

# STAFF REPORT



## COMMUNITY DEVELOPMENT

---

**DATE:** September 26, 2023

**TO:** Justin Hess, City Manager

**FROM:** Patrick Prescott, Community Development Director

VIA: Fred Ramirez, Assistant Community Development Director, Planning

Scott Plambaeck, Planning Manager

Amanda Landry, Principal Planner

BY: Joseph Onyebuchi, Associate Planner

**SUBJECT:** Introduction of an Ordinance 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

---

### **RECOMMENDATION**

Introduce 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 (ATTACHMENT 1).

### **BACKGROUND**

For several decades leading up the late 1990s, "Drive-Through Restaurants" had been a permitted use in the City of Burbank's commercial zones. In 1998, the City Council imposed additional regulations on Drive-Through Restaurants and made them conditionally permitted uses, subject to approval by the Planning Board, due to the potential for them to affect traffic circulation and nearby land uses. However, businesses with existing drive-throughs were allowed to adaptively reuse the business locations with drive-throughs and continue offering drive-through service subject to specific provisions of the City's zoning code (i.e., Burbank Municipal Code Section 10-1-1608).

More recently, an industrywide trend that became prominent during the temporary shutdown of indoor dining during the COVID pandemic has been for Drive-Through Restaurants to maximize the use of the drive-through and reduce the required space for walk-up counter and dine-in service. This trend has remained to this day. As a result, the City's current development standards for new and replacement drive-through businesses

do not adequately address the shift of the majority of a drive-through restaurant's business to the drive-through lane.

During high-demand periods at drive-through restaurants throughout the City, customer vehicle traffic has been reported and observed to encroach into the public right-of-way. Known as vehicle spillover, this occurrence has resulted in many residents expressing that this intensification of drive-through business has negatively affected their quality of life, especially for residentially adjacent restaurants. Adjacent residential and commercial neighborhoods have reported increased traffic from vehicular queueing lines that spill into the public right-of-way, blocked driveways that impact access to nearby properties, increased use of on-street parking, increased littering caused by more restaurant patrons consuming food outside of onsite dining areas, and unruly or disrespectful patrons.

In response, the City Council requested an urgency ordinance that could quickly address some of these issues. On October 4, 2022, the City 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. The City Council subsequently adopted the Urgency Ordinance (Attachment 2) and established a temporary moratorium on new and replacement Drive-Through Restaurants, 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 the Urgency Ordinance (Attachment 3). The Urgency Ordinance has since expired, and staff has prepared a Zone Text Amendment (ZTA) as a next step to address this ongoing issue.

### Community Concerns

The continued 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 Drive-Through Restaurants 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 extended vehicle queueing lanes, spillover traffic, and other 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 (Attachment 5), new Drive-Through Restaurants are only permitted upon approval of a Conditional Use Permit (CUP) and are 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 a discretionary review intended for land uses that require special consideration before being allowed to operate in a particular zone. The CUP process is intended to ensure that new uses are compatible with the conditions of the site and allows the City to consider other existing and potential uses within the general area of a project site. The CUP process provides opportunities for public participation and input and requires the City to determine that specific requirements, or findings, are satisfied. The CUP findings (BMC 10-1-1936) (Attachment 10) 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, its relationship with the public right-of-way, and its compatibility with other uses on the same lot and in the surrounding area. Conditions of approval may be imposed through the CUP process to mitigate any potential adverse impacts, thereby protecting the public health, convenience, safety, and welfare of the surrounding community. CUPs are approved by the Planning Board after holding a noticed public hearing.

### BMC Regulations Related to Drive-Throughs

BMC Sections 10-1-1608 and 10-1-1609 contain separate development standards for Drive-Through Restaurants and Residentially Adjacent Drive-Through Establishments, respectively. BMC Section 10-1-1608 addresses Drive-Through Restaurants in general, specifying a minimum vehicle stacking distance (queueing length) as well as the design of the drive-through lane. Additionally, this section specifically requires a CUP be approved 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 separate standards for Residentially Adjacent Drive-Through Establishments contained in 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 more detailed standards for minimum vehicle queuing length and identifies design standards for the drive-through lane. These standards currently require an on-site vehicular queuing 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 about 15 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 Drive-Through Restaurants in the City have resulted in a stacking distance that exceed the City's 160-foot minimum, resulting in queueing lines that extend well beyond the private property's designated drive-through lanes and into the public right-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 CUP if specific criteria are satisfied to the satisfaction of the City's Building Official. Therefore, under this Section, an existing Drive-Through Establishment can be converted into a Drive-Through Restaurant without the requisite CUP process that includes the development standards mentioned previously.

## **RESEARCH AND OUTREACH**

As part of the research into the proposed ZTA, staff reviewed the development standards from other similar jurisdictions and met with members of the business community and the public. The research and outreach efforts are summarized below.

### **Research**

Staff researched the development standards for Drive-Through Restaurants in other jurisdictions. The surveyed jurisdictions included Glendale, Pasadena, Los Angeles, Santa Clarita, Long Beach, Marin County, Santa Barbara, San Jose, Laguna Hills, and Placentia. These jurisdictions 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. Except for Santa Barbara, where drive-throughs are banned citywide, and Glendale, which allows drive-throughs by-right in commercial zones, all surveyed jurisdictions required CUP approval for Drive-Through Establishments. A detailed analysis of staff's research is provided in Attachment 4 of this staff report.

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.

### **Public Outreach**

The City Council held two public hearings to consider the negative impacts associated with Drive-Through Establishments, during which the public had the opportunity to comment on the issue. The first public hearing was held on October 4, 2022, during which the City Council voted unanimously for the adoption of an urgency ordinance establishing a moratorium on new and replacement Drive-Through Restaurants and the conversion of businesses with drive-throughs into Drive-Through Restaurants Citywide. The City

Council adopted an extension to the moratorium at a second public hearing held on November 1, 2022, which has since expired.

On March 2, 2023, staff attended a meeting with members of the Property Based Business Improvement District (PBID) to provide an update on the status of the drive-through moratorium and to solicit feedback. The PBID expressed concern that requiring a traffic analysis or parking study could be a barrier for new businesses to operate in the City. The PBID suggested requiring an Administrative Use Permit (AUP) instead of a CUP as the review process to determine if a proposed drive-through would have any significant impacts. Several other possible solutions were offered by the PBID during the meeting, including only allowing mobile ordering in the R-1 (residentially adjacent) zones and further limiting drive-through service hours.

Staff held a community meeting on May 3, 2023, and invited affected businesses, property owners, and the public to attend. Staff provided an overview of the proposed ZTA in detail and answered two questions related to entitlement processing and the availability of draft ZTA materials. No changes to the ordinance were proposed in response to the feedback received at the meeting.

#### **PLANNING COMMISSION RECOMMENDATION**

The Planning Commission considered the proposed Ordinance during a noticed regular public hearing on April 10, 2023 (Attachment 6). During the meeting, the Planning Commissioners voted 5-0 to continue the public hearing and requested staff return with additional information about possible community benefits associated with Drive-Through Restaurants. The Planning Commission voiced concern with the proposed prohibition of new restaurants with drive-throughs both as new development and/or through the conversion of existing businesses with drive-throughs. During the hearing, the Planning Commission expressed concern that the proposed ZTA might result in a fiscal impact to affected businesses and requested that staff directly contact business and property owners affected by the proposed ZTA. The Planning Commission deliberated further, noting that outreach and input from the affected business community would allow the Commissioners to make a more informed decision. Finally, the Planning Commission directed staff to contact each drive-through establishment that would be affected by the proposed ZTA and inform them of the proposed changes to the existing ordinance. The hearing was continued to May 22, 2023, to allow staff the necessary time to gather additional public input from potentially affected business and address the Planning Commissions concerns (Attachment 7).

After the hearing, staff consulted with the Economic Development Division of the Community Development Department and found that drive-through business can be a desirable development opportunity for property owners. Staff also found that drive-through business may have a positive impact on the local economy because they provide “no-contact” services, which allow food delivery to be placed in a secure location within the building after preparation for customer pick-up thereby removing the need for physical contact. These services have become increasingly popular since the start of the COVID pandemic.

In addition, staff found other emerging trends in the restaurant industry, such as mobile ordering solutions, which allow patrons to order food off-site from their mobile phone and pick up food at a designated time without having to wait in a drive-through queuing lane. These innovations have the potential to compete with or be more successful than existing drive-through models because they require less wait time for the patron and may require a smaller footprint for the restaurant.

Staff also identified the affected property and drive-through business owners and provided them with written notice of the May 3, 2023 virtual community meeting through mailed post cards and emails. This ensured that each affected property owner had the opportunity to provide public input and discuss the proposed ZTA concerning Drive-Through Establishments throughout the City.

On May 22, 2023, the Planning Commission considered the new information gathered by staff and after deliberation, voted 3-2 in favor of recommending the proposed ZTA to the City Council for adoption (Attachment 9). Three of the Planning Commissioners (Robert Monaco, Samantha Wick, and Michael Elric) noted that the proposed ZTA would provide the City with the ability to change the vision for Drive-Through Restaurants while creating more options when approving future development, and that the City owed it to the community to create higher standards for Burbank to prevent negative impacts. Chair Rizzotti expressed concern over taking a broad approach and using strict regulations to fix a specific problem, citing the changes to the queuing length requirements and questioning whether any existing sites would meet the new minimum length. Apraham Atteukenian noted his belief that the City should focus on more creative solutions to address potential negative impacts instead of regulations that could potentially discourage these types of businesses from opening in the City.

## **ANALYSIS**

Based on City Council and Planning Commission feedback, community input and concerns, and staff research, staff recommends that several modifications to the BMC be made. The draft ordinance is included as Attachment 1 to this report. The substantive changes are described below.

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, which is measured at the two properties' closest points.

Prohibiting residentially adjacent restaurants with a drive-through from residentially adjacent areas will provide the maximum protection for residential neighborhoods from the potential negative spillover effects such as increased vehicular traffic, noise and light pollution, and litter. Staff believes that these impacts to residential neighborhoods are the most severe consequence of the current regulations, and that these impacts are not easily remedied through other City measures such as neighborhood protection, parking management, and other tools that City has traditionally used to address residentially-adjacent drive-throughs.

Additionally, staff recommends modifying the Use Table to clarify that Drive-Through Establishments are permitted only with approval of a CUP in all designated zones. The inclusion of this modification will ensure that other Drive-Through Establishments (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 10). 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. Staff proposes to rename Section 10-1-1608 with a new heading entitled, "Drive-Through Establishments" to combine regulations for both Drive-Through Restaurants as well as other Drive-Through Establishments such as drive-through retailers, pharmacies, or banks. Staff then proposes to delete Section 10-1-1609 since regulations for Residentially Adjacent Drive-Through Establishments would be relocated into the revised section 10-1-1608. Staff proposes the following text for the revised Section 10-1-1608:

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 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.

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

As discussed above, Staff recommends the deletion of the text for Section 10-1-1609 as currently written.

#### Findings for Approval of a Zone Text Amendment

BMC Section 10-1-1985 addresses the requirements for considering text amendments. The findings for approval of a ZTA are primarily focused on 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 property development standards and report to the City 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 Drive-Through Restaurants, establishing a minimum stacking distance of 300 feet, and limiting the hours of operations from 6 am to 10 pm for all other drive-through establishments unless approved as part of CUP. The Planning Commission has previously reviewed and made a recommendation on this proposed ZTA 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 considered by the Commission after holding a public hearing.



### California Government Code

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

### Consistency with the Burbank2035 General Plan

The proposed ZTA was reviewed for consistency with the Burbank2035 General Plan and was determined to support General Plan Land Use Element Goal 1 (Quality of Life) and Land Use Element 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 provide increased protections for 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 General Plan Land Use Element Policy 1.5, which ensures careful review and consideration of non-residential uses with the potential to degrade quality of life. Requiring a CUP 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 General Plan Land Use Element Goal 3 (Community Design and Character) and Land Use Element Policy 3.5, which seeks to ensure that site design is 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 the 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 General Plan Land Use Element Goal 10 (Commercial Corridors), Policy 10.6, which seeks to ensure that the design of businesses and surrounding public right-of-way maintains the ability of streets and sidewalks to serve pedestrians in commercial corridors.

Additionally, General Plan Mobility Element Goal 6 (Neighborhood Protection), Mobility Element Policy 6.1 seeks to maintain arterial street efficiency to discourage spillover traffic into residential neighborhoods. Furthermore, the ZTA is consistent with General Plan Mobility Element Policy 9.1, which 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 by providing development standards that seek to address vehicle queueing and the blocking of shared lanes of travels for vehicles and bicyclists when vehicle spillover affects the adjacent streets and sidewalks. 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.

### **PUBLIC NOTIFICATION/NOTICE**

Pursuant to BMC 10-1-1994, notice of the public hearing was given by publication once in a newspaper of general circulation in the City on August 23, 2023. Additional notice of the public hearing was provided via certified mail to all Drive-Through Establishments within the City of Burbank on August 16, 2023. The notice included a copy of the proposed ordinance. Finally, notice of the hearing was provided through the City's Public Information Office on social media and through E-notify.

### **ENVIRONMENTAL ASSESSMENT**

The proposed ZTA and associated Ordinance has been reviewed for compliance with the California Environmental Quality Act (CEQA). It is staff's assessment that 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.

### **FISCAL IMPACT**

The ZTA has the potential to reduce future revenue to the City's General Fund. The proposed prohibition of new Drive-Through Restaurants that are residentially adjacent as well as the reduction over time of the number restaurants that may become legal non-conforming with the adoption of the ZTA may result in a reduction of sales taxes from these types of business. Furthermore, future CUP applications for drive-throughs will require the payment of a CUP application fee to prepare public hearing notices and entitlements for Planning Commission consideration.

### **CONCLUSION**

Staff recommends that the City Council adopt the proposed Ordinance and ZTA. The changes outlined in the proposed ZTA are intended to address potential negative impacts, such as inadequate onsite drive-through queuing lanes, vehicular traffic spillover, loitering, noise, and litter, that may be caused 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 all new Drive-Through Establishments, increase the minimum drive-through lane stacking length for vehicles from 160 feet to 300 feet, and establish hours of operation from 6 am to 10 pm.

### **ATTACHMENT**

Attachment 1 – Ordinance

Attachment 2 – Ordinance No. 22-3,979, Interim Urgency Ordinance Establishing a  
Moratorium on New and Replacement Restaurants with Drive-Throughs

Citywide

Attachment 3 – Ordinance No. 22-3982, Extension of Interim Urgency Ordinance No. 22-3,979 Restaurants with Drive-Throughs

Attachment 4 – Staff’s Research on Similar Jurisdictions

Attachment 5 – Burbank Municipal Code Section 10-1-502: Uses in All Zones (excerpt residential zones)

Attachment 6 – April 10, 2023 Planning Commission Staff Report

Attachment 7 – April 10, 2023 Planning Commission Minutes

Attachment 8 – Planning Commission Resolution No. 3455

Attachment 9 – May 22, 2023 Planning Commission Minutes

Attachment 10 – Burbank Municipal Code Section 10-1-1936

Correspondences