

Eff.: ORDINANCE NO. _____

AN EXTENSION OF AN INTERIM URGENCY ORDINANCE OF THE COUNCIL OF THE CITY OF BURBANK ESTABLISHING A MORATORIUM ON NEW AND REPLACEMENT RESTAURANTS WITH DRIVE-THROUGHS AND THE CONVERSION OF BUSINESSES WITH DRIVE-THROUGHS INTO DRIVE-THROUGH RESTAURANTS CITYWIDE

City Attorney's Synopsis

This ordinance extends the interim urgency ordinance adopted on October 4, 2022, which establishes a temporary moratorium on the establishment of new and replacement restaurants with drive-throughs and the conversion of businesses with drive-throughs into drive-through restaurants citywide. The terms of the moratorium will expire on November 18, 2022.

THE CITY COUNCIL OF THE CITY OF BURBANK FINDS, DETERMINES AND DECLARES THAT:

A. On October 4, 2022, pursuant to Government Code Section 65858, the City Council adopted an interim urgency ordinance (Urgency Ordinance No. 22-3,797 that established a temporary moratorium on new and replacement restaurants with drive-throughs, the conversion of businesses with drive-throughs into drive-through restaurants, and the expansion of hours of drive-through operations citywide.

B. The adopted interim urgency ordinance took effect immediately and is in place for a period of 45 days and will expire by operation of law unless extended by the City Council on or before November 18, 2022.

C. On November 1, 2022, pursuant to Government Code Section 65858(d), the City Council considered an extension to the interim urgency ordinance originally adopted on October 4, 2022, that establishes a temporary moratorium on new and replacement restaurants with drive-throughs, the conversion of businesses with drive-throughs into drive-through restaurants, and the expansion of hours of drive-through operations citywide.

D. In the absence of an extension to the moratorium, there is no way to provide a comprehensive study and consider the development standards that address the potential negative impacts posed by drive-through facilities within the current 45-day period and thus impairing the City's substantial interests in economically sustainable development, health, public safety, and welfare.

E. The Burbank Municipal Code (Code) defines Restaurants with Drive-Throughs as any establishment, which is engaged in the business of preparing and purveying food where provision is made for serving of food to patrons in vehicles for consumption at a separate location either on or off the premises.

ATTACHMENT 1

F. City Code Sections 10-1-502, 10-1-1608, 10-1-1609 and Section 10-1-2706.8, collectively contain development standards that regulate the City's review and approval of restaurants with drive-throughs and the conversion of businesses with drive-throughs into drive-through restaurants citywide.

G. Without the interim urgency ordinance, the City may be forced to approve new restaurants with drive-throughs along the City's major commercial corridors that are adjacent to existing neighborhoods without the benefit of updated objective development standards, tailored to address the current design and operational demands of this use that can help protect the public health, safety and general welfare.

H. Under the existing zoning regulations, new and replacement restaurants with drive-throughs as well as the conversion of existing businesses with drive-throughs into drive-throughs have the potential to create safety hazards for traffic and pedestrians resulting from traffic conditions, including unexpected stopping of vehicles, vehicular blind spots, unanticipated lane changes to avoid vehicle queues that spill onto City streets, all of which affect the ability of pedestrians to safely navigate on sidewalks across driveway aprons and on street crossings that are impacted by lines of cars. Residents, businesses, and City Councilmembers have expressed concerns that the current zoning regulations for new and replacement restaurants with drive-throughs and the conversion of businesses with drive-throughs into drive-through restaurants do not fully address the adverse impacts that these businesses that rely primarily on drive-through traffic as part of an evolving business model, have on the surrounding neighborhoods and major streets.

I. On October 4, 2022, pursuant to Government Code Section 65858, the City Council considered an interim urgency ordinance to establish a moratorium on new and replacement restaurants with drive-throughs and the conversion of businesses with drive-throughs into drive-through restaurants citywide.

J. The City Council considered the report and recommendations of the Community Development Director and the evidence presented at such meeting.

K. The City Council finds that the adoption of an extension to the interim urgency ordinance is necessary to allow City staff adequate time to review the current regulations applicable to new and replacement restaurants with drive-throughs as well as the conversion of businesses with drive-throughs to drive-through restaurants, review development standards of other jurisdictions that have dealt with similar issues, and prepare a future Zone Text Amendment to update the City's current development standards governing the approval and development of new and replacement restaurants with drive-throughs and the conversion of businesses with drive-throughs into drive-through restaurants citywide to balance the need to facilitate the ongoing responsible development of successful new restaurants with drive-throughs in order to protect the public health, safety, general welfare and character of existing neighborhoods and viability of nearby businesses.

ATTACHMENT 1

L. The City Council has determined that the adoption of an extension to the adopted interim urgency ordinance is statutorily exempt from CEQA pursuant to State CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, section 15061(b)(3), because the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The proposed urgency ordinance maintains the status quo and prevents changes in the environment pending the completion of the contemplated Zoning Ordinance review, because there is no possibility that this urgency ordinance may have a significant adverse effect on the environment, the adoption of this urgency ordinance is exempt from CEQA.

THE COUNCIL OF THE CITY OF BURBANK DOES ORDAIN AS FOLLOWS:

1. All the findings set forth above are true and correct and are incorporated herein as if restated in their entirety.
2. No permits may be approved for new and replacement restaurants with drive-throughs, as well as the conversion of existing businesses with drive-through to a restaurant with drive-through, citywide.
3. Existing, legally established residentially adjacent restaurants with drive-throughs shall not expand business operations between the hours of 10:00 p.m. to 6:00 a.m. Residentially Adjacent is defined by BMC section 10-1-203.
4. The Interim Urgency Ordinance shall be introduced, passed, and adopted at one and the same meeting and shall become effective immediately upon the adoption thereof and shall expire and be of no further force and effect after forty-five (45) days from the date of its adoption, unless further extended on or before this forty-fifth (45th) day.
5. Any restaurant(s) with a drive-through with a Conditional Use Permit previously approved by the City and not Residentially Adjacent as defined by BMC section 10-1-203 prior to the effective date of this ordinance are exempt from this ordinance.
6. If any section, subsection, sentence, clause, phrase, or word of this Interim Urgency Ordinance is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Interim Urgency Ordinance. The City Council hereby declares that it would have passed and adopted this Interim Urgency Ordinance, and each and all provisions hereof, irrespective of the fact that one or more provisions may be declared invalid.

ATTACHMENT 1

7. The City Clerk shall certify to the passage of this extension to the adopted Interim Urgency Ordinance and cause this Interim Urgency Ordinance to be published, within fourteen days of the adoption hereof, once in a newspaper of general circulation, published and circulated in the City of Burbank, California.

PASSED AND ADOPTED this ____ day of November, 2022.

Jess A. Talamantes
Mayor

Approved as to Form:
Office of the City Attorney

Attest:

Zizette Mullins, MMC, City Clerk

By: _____
Joseph H. McDougall
City Attorney

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.
CITY OF BURBANK)

I, Zizette Mullins, MMC, City Clerk of the City of Burbank, do hereby certify that the foregoing Ordinance No. _____ was duly and regularly passed and adopted by the Council of the City of Burbank at its regular meeting held on the ____ day of November, 2022, by the following vote:

AYES:

NOES:

ABSENT:

I further certify that said Ordinance was published as required by law in a newspaper of general circulation in the City of Burbank, California within 14 days following of the ordinance’s adoption on _____, 2022.

Zizette Mullins, MMC, City Clerk