

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BURBANK TO AMEND THE CITY'S ZONING REGULATIONS RELATED TO THE REGULATIONS FOR THE CONVERSION OF EXISTING BUSINESSES WITH DRIVE-THROUGH AND NEW AND EXISTING DRIVE-THROUGH RESTAURANTS

City Attorney's Synopsis

This Ordinance amends the Burbank Municipal Code, Title 10, Chapter 1, by updating the zoning text regulating development standards for the conversion of existing businesses with a drive-through, the prohibition of residentially adjacent restaurants with a drive-through, requirement to obtain a conditional use permit to operate a drive-through establishment, changes to the minimum stacking distance requirements, and limiting the hours of operations.

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

A. The City of Burbank ("City") is amending regulations regarding the development and conversion of existing businesses with a drive-through and new and existing restaurants with a drive-through to address potential negative impacts, such as vehicle spillover, blocked driveways, and trash, posed by drive-through facilities to adjacent residential neighborhoods and commercial corridors in the City of Burbank ensuring that any alterations to existing drive-through facilities, operations or the establishment of new drive-through facilities are subject to discretionary approval; and

B. The City Council adopted an Interim Urgency Ordinance No. 22-3,979 on October 4, 2022, establishing a moratorium on new and replacement restaurants with drive-throughs and the conversion of businesses with drive-throughs into drive-through restaurants citywide and adopted Ordinance No. 22-3,982, an extension to the Interim Urgency Ordinance on November 1, 2022. The moratorium expired on December 16, 2022; and

C. Drive-through restaurants have been allowed as a commercial use in the City of Burbank for several decades. However, a recent industry wide trend for restaurants with drive-through is to maximize the use of the drive-through, reducing the required space for walk-up counter and dine-in service. Additionally, the City has recognized that there may be a correlation between the shutdown of indoor dining during the COVID pandemic and the increase in the use of drive-throughs. The City's current development standards did not anticipate the shift to drive-throughs caused by the COVID pandemic

response, and the subsequent behavioral shift that incentivizes the majority of a restaurant's business to be conducted within the drive-through lane; and

D. The City acknowledges the need to address concerns regarding the potential negative impacts imposed by the conversion of existing businesses with a drive-through and new and existing restaurants with a drive-through; and

E. The Ordinance removes redundant and unclear language concerning the regulatory process for drive-through establishments, prohibits new restaurants with drive-throughs that are residentially adjacent, requires a Conditional Use Permit to operate an establishment with drive-through, increases minimum stacking distance requirements and establishes allowable hours of operations; and

F. The Ordinance and resulting zone text amendment will benefit the community by ensuring that residential neighborhoods and commercial corridors are protected from any negative impacts imposed by drive-through facilities by prohibiting residentially adjacent restaurants with drive-through and by establishing a discretionary process that assesses potential impacts to adjacent land uses for new and existing drive-through facilities; and

G. The City Council hereby finds and determines that this Ordinance is not subject to the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) ("CEQA") pursuant to California Code of Regulations Section 15061(b)(3). The activity is covered by the commonsense exemption that CEQA applies only to projects, which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. There are no pending applications for restaurants with drive-throughs that would be affected by this ZTA or that would otherwise be forced to relocate to other locations; and

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

Section 1. Findings. All the findings set forth above are true and correct and are incorporated herein as if restated in their entirety.

Section 2. Amendment to Burbank Municipal Code (BMC) 10-1-502 Uses in All Zones. Table 10-1-502 is hereby amended to read as follows (additions to the BMC are underlined and deletions are marked in ~~strikeout~~):

City of Burbank Zoning Use List | Burbank Municipal Code Section 10-1-502

P = permitted

CUP = Conditional Use Permit required

AUP = Administrative Use Permit required

(blank) = prohibited

[CUP] = CUP required if residentially adjacent as defined in 10-1-203

[AUP] = AUP required if residentially adjacent as defined in 10-1-203

[PRH] = prohibited if residentially adjacent as defined in 10-1-203

LAND USE	C-2	C-3	C-4	M-1	M-2	MDM-1	MDC-2	MDC-3	MDC-4	NB	GO	RC	C-R	RBP	BCC-1	BCC-2	BCC-3	BCCM	MPC-1	MPC-2	MPC-3	OS	AP	RR	AD	
RETAIL SALES AND DINING																										
Restaurant with drive-through (Section 10-1-16089)	CUP [PRH]	CUP [PRH]	CUP [PRH]	CUP [PRH]	CUP [PRH]		CUP [PRH]	CUP [PRH]	CUP [PRH]												CUP [PRH]	CUP [PRH]		CUP [PRH]	CUP [PRH]	
VEHICLE RELATED																										
Drive-through establishments, in conjunction with a permitted land use ¹²	CUP	CUP	CUP	CUP	CUP								CUP	CUP							CUP	CUP	CUP		CUP	

¹² REFER TO SECTIONS-10-1-1608 AND 10-1-1609

Section 3. Deletion and Replacement of Burbank Municipal Code (BMC)
10-1-1608 Drive- Through Restaurants. Section 10-1-1608 is replaced in its entirety with the following (additions to the BMC are underlined and deletions are marked in ~~strikeout~~):

10-1-1608: DRIVE-THROUGH RESTAURANTS:

~~1. STACKING DISTANCE. All new drive-through restaurants shall have a drive-up or drive-through bay for in-car service with an on-site vehicular waiting lane. The on-site vehicular waiting lane shall be a minimum length of 160-300 feet as measured along the centerline from the point of entry or the beginning of a drive-through lane, to the center of the farthest service window area (the "stacking distance").~~

~~2. SEPARATE WAITING LANE FOR NEW DRIVE-THROUGH RESTAURANTS. The drive-through lane shall be a separate lane from the circulation routes and aisles necessary for ingress to or egress from the property or access to any off-street parking spaces.~~

~~3. CONDITIONAL USES. In addition to the above requirements, all new drive-through restaurants shall receive a Conditional Use Permit.~~

~~4. EXISTING USES WITH 100 FEET OR MORE OF STACKING LANE. Any drive-through restaurant in existence on or before March 2, 1996, (effective date of this section) which has at least 100 feet on-site stacking distance shall be automatically deemed a permitted use and not subject to this section.~~

~~5. EXISTING USES WITH LESS THAN 100 FEET OF STACKING LANE. Any drive-through restaurant in existence on or before March 2, 1996, (effective date of this section) which has less than 100 feet on-site stacking distance may continue operating, but may not be expanded, enlarged, or otherwise modified until the proposed work has been evaluated by the Building Official. If the Building Official determines that the desired work will 1) prolong the useful life of the service window (s) and/or 2) increase the pre-permit building valuation, as defined herein, by ten percent or more, than the property owner shall obtain an Administrative Use Permit prior to the issuance of any building permits or other development permits. Pre-permit building valuation shall be the value of the building assessed by the Building Official as determined from the most recent edition of the International Conference of Building Officials "Building Valuation Data".~~

~~6. NEW AND EXISTING RESIDENTIALLY ADJACENT DRIVE-THROUGHS MUST COMPLY WITH SECTION 10-1-1609. On and after December 26, 1998, this entire Section 10-1-1608, including the exceptions in Subsection (4) and (5) of Section 10-1-1608 shall not apply to residentially adjacent drive-through restaurants, but rather all new and existing residentially adjacent drive-throughs shall be subject to Section 10-1-1609. [Added by Ord. No. 3431, eff. 3/2/96. Amended by Ord. No. 3503, eff. 12/26/98.]~~

10-1-1608: DRIVE-THROUGH ESTABLISHMENTS:

A. PROHIBITED USE.

Residentially adjacent restaurants with drive-through are prohibited.

B. DISCONTINUATION OF USE

Any legal non-conforming establishment with drive-through that cease operation for any

reason for a period of three (3) consecutive calendar months or 90 days is subject to Section 10-1-1809(3) and 10-1-1809(4).

C. CONDITIONAL USE PERMIT REQUIRED.

1) A Conditional Use Permit (CUP) is required to operate a drive-through establishment.

a. A queuing lane analysis, prepared by the City and funded by the applicant, is a requirement for an establishment with drive-through.

b. Changes to operations for existing drive-through establishments, including but not limited to hours of operation and expansion of the drive-through facility and modifications to the site layout and building footprint, shall also require a CUP.

D. STACKING DISTANCE.

All new drive-throughs shall have a drive-up or drive-through bay for in-car service with an on-site vehicular waiting lane. The on-site vehicular waiting lane shall be a minimum length of 300 feet as measured along the centerline from the point of entry or the beginning of a drive-through lane, to the center of the farthest service window area (the "stacking distance").

1) An applicant can request that the Director consider a reduction in the minimum stacking distance subject to the preparation of a queuing lane analysis, but in no instance shall the minimum stacking distance be no less than 220 feet. Final approval of the minimum stacking distance shall be at the sole discretion of the Director or his/her designee.

E. SEPARATE WAITING LANE.

For new drive-throughs, the drive-through lane shall be a separate lane from the circulation routes and aisles necessary for ingress to or egress from the property or access to any off-street parking spaces.

F. HOURS OF OPERATION FOR AN ESTABLISHMENT WITH DRIVE-THROUGH

The hours of operation are limited to 6 am to 10 pm, unless approved as part of a Conditional Use Permit.

G. ALL OTHER DEVELOPMENT STANDARDS

The development standards contained in Articles 11 through 16 of this Chapter also apply to this Section. In the event of any conflict between the requirements contained in Articles 11 through 16 and the requirements of this Section, the requirements of this Section supersede.

Section 4. Deletion of Burbank Municipal Code (BMC) 10-1-1609: Residentially Adjacent Drive-Throughs. Section 10-1-1609 is hereby deleted in its entirety.

Section 5. Severability. If any provision of this Ordinance or its application is held invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions, sections, or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end each phrase, section, sentence, or word is declared to be severable.

Section 6. Environmental Assessment This Ordinance is not subject to the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) (“CEQA”) pursuant to California Code of Regulations Section 15061(b)(3). The activity is covered by the commonsense exemption that CEQA applies only to projects, which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. There are no pending applications for restaurants with drive-throughs that would be affected by this ZTA or that would otherwise be forced to relocate to other locations. This project involves the adoption of amendments to the BMC, including new objective standards intended to protect residential neighborhoods and commercial corridors from potential negative impacts associated with drive-through restaurants and other drive-through establishments.

Section 7. Effective Date This Ordinance shall become effective at 12:01 a.m. on the thirty-first (31st) day after the date of adoption.

PASSED AND ADOPTED this ____ day of _____, 2023.

Konstantine Anthony
Mayor

Approved as to Form:
Office of the City Attorney

Attest:

Kimberley Clark, City Clerk

By: _____
Iain MacMillan
Senior Assistant City Attorney

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

I, Kimberley Clark, 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 _____, 2023, by the following vote:

AYES:

NOES:

ABSENT:

I further certify that said Synopsis was published as required by law in a newspaper of general circulation in the City of Burbank, California within 14 days following its _____, 2023 adoption.

Kimberley Clark, City Clerk