

## STAFF REPORT



## COMMUNITY DEVELOPMENT

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**DATE:** October 4, 2022

**TO:** Justin Hess, City Manager

**FROM:** Patrick Prescott, Community Development Department Director  
Via: Fred Ramirez, Assistant Community Development Director - Planning  
By: Scott Plambaeck, Planning Manager  
Joseph Onyebuchi, Associate Planner

**SUBJECT:** Adoption of an Interim 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

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### **RECOMMENDATION**

Adopt 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 (ATTACHMENT 1) (4/5th vote required).

### **BACKGROUND**

Although drive-through restaurants are not new to Burbank, a recent business trend is to maximize the drive-through use, with the resulting queueing far exceeding the existing drive-through queueing standards. Many new restaurant drive-through prototypes have smaller building footprints with limited or no on-site dining, garnering more demand for vehicle queueing lanes, which far exceed the physical capacity of existing and proposed sites. During high-demand periods, customer vehicle traffic can spill over onto busy thoroughfares and can negatively affect the surrounding residential neighborhoods and businesses who subsequently face increased vehicle traffic, blocked driveways, trash, and unruly or disrespectful patrons.

The proposed Interim Urgency Ordinance would prohibit the processing of any application for new and replacement restaurants with drive-throughs, the conversion of existing businesses to drive-throughs into Drive-Through restaurants and prohibit any expansion of hours of drive-through operations citywide for a period of 45 days. During the 45-day

period, staff will review the City's existing drive-through standards, review development standards of other jurisdictions that have dealt with similar issues, and report back to City Council on possible next steps that may include a Zone Text Amendment (ZTA).

## **DISCUSSION**

### **Community Concerns**

The City has recognized that there may be a correlation between the shutdown of indoor dining during the COVID-19 Pandemic (Pandemic) and the increase in the use of drive-throughs. 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 Pandemic response, and the subsequent behavioral shift that incentivizes the majority of a restaurant's business to be conducted in the drive-through. This business model increases potential customer traffic spill over into the surrounding neighborhoods and major streets creating potential impacts to neighboring residents, businesses, and commuters. Furthermore, the demand for potential drive-through sites on major thoroughfares has created concerns that existing commercial businesses with drive-throughs are susceptible to conversion 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.

An initial survey identified potential "conversion sites" including:

- 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 queuing, traffic, and neighborhood compatibility issues with the establishment of any new or replacement businesses with drive-throughs.

### **Existing Zoning Regulations**

Pursuant to Burbank Municipal Code (BMC) Section 10-1-502 (Attachment 2), most new or replacement 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)
- Railroad Zone (RR)
- Media District Commercial/Media Production Zone (MDC-4)
- Magnolia Park Limited Business (MPC-2)
- Magnolia Park General Business (MPC-3)
- Airport Zone (AP)

BMC Sections 10-1-1608 and 10-1-1609 contain separate standards for the approval of restaurants with drive-throughs. 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 (stacking distance). With an average car length of 14.7 feet, these standards would ensure stacking space for a minimum of 10 cars between the order board and the point of entry. However, due to the current more intense drive-through business model that the City's is experiencing, some restaurants with drive-throughs in the City have required far more space than the 160-foot minimum, resulting in queuing lines that extend beyond private property and into the public rights of way.

Further, the CUP findings (BMC 10-1-1152), in general, require staff to review potential impacts from the proposed use on the adjacent or nearby community and recommend conditions of approval to be imposed that mitigate such potential adverse impacts.

Separately, BMC Section 10-1-1609(D) allows for the modification of any business with an existing drive-through into a drive-through without a conditional use permit if an applicant satisfies specific criteria. This code section establishes the criteria for when an existing drive-through establishment can be expanded, enlarged, or modified.<sup>1</sup> 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.

Article 11 of the City's Zoning Code contains property development standards intended to protect residential neighborhoods from impacts caused by commercial and industrial uses. BMC Sections 10-1-1150 through 10-1-1154 specifically, contain requirements for residentially adjacent commercial and industrial properties. These requirements ensure that commercial and industrial uses do not cause adverse impacts on adjacent properties and residents or on surrounding neighborhoods due to customer and employee parking demand, traffic generation, noise, light, litter, or the cumulative impact of these demands in the surrounding area. If approved, the Interim Urgency Ordinance would allow staff the time to ensure that the requirements contained in these code sections adequately

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<sup>1</sup> BMC Section 10-1-1811, entitled "Continuation Use of Structure" does not apply, because Section 10-1-1609 (D) specifically addresses non-conforming drive-throughs with existing service windows. When interpreting statutes and regulations, laws drafted to address specific matters govern over generally applicable laws.

address the challenges and potential negative impacts resulting from the more intense drive-through business model.

### Neighboring Jurisdictions

Staff reviewed the development standards for drive-through restaurants of nearby and comparable cities of Glendale, Pasadena, Santa Clarita, and Long Beach. Each city addresses the requirements for the physical layout of the drive-through facility, specifying a combination of minimum queue length, width of lanes, and/or minimum number of vehicles. The drive-through use, if specifically identified, is largely restricted to commercial, industrial, and mixed-use zones. The City of Glendale is the only city, which permits drive-through establishments by-right, while every other city studied, requires at least an administrative permit. Expansion, enlargements, or modifications of the drive-through use are generally subjected to higher thresholds of approval ranging from Director's approvals to Conditional Use Permits. A more detailed analysis of each jurisdiction's standards and requirements for drive-through establishments is provided in Attachment 3.

### ANALYSIS

When drive-through queuing lines extend beyond private property, the lines may create parking and circulation conflicts. Those lines may extend across sidewalks and into drive-way aprons, and even onto City streets, which may create traffic and pedestrian hazards. With the proposed Interim Urgency Ordinance, staff will review and identify any potential updates to the existing standards to ensure that any future or replacement restaurant drive-throughs are adequate to prevent these problems.

As previously noted, there are at least 12 potential conversion sites for new or replacement restaurant drive-through locations. Given the significant number of potential sites eligible for conversion, an Interim Urgency Ordinance is necessary to preserve public health, safety, and welfare, as the approval of additional or replacement restaurant drive-throughs at these sites has the potential to create the concerns described above. Although staff is in the process of evaluating new queuing standards to meet the needs of a new drive-through business model, any restaurant drive-through that is approved while the standards are being developed would expose the public to potential negative effects and an Interim Urgency Ordinance is necessary to prevent that from happening.

An Interim Urgency Ordinance will give staff time to thoroughly research and develop a comprehensive set of regulations that recognize and balance the various interests related to restaurants with drive-throughs in a manner that accounts for the City's needs and the community vision, which support more walkable and pedestrian-friendly environments, reduce greenhouse gas emissions, and reflect the current land use and zoning policy choices of the City.

### City Council Adoption Required

Charter Section 500 authorizes the City Council to adopt an Interim Urgency Ordinance as an emergency measure to preserve the public health, safety, and general welfare. Without the proposed Interim Urgency Ordinance, the City may lack the discretion to deny new or replacement restaurants with drive-throughs or the conversion of businesses with drive-throughs into drive-through restaurants along the City's major commercial corridors

that are adjacent to existing neighborhoods without the benefit of updated zoning regulations. Under the existing zoning regulations, new or replacement restaurants with drive-throughs have the potential to create hazards for local business, pedestrian, and vehicular traffic.

#### Exceptions to this Ordinance

The Interim Urgency Ordinance shall not apply to any CUP, building permit or other entitlement issued for a restaurant with drive-through or business with drive-through prior to the effective date of this Ordinance.

Any complete applications for a restaurant with drive-through that have been submitted to the City of Burbank, and where fees have been paid prior to the effective date of this Ordinance, are exempt.

#### Environmental Assessment

The proposed Interim Urgency Ordinance has been reviewed for compliance with the California Environmental Quality Act (CEQA). The proposed Interim Urgency Ordinance 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. Therefore, it is the City's determination that the Interim Urgency Ordinance will not have a significant effect on the environment and is not subject to CEQA.

#### **FISCAL IMPACT**

There is no fiscal impact to the City's General Fund by adopting the Interim Urgency Ordinance establishing a moratorium on new and replacement restaurants with drive-throughs citywide. A future Zone Text Amendment and any associated design guidelines that may be proposed at a future date will include a budget estimate for consultant services for City Council consideration.

#### **CONCLUSION**

Charter Section 500 authorizes the City Council to adopt an Interim Urgency Ordinance necessary as an emergency measure for preserving the public health, safety, and general welfare. The Interim Urgency Ordinance requires a 4/5th vote for approval (Government Code § 65858). The proposed Interim Urgency Ordinance is necessary to preserve the public health, safety, and welfare, as the approval of additional or replacement restaurants with drive-throughs throughout the City under the existing zoning regulations has the potential to create a risk of harm to the surrounding residential and commercial corridors.

Adoption of the Interim Urgency Ordinance and potential consideration of ZTA by the City Council will facilitate ongoing responsible development by allowing staff to review and update the existing standards to ensure that future restaurant drive-through installations do not have negative consequences to public health, safety, and welfare.

**ATTACHMENTS**

Attachment 1 – Proposed Ordinance

Attachment 2 – Burbank Municipal Code Section 10-1-502

Attachment 3 – Burbank Municipal Code Section 10-1-1608 and 10-1-1609

Attachment 4 – Standards and Requirements on Drive-Through Establishments in  
Surrounding Jurisdictions

Correspondences