

TO CITY COUNCIL: ADDENDUM ON THE LA FARINE APPEAL (03-10000094)

EVERYONE wants La Farine – we just don't want another Food Service Use Permit.

INCIDENTAL: With this appeal we wish to establish for all future reference a fact that should be clear to both Council and ZAB – that an Incidental Food Service Use Permit **MAY NOT APPLY TO A FOOD ESTABLISHMENT!** It may apply to food service use in a theater, a bowling alley, the lunchroom of an office suite, to many establishments that are not primarily engaged in the sale of food. But when an establishment devoted to selling food provides seating for the immediate consumption of that food on the premises, then that seating, no matter the number, is **NOT** incidental, but defines that establishment as a **FOOD SERVICE BUSINESS.**

UNANIMOUS: Planning Staff erred in recommending this permit. Thus misled by Staff and under popular pressure, ZAB then unanimously granted the Permit, which our Appeal clearly shows to be in violation of the Ordinance. ZAB is unanimously wrong!

SIZE MATTERS? The distinction between McDonald's and La Farine may seem obvious, but it's a distinction without a difference. Both sell food over the counter and provide tables that they clean but do not wait on. ZAB may argue that seating limited to twelve people precludes restaurant use, but we can show you nearby on San Pablo Avenue a Jack-in-the-Box with seating for 16. Shall we quibble that twelve people are incidental and 16 are not? Welcome to Solano, Jack!

SUPPLY AND DEMAND: Times change - businesses come and go. There is a constant demand from restaurants to open on Solano. If you supply another Food Service Use Permit, then someday, when La Farine eventually leaves, a future ZAB will issue a seating variance and 1820A Solano **WILL** become another full service restaurant.

SUBJECTIVE? One ZAB member told us that their decisions are "subjective." Wrong! The Zoning Ordinance is a clear and precise legal document, and our Appeal shows very simply and clearly that this permit violates it. We believe a court of law will agree.

PETITION? We did not canvas the Solano neighborhood for others to join in our Appeal because numbers have no meaning here, just as La Farine's petition has no meaning. This is a legal issue, not a popularity contest. The petition has no legal force; its signers have no legal standing. If those signers (or the few of them from the Solano area) wish to undertake the legal process of amending the Solano Ordinance, they have that right. **Un** If they do, the Ordinance is law, and the buck stops here. Council must uphold the law.

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