recording number for the avigation easement.

14. Prior to the issuance of any construction permits, the Owner/Permittee shall provide a copy of the signed agreement [DS-503] and show certification on the building plans verifying that the structures do not require Federal Aviation Administration [FAA] notice for Determination of No Hazard to Air Navigation, or provide an FAA Determination of No Hazard to Air Navigation as specified in Information Bulletin 520.

ENGINEERING REQUIREMENTS:

15. Prior to the issuance of any construction permit, the Owner/Permittee shall obtain a Right-of-Way Permit (D-Sheet) for the proposed improvements.

16. Prior to issuance of any construction permit, the applicant shall assure, by permit and bond, to reconstruct existing curb ramp at the corner of Kearny Mesa Road and southbound ramp of SR-163 Freeway, with current City Standard, to the satisfaction of the City Engineer.

17. Prior to the issuance of any construction permit, the Owner/Permittee shall obtain an Encroachment Maintenance Removal Agreement, from the City Engineer, for private storm drain pipe within Kearny Mesa Road Public Right-of-Way.

18. Prior to the issuance of any construction permit, the Owner/Permittee shall obtain an Encroachment Maintenance Removal Agreement, from the City Engineer, for private landscaping/irrigation adjacent to the site on Kearny Mesa Road.

19. Prior to the issuance of any construction permit, the Owner/Permittee shall dedicate additional five-foot-wide easement, to meet the City required 15-foot-wide drainage easement, for the existing public storm water pipe within private property, to the satisfaction of the City Engineer.

20. Prior to the issuance of any construction permit, the applicant shall submit a Technical Report that will be subject to final review and approval by the City Engineer, based on the Storm Water Standards in effect at the time of the construction permit issuance.

21. Prior to the issuance of any construction permit the Owner/Permittee shall submit a Water Pollution Control Plan (WPCP). The WPCP shall be prepared in accordance with the guidelines in Part 2 Construction BMP Standards Chapter 4 of the City's Storm Water Standards.

22. Prior to the issuance of any construction permit, the Owner/Permittee shall obtain an Encroachment Maintenance Removal Agreement, from the City Engineer, for private storm drain pipe within Public Storm Drain Easement on private property.

LANDSCAPE REQUIREMENTS:

23. Prior to the issuance of any construction permits for public improvements, the Owner/Permittee shall submit complete landscape construction documents for right-of-way improvements to the Development Services Department for approval. Improvement plans shall show, label, and dimension a 40 square-foot area around each tree which is unencumbered by utilities. Driveways, utilities, drains, water and sewer laterals shall be designed so as not to prohibit the placement of street trees.

24. Prior to the issuance of any construction permit (including building shell), the Owner/Permittee shall submit complete landscape and irrigation construction documents, which are consistent with the Landscape Standards, to the Development Services Department for approval. The construction documents shall be in substantial conformance with Exhibit "A," Landscape Development Plan, on file in the Development Services Department. Construction plans shall provide a 40 square-foot area around each tree that is unencumbered by hardscape and utilities unless otherwise approved per SDMC Sec. 142.0403(b)5.

25. The Owner/Permittee shall be responsible for the maintenance of all landscape improvements shown on the approved plans, including in the right-of-way, unless long-term maintenance of said landscaping will be the responsibility of another entity approved by the Development Services Department. All required landscape shall be maintained consistent with the Landscape Standards in a disease, weed, and litter free condition at all times. Severe pruning or "topping" of trees is not permitted.

26. If any required landscape (including existing or new plantings, hardscape, landscape features, etc.) indicated on the approved construction documents is damaged or removed during demolition or construction, the Owner/Permittee shall repair and/or replace in kind and equivalent size per the approved documents to the satisfaction of the Development Services Department within 30 days of damage or Certificate of Occupancy.

PLANNING/DESIGN REQUIREMENTS:

27. A topographical survey conforming to the provisions of the SDMC may be required if it is determined, during construction, that there may be a conflict between the construction and a condition of this Permit or a regulation of the underlying zone. The cost of any such survey shall be borne by the Owner/Permittee.

28. All signs associated with this development shall be consistent with sign criteria established by either the approved Exhibit "A" or City-wide sign regulations.

29. All private outdoor lighting shall be shaded and adjusted to fall on the same premises where such lights are located and in accordance with the applicable regulations in the SDMC.

TRANSPORTATION REQUIREMENTS:

30. The automobile, motorcycle and bicycle parking spaces must be constructed in accordance with the requirements of the SDMC. All on-site parking stalls and aisle widths shall be in compliance with requirements of the City's Land Development Code and shall not be converted and/or utilized for any other purpose, unless otherwise authorized in writing authorized by the appropriate City decision maker in accordance with the SDMC.

31. Prior to the issuance of any construction permit, the Owner/Permittee shall assure, by permit and bond, closure of two existing driveways on Kearny Mesa Road and construction of a 26-foot-wide driveway per current City Standards, adjacent to the site on Kearny Mesa Road, to the satisfaction of City Engineer.

32. Prior to the issuance of any construction permit, the Owner/Permittee shall assure by permit and bond the construction of a 14-foot-wide City standard driveway (Entrance only), on the southern portion of project's frontage on Kearny Villa Road, to the satisfaction of the City Engineer.

33. Prior to the issuance of any construction permit, the Owner/Permittee shall assure by permit and bond the construction of a 14-foot-wide City standard driveway (Exit only), on the northern portion of the project's frontage on Kearny Villa Road, to the satisfaction of the City Engineer.

34. The Owner/Permittee shall provide and maintain 10 feet by 10 feet visibility triangle area on both sides of the driveways along the property line on Kearny Villa Road. No obstruction higher than 36 inches shall be located within this visibility triangle area.

INFORMATION ONLY:

- The issuance of this discretionary permit alone does not allow the immediate commencement or continued operation of the proposed use on site. Any operation allowed by this discretionary permit may only begin or recommence after all conditions listed on this permit are fully completed and all required ministerial permits have been issued and received final inspection.
- Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this Permit, may protest the imposition within ninety days of the approval of this development permit by filing a written protest with the City Clerk pursuant to California Government Code-section 66020.
- This development may be subject to impact fees at the time of construction permit issuance.

APPROVED by the City Council of the City of San Diego on JAN 14 2019 and R- 312180

AUTHENTICATED BY THE CITY OF SAN DIEGO DEVELOPMENT SERVICES DEPARTMENT

Francisco Mendoza
Development Project Manager

**NOTE: Notary acknowledgment
must be attached per Civil Code
section 1189 et seq.**

The undersigned Owner/Permittee, by execution hereof, agrees to each and every condition of this Permit and promises to perform each and every obligation of Owner/Permittee hereunder.

IN-N-OUT BURGERS
a California corporation
Owner/Permittee

By _____
Name:
Title:

**NOTE: Notary acknowledgments
must be attached per Civil Code
section 1189 et seq.**

Passed by the Council of The City of San Diego on JAN 14 2019, by the following vote:

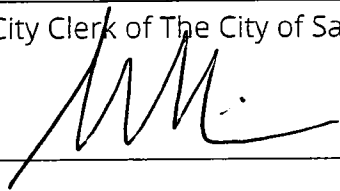
Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Ward	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Georgette Gómez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage JAN 14 2019.

(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY: KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

(Seal) ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By , Deputy

Office of the City Clerk, San Diego, California

312180
Resolution Number R-_____