

# STAFF REPORT



## COMMUNITY DEVELOPMENT

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**DATE:** April 10, 2023

**TO:** City Planning Commission

**FROM:** Fred Ramirez, Assistant Community Development Director - Planning *SP for FR*  
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**SUBJECT:** **Zone Text Amendment (ZTA) to amend Burbank Municipal Code Sections 10-1-502, 10-1-1608 and 10-1-1609, related to the zoning regulations for the conversion of existing businesses with drive-throughs, the prohibition of residentially adjacent restaurants with drive-through, requirement of a Conditional Use Permit to operate an establishment with drive through, change the minimum stacking distance requirements, and establish of hours of operation.**

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### **RECOMMENDATION**

Adopt a RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BURBANK RECOMMENDING THE CITY COUNCIL ADOPT AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BURBANK AMENDING TITLE 10, CHAPTER 1 (ZONING) OF THE BURBANK MUNICIPAL CODE TO UPDATE THE DEVELOPMENT STANDARDS FOR THE CONVERSION OF EXISTING BUSINESSES WITH DRIVE-THROUGHS, THE PROHIBITION OF RESIDENTIALLY ADJACENT RESTAURANTS WITH DRIVE-THROUGH, REQUIREMENT TO OBTAIN A CONDITIONAL USE PERMIT TO OPERATE A DRIVE THROUGH ESTABLISHMENT, CHANGES TO THE MINIMUM STACKING DISTANCE REQUIREMENTS, AND LIMITATION OF HOURS OF OPERATIONS FOR ESTABLISHMENTS WITH A DRIVE-THROUGH. (Exhibit A)

### **BACKGROUND**

Drive-Through restaurants have been an allowed use in the City of Burbank for several decades. However, a recent industry wide trend for restaurants with drive-throughs 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, which has remained to this day. The City's current development

standards for new and replacement drive-through businesses did not anticipate the shift to drive-through use 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.

During high-demand periods, customer vehicle traffic has been reported and observed encroaching into the public right-of-way. Known as vehicle spillover, this trend has resulted in many residents expressing that this behavior has negatively affected their quality of life. Specifically, adjacent residential and commercial neighborhoods have reported increased vehicular traffic, blocked driveways, trash, and unruly or disrespectful patrons.

In response, the City Council requested an urgency ordinance and on October 4, 2022, the Council was presented with a report that outlined potential negative impacts posed by drive-through facilities to adjacent residential neighborhoods and commercial corridors in the City of Burbank. The City Council subsequently adopted that urgency ordinance (Exhibit C) and 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. On November 1, 2022, the City Council approved an extension to that ordinance (Exhibit D). The urgency ordinance has since expired, and staff has prepared a formal Zoning Text Amendment (ZTA) to address this issue.

#### Community Concerns

The demand for potential drive-through sites on major thoroughfares has created community concerns that existing commercial businesses with drive-throughs may be converted into new or replacement restaurants with drive-throughs with similar potential for negative effects throughout the City. These effects may be particularly acute for drive-throughs located adjacent to single-family residential neighborhoods and along major commercial corridors already impacted by high commuter traffic during peak morning, noon, and afternoon hours.

Some potential "conversion sites" include:

- Fosters Freeze at 201 S. Glenoaks Boulevard
- CVS Pharmacy at 1820 W. Verdugo Avenue
- Chase Bank at 1551 W. Olive Avenue
- Bank of America at 142 E. Olive Avenue
- Comerica Bank at 1090 N. San Fernando Boulevard
- Gain Federal Credit Union at 1800 W. Magnolia Boulevard
- CVS Pharmacy at 101 E. Alameda Avenue
- Wells Fargo at 2320 W. Victory Boulevard
- Norms Burger Restaurant at 1201 W. Magnolia Boulevard
- Walgreens Pharmacy at 2501 W. Magnolia Boulevard
- Retro Dairy Mart at 4420 W. Magnolia Boulevard
- Baskin Robbins at 1201 S. Victory Boulevard

These sites and their proximity to existing residential neighborhoods on the City's major

commercial corridors could result in queueing, traffic, and neighborhood compatibility issues with any new or replacement businesses with drive-throughs.

#### Existing Zoning Regulations

Pursuant to the Use Table in Burbank Municipal Code (BMC) Section 10-1-502 (Exhibit E), new restaurants with drive-throughs are permitted with a Conditional Use Permit (CUP) only and restricted to the following zones:

- Commercial 2-3  
(C -2, 3, 4)
- Industrial 1-2  
(M-1, 2)
- Media District Commercial  
(MDC-2)
- Media District Commercial  
(MDC-3)
- Media District Commercial/Media  
Production Zone (MDC-4)
- Magnolia Park Limited Business  
(MPC-2)
- Magnolia Park General Business  
(MPC-3)
- Airport Zone (AP)
- Railroad Zone (RR)

A CUP is intended for land uses, which require special consideration before being allowed in a particular zone. The CUP process ensures that the degree of compatibility for the specified use is maintained with respect to the particular use on the site giving consideration to the other existing and potential uses within the general area in which the use is located. The CUP process is a discretionary process that invites public input and requires the satisfaction of several requirements for the permit, known as findings. The CUP findings (BMC 10-1-1936) (Exhibit F) require staff to review potential impacts from the proposed use on the adjacent or nearby community by determining the site's eligibility according to several factors such as the site's size and shape or its relationship with the public-right-of-way. Additionally, staff may recommend conditions of approval to be imposed that mitigate any potential adverse impacts, thereby protecting the public health, convenience, safety and welfare of the surrounding community.

BMC Sections 10-1-1608 and 10-1-1609 contain separate development standards for restaurants with drive-throughs and residentially adjacent drive-through establishments, respectively.

BMC Section 10-1-1608 addresses drive-through restaurants in general, specifying a minimum vehicle stacking distance (queuing length) as well as the design of the drive-through lane. Additionally, this section specifically requires discretionary approval for all new drive-through restaurants. However, subsection 6 of this section states that, after December 26, 1998, new and existing residentially adjacent drive throughs must comply with BMC Section 10-1-1609.

BMC Section 10-1-1609 addresses residentially adjacent drive-through establishments. Similar to BMC Section 10-1-1608, this section specifies a minimum vehicle queuing length, and identifies design standards for the drive-through lane. These standards currently require an on-site vehicular waiting lane that is a minimum of 160 feet as measured from the point of entry to the furthest service window area. With an average

car length of 14.7 feet, these standards would ensure queuing length for a maximum of 10 cars between the order board and the point of entry. However, due to the more intense drive-through business model, some restaurants with drive-throughs in the City have required a stacking distance far more than the 160-foot minimum, resulting in queuing lines that extend well beyond private property and into the public rights-of-way.

Furthermore, BMC Section 10-1-1609(D) allows for the modification of any establishment with an existing drive-through to continue to operate and even convert into a drive-through restaurant without a conditional use permit if specific criteria is satisfied to the satisfaction of the City's Building Official. Therefore, under this Section, an existing drive-through establishment can be converted into a restaurant with drive-through without the requisite CUP process that includes the development standards mentioned previously.

#### Outreach and Research:

As part of the research into the proposed ZTA, staff reviewed the City's existing drive-through standards and development standards from other similar jurisdictions. The outreach and research efforts are summarized below.

#### Public Outreach

Staff held two public City Council hearings in which Council members and the public were informed of the negative impacts associated with drive-through establishments. The first Council hearing was conducted on October 4, 2022, and the Council voted unanimously for adoption of an urgency ordinance establishing a moratorium on new and replacement restaurants with drive-throughs and the conversion of businesses with drive-throughs into drive-through restaurants Citywide (Exhibit C). City Council adopted an extension to the moratorium at a second public hearing held on November 1, 2022, which has since expired (Exhibit D).

On March 2, 2023, staff held a meeting with members of the Property Based Business Improvement District (PBID) to update members on the status of the drive-through moratorium and to solicit feedback on proposed solutions.

If the Planning Commission recommends approval of this ZTA, staff will conduct a publicly noticed community meeting on May 3, 2023, inviting both residents and members of the business community to learn more about the proposed ZTA and provide comments.

Finally, in conformance with BMC Section 10-1-1994, staff provided public notice in a newspaper of general circulation in the City on March 22, 2023, for the proposed ZTA to be heard by the Planning Commission at their regular meeting to be held on April 10, 2023.

#### Research:

Staff researched the development standards for drive-through restaurants in similar jurisdictions. The cities of Glendale, Pasadena, Los Angeles, Santa Clarita, Long Beach, Marin County, Santa Barbara, San Jose, Laguna Hills, and Placentia were reviewed, and the standards governing the queuing length as well as design of the drive-through lane were expressly identified in all but one jurisdiction. With the exception of Santa Barbara, where drive-throughs are banned city wide, and Glendale, which allows drive-throughs

by-right in commercial zones, all jurisdictions required CUP approval for drive-through establishments.

This research, in conjunction with an analysis of the existing drive-through sites within the City of Burbank, the City's existing development standards, and public input and concerns with the development of restaurants with high drive-through demands like Raising Cane's on Olive Avenue led to staff's recommendations for the proposed ZTA.

## ANALYSIS

Based on Council feedback, community input and concerns, and staff research, staff recommends that several modifications to the BMC be made. A complete exhibit of the proposed changes to the existing ordinance are included as Exhibit B to this report.

### 1. Burbank Municipal Code Section 10-1-502 (Use Table)

Staff recommends modifying the use table to indicate that residentially adjacent restaurants with drive-through uses are prohibited. "Residentially Adjacent" is defined in BMC Section 10-1-203 as any commercially or industrially zoned property located within 150 feet of any residentially zoned property (measured at the two properties' closest points).

Prohibiting residentially adjacent restaurants with drive-through from residentially adjacent areas will protect residents from the potential negative spillover effects such as increased vehicular traffic, noise and light pollution, and litter.

Additionally, staff recommends modifying the use table to clarify that drive-through establishments are permitted only with approval of a CUP in designated zones. The inclusion of this modification will ensure that drive-through establishments, exclusive of restaurants with drive-through (i.e., banks, pharmacies, etc.) are subject to discretionary approval as well.

Applicants for a CUP to allow a restaurant with drive-through that are not residentially adjacent must meet the required findings set forth in BMC Section 10-1-1936 (Attachment 5). Those required findings apply to all CUP applications.

### 2. Burbank Municipal Code Section 10-1-1608

BMC Sections 10-1-1608 and 10-1-1609 create a distinction between drive-through restaurants and residentially adjacent drive-through establishments even though the development standards listed are very similar. However, staff recommends the deletion of this section as the proposed amendments to BMC Section 10-1-502 would prohibit new restaurants with drive-throughs in residentially adjacent areas, thereby eliminating the need for 10-1-1608.

### 3. Burbank Municipal Code Section 10-1-1609

Staff recommends the deletion of the text for Section 10-1-1609 as currently written and proposes replacement text. Staff proposes a new heading entitled, "Drive-Through Establishments" to address drive-through restaurants as well as other

drive-through establishments such as drive-through retailers, pharmacies, or banks. The proposed text is included below:

**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, shall 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 6am to 10pm, 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.

Furthermore, the recommended amendment to BMC Section 10-1-1609 will ensure that existing drive-through establishments that intend to convert to another drive-through use must obtain discretionary approval, subjecting that conversion to discretionary review (i.e., CUP review and approval) and requiring the submission of additional analyses such as a queueing lane analysis.

### Findings for Approval of a Zone Text Amendment

BMC Section 10-1-1985 address the requirements for considering text amendments. The findings for approval of a ZTA largely address the requirements for adding a use, however, Section 10-1-1992 specifies that the Planning Commission shall consider all land use amendments and amendments to the property development standards and report to the Council with a recommendation approving or disapproving the amendment.

This ZTA will support the vision of quiet, pedestrian friendly single-family and multiple-family residential zones throughout the city by ensuring their character is protected and maintained by prohibiting residentially adjacent restaurants with drive-through, the establishment of a minimum stacking distance of 300 feet and limiting the hours of operations for establishments with a drive-through from 6am 10pm unless approved as part of Conditional Use Permit. Furthermore, upon recommendation by the Planning Commission, this ZTA will be presented at a public hearing to the City Council and is therefore consistent with Article 19, Division 7 of the Burbank Municipal Code, which requires that the repeal or modification of a listed use and any change in the prohibited uses must be preceded by a public hearing.

This Zoning Text Amendment will also support the vision of single-family and multiple-family residential zones throughout the city by ensuring their character is protected and maintained with the requirement of CUP approval, the prohibition of residentially adjacent restaurants with drive-through, the establishment of a minimum stacking distance of 300 feet and limiting the hours of operations for establishments with a drive-through from 6 am 10 pm unless approved as part of Conditional Use Permit.

### California Government Code

California Government Code Section 65860 requires that any zone text amendment be consistent with the objectives, policies, general land uses and programs specified Burbank2035 General Plan and the provisions of Title 10, Chapter 1 (Zoning) of the Burbank Municipal Code.

### Consistency with the Burbank2035 General Plan

This Zoning Text Amendment supports the implementation of Land Use Goal 1 (Quality of Life) and Policy 1.3, which seeks to maintain and protect Burbank's residential neighborhoods by avoiding encroachment of incompatible land uses and public facilities.

The proposed ZTA will protect residential and commercial neighborhoods from the potential negative impacts associated with drive-through establishments. Requiring a minimum vehicle queueing lane of 300 feet and a limitation on hours of operation will ensure that the residentially adjacent areas maintain their quiet, small-town residential quality.

Additionally, the ZTA supports Policy 1.5, which ensures careful review and consideration of non-residential uses with the potential to degrade quality of life. Requiring a Conditional Use Permit approval for new drive-through establishments will ensure that each drive-through facility is carefully reviewed for conformance with the standards set forth in the Burbank Municipal Code and considered by the Planning Commission as part of a public hearing process.

The ZTA supports the implementation of Land Use Goal 3 (Community Design and Character) and Policy 3.5, which seeks to ensure that site design are high quality, creative, complementary to Burbank's character and compatible with surrounding development and public spaces. The ZTA will ensure high quality site design for future commercial developments that are complementary to character of the surrounding residential and commercial neighborhoods while respecting the public space by requiring a minimum stacking distance of 300 feet and queuing lane analysis for an establishment with a drive-through.

The ZTA supports the implementation of Land Use Goal 10 (Commercial Corridors), Policy 10.6, which seeks to ensure that the design of businesses and surrounding rights-of-way maintains the ability of streets and sidewalks to serve pedestrians in commercial corridors. Additionally, Mobility Goal 6 (Neighborhood Protection), Policy 6.1 seeks to maintain arterial street efficiency to discourage spillover traffic into residential neighborhoods and Policy 9.1 seeks to ensure safe interaction between all modes of travel that use the street network, specifically the interaction of bicyclists, pedestrians, and equestrians with motor vehicles. Many of the City's drive-through restaurants can be found within commercial corridors along arterial streets. This ZTA will require high quality site design to ensure vehicular traffic can safely and efficiently access and exit the drive-through sites without obstructing the free flow of traffic in the public right-of-way by requiring a minimum stacking distance of 300 feet and queuing lane analysis for an establishment with a drive-through.

### **ENVIRONMENTAL ASSESSMENT**

The proposed Zoning Text Amendment has been reviewed for compliance with the California Environmental Quality Act (CEQA). The proposed ZTA is exempt from review under 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. Furthermore, pursuant to Section 15378(a)(1), this ZTA is not considered a "project" subject to the requirements of



CEQA. Therefore, it is the City's determination that this Zoning Text Amendment will not have a significant effect on the environment and is not subject to CEQA.

**FISCAL IMPACT**

There is no significant impact to the City's General Fund by adopting the proposed Zone Text Amendment establishing updating the development standards for the conversion of existing businesses with drive-through and new and existing restaurants with drive-through. Future applications for drive-throughs will pay the applicable CUP application fees to ensure cost recovery of staff time to prepare entitlements for Planning Commission consideration.

**CONCLUSION**

The changes outlined in the proposed ZTA are intended to resolve potential negative impacts, such as vehicular traffic spillover, noise, and litter, posed by drive-through establishments within the City. The proposed ZTA will prohibit new drive-through restaurants from operating in residentially adjacent areas, require a CUP for new drive-through establishments, increase the minimum stacking length for vehicles from 160 feet to 300 feet, and establish hours of operation from 6am to 10pm. Recommending the City Council adopt this ZTA will ensure that potential negative impacts do not create a risk of harm to the surrounding residential and commercial neighborhoods.

**EXHIBITS**

List of Exhibits	
Exhibit	Title
A	Resolution with Redline Ordinance
B	Ordinance
C	Ordinance No. 22-3,979, Interim Urgency Ordinance Establishing a Moratorium on New and Replacement Restaurants with Drive-Throughs Citywide
D	Ordinance No. 22-3982, Extension of Interim Urgency Ordinance Establishing a Moratorium on New and Replacement Restaurants with Drive-Throughs Citywide
E	Burbank Municipal Code Section 10-1-502: Uses in All Zones (except Residential Zones)
F	Burbank Municipal Code Section 10-1-1936: Requirements for Conditional Use Permit