



DATE: July 24, 2018

TO: Mayor and City Council

FROM: Development Services Director

SUBJECT: Application to Amend Chapter 10, Article 1 (Zoning Ordinance), Sections 10-1.845.j (5) and (6); and 10-1.1045.j (5) and (6) (Minimum Design and Performance Standards) of the Hayward Municipal Code Related to Drive-Through Restaurants and Drive-Through Coffee/Espresso Shops in the City of Hayward by United Growth Capital Management, LLC. (Applicant), Requiring the Introduction of an Ordinance and the Adoption of a Resolution Approving Zoning Text Amendment Application No. 201802227

RECOMMENDATION

That the City Council approves the proposed Zoning Text Amendment to Chapter 10, Article 1, Sections 10-1.845.j (5) and (6); and 10-1.1045.j (5) and (6) (Minimum Design and Performance Standards) of the Hayward Municipal Code related to drive-through establishments in the City of Hayward by introducing an Ordinance (Attachment II) and adopting the Resolution (Attachment III) with the required Findings and environmental review.

SUMMARY

United Growth Capital Management, LLC (“United Growth”) is requesting approval of a Zoning Text Amendment (ZTA) application to amend the minimum design and performance standards related to drive-through restaurants and drive-through coffee/espresso shops to allow additional flexibility for the establishment of new drive-through facilities in the City within half-mile of another establishment.

Currently, the minimum design and performance standards for drive-through restaurants and coffee/espresso shops prohibit the establishment of any drive-through restaurant or drive-through coffee/espresso shop within half-mile radius of another establishment as measured from the building walls of existing or proposed buildings. The applicant is requesting to amend the current land use prohibition to allow the establishment of these land uses, if certain additional findings can be made related to location.

BACKGROUND

[United Growth](#) is a development and asset management firm that has specialized in the development and redevelopment of first-class retail centers throughout the United States for over twenty years. The primary objective for United Growth is to attract a productive mix of quality restaurant and retail tenants that serve the community and complement its centers and the surrounding area focusing on trade areas with high traffic, excellent visibility, strong demographics, and the ease of property ingress/egress. United Growth has developed and managed projects for clients in the past that include, but are not limited to, The Habit Burger Grill, Bank of America, Five Guys, Petco, Starbucks, Panera Bread, and Dick's Sporting Goods.

Regulation History. Research indicates that zoning regulations and ordinances related to drive-in restaurants were originally introduced in the 1980s that restricted the development of these uses. In 1984, an urgency ordinance was adopted prohibiting the development of new drive-in restaurants which might have conflicted with the studies undertaken by the Planning Department to update drive-in restaurant regulations to address the problems of traffic circulation, litter, and visual impacts created by the proliferation of such uses. Upon completion of the drive-in establishments regulations update in 1986, [Ordinance No. 86-14](#) was introduced and adopted stating that, “[d]rive-in restaurants shall be prohibited within 500-feet of one another when located on and where access thereto is on the same side of a thoroughfare [...]”. Exceptions to this provision existed where drive-in restaurants shared common driveways and there were no other access points from a thoroughfare to the parcel. Since that time, the language was further amended in the 1990s, becoming more restrictive, to the City’s current regulations that now specify a half-mile prohibition regardless of which side of the street.

Council Economic Development Committee. On April 2, 2018, the applicant presented a preliminary concept review at the [Council Economic Development Committee \(CEDC\) meeting](#), where 4 of the 5 CEDC members were present (Michael Ly absent). The purpose of the review was to introduce the preliminary conceptual project and the related policy issue to the CEDC and obtain high-level feedback related to drive-through establishments, particularly drive-through restaurant uses. During the meeting, each of the CEDC members conveyed their comments, concerns, and questions to United Growth and staff regarding potential model tenants, expectations, operational standards (i.e. debris clean-up), and appropriate locations for additional drive-throughs. The minutes of the CEDC meeting are included as Attachment IV.

Planning Commission Recommendation. On July 12, 2018, the [Planning Commission](#) reviewed the proposed text amendment application and voted 4:0:0 (two commissioners absent) to recommend approval to the City Council. There were approximately 6 persons in attendance for the agenda item (including the applicant). The Planning Commission discussed similar points that were raised at the CEDC meeting about bringing unique, healthier businesses to Hayward and how the proposed text amendment would introduce flexibility for those tenants to locate within the City. The Planning Commission also discussed the issue of litter and trash originating from drive-through establishments and how that would be addressed and monitored with the development of new drive-through restaurants.

DISCUSSION

Existing Restaurants. Within the City, there are 23 existing drive-through restaurants that include, but are not limited to, McDonalds, Burger King, Jack in the Box, Taco Bell and Kentucky Fried Chicken. Attachment V includes a map indicating the drive-through restaurants with their half-mile radii. City staff is currently processing two Conditional Use Permit applications for new Starbucks cafes, with one proposed at the new Eden Shores Retail Center and the other at the intersection of Mission Boulevard and Tennyson Road; however, neither application has yet been approved. Based on the map, most of the existing drive-through restaurants are concentrated along major arterial streets such as Mission Boulevard, Jackson Street, Hesperian Boulevard, and Tennyson Road. County records indicate that approximately half of the existing drive-through restaurants in the City were developed in the 1980s, before the adoption of the ½ mile prohibition.

As stated previously, the minimum design and performance standards for drive-through restaurants and drive-through coffee/espresso shops are contained within Sections 10-1.845.j(5) and (6) and 10-1.1045.j(5) and (6) of the [Neighborhood Commercial \(CN\)](#) and [General Commercial \(CG\)](#) zoning districts. One of the most significant performance standards for drive-through restaurants is the prohibition of one or more of these establishments (either restaurant or coffee/espresso shop) within a half-mile of each other. As written, the HMC does not provide a mechanism for special findings, circumstances, or deviations from the prohibition such as a Variance. Currently, the Zoning Ordinance only allows for the development of drive-in establishments with the discretionary review and approval of an [Administrative Use Permit \(AUP\)](#) or [Conditional Use Permit \(CUP\)](#). AUPs may be processed administratively with a staff-level decision, whereas CUPs require the review and approval by the Planning Commission – unless otherwise appealed to next decision-making body. Zoning districts that do conditionally permit drive-through restaurants defer to the minimum performance and design standards section of the CN or CG zoning districts for operational and performance criteria; thus, an amendment to these Districts would apply to all applicable districts Citywide that currently allow drive-in and drive-through establishments, as shown in Table 1 below.

Table 1. Hayward Zoning Districts that Conditionally Permit Drive-In Establishments

ZONING DISTRICT	ENTITLEMENT PROCESS
Commercial Neighborhood (CN)	Conditional Use Permit (CUP)
General Commercial (CG)	Conditional Use Permit (CUP)
Central Business (CB)	Conditional Use Permit (CUP)
Commercial Limited (CL)	Conditional Use Permit (CUP)
Central-City Commercial (CC-C)	Conditional Use Permit (CUP)
Industrial District (I)	Administrative Use Permit (AUP)

South Hayward BART and Mission Boulevard Form-Based Codes (Specific Transect Zones)	Conditional Use Permit (CUP)
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Proposed Amendment. The proposed amendments are related to the minimum design and performance standards for drive-in and drive-through establishments. Specifically, the amendment focuses on the half-mile prohibition to introduce some level of flexibility at select locations in the City, and to continue to minimize the placement of new drive-in and drive-through establishments in walkable, pedestrian friendly areas which are not as auto-oriented.

The proposed text amendment (Attachment II) is proposed to maintain the existing half-mile prohibition, but include additional special required findings within the performance standards that will need to be justified in addition to those of the AUP or CUP to allow for an application to be filed with the Planning Division. The required findings to grant flexibility are proposed to include the following:

- i. The drive-in or drive-through restaurants (and coffee/espresso shops) are located within one-half mile from the Interstate 880 (Nimitz Freeway) or State Route 92 (Jackson Freeway) rights-of-way as measured by the existing roadway network;
- ii. The location of the drive-in or drive-through restaurants (and coffee/espresso shops) will not have a substantial adverse effect on vehicular (including bicycle), pedestrian circulation and safety, or transit accessibility;
- iii. The drive-in or drive-through restaurants (and coffee/espresso shops) will not conflict with City adopted goals and policies including, but not limited to, the General Plan and Bicycle Master Plan; and
- iv. The site is suitable and adequate for the proposed use because the drive-in or drive-through restaurant (and coffee/espresso shops) lanes and service windows will be located at least seventy-five (75) feet away from residential uses and residentially zoned properties.

Such flexibility may be exercised if a project site is within a half-mile of the Interstate-880 (Nimitz Freeway) or State Route 92 (Jackson Freeway). It is important to note that the Jackson Freeway commences at the intersection of Santa Clara Street and West Jackson Street going westbound. East of that intersection is not considered the Jackson Freeway, but instead identified as an arterial City street. This finding will ensure that flexibility is granted for locations in proximity of a major freeway that bisects the City, which are consistent with other auto-oriented land uses.

The second and third findings will ensure that any proposed drive-through restaurant will not adversely impact the City's goal for multi-modal transportation options such as driving, biking, and walking. New drive-through restaurants seeking flexibility from the half-mile prohibition shall remain consistent and not conflict with the goals and policies set forth in the City's Hayward 2040 General Plan (Mobility Element), the Bicycle Mater Plan, or the Complete Streets Strategic Initiative. For example, Downtown Hayward is envisioned as a pedestrian-friendly, mixed-use destination where transit accessibility and walkability is prioritized over

the automobile. As such, a drive-through restaurant may not be appropriate. Additionally, the proposed findings include a requirement for a 75-foot buffer to minimize impacts of the proposed drive-through activities from adjacent residential properties, including impacts associated with additional light, noise, and odors.

In addition to the four new findings being proposed, the project would also need to meet the existing four findings for AUP or CUP issuance:

- a) The proposed use is desirable for the public convenience or welfare;
- b) The proposed use will not impair the character and integrity of the zoning district and surrounding area;
- c) The proposed use will not be detrimental to the public health, safety, or general welfare; and
- d) The proposed use is in harmony with applicable City policies and the intent and purpose of the zoning district involved.

Hayward 2040 General Plan. The zoning districts that conditionally permit the drive-through restaurants and coffee/espresso shops will not change and will remain consistent with the accompanying General Plan land use designations that include allow retail, dining, and service uses as either a permitted or conditionally permitted use. Specifically, the City's General Plan contains policies to ensure that new drive-through establishments do not conflict with, a "variety of topics, including multimodal transportation, regional coordination, complete streets, local circulation, pedestrian facilities, bikeways, public transit, transportation demand management, parking, aviation, goods movement, and transportation funding" (Mobility Element, 2014). If the proposed text amendment is approved, all future development proposals will be evaluated to verify consistency. In addition to the Mobility Element, the proposed text amendment is consistent with the following policies related to Land Use and Community Character as well as the Economic Development Element:

- Land Use Policy LU-5.2 - Flexible Land Use Regulations. To maintain flexible land use regulations that allow the establishment of economically productive uses in regional and community centers.
- Economic Development Policy ED-6.7 - Business Incentives. To provide incentives to attract, expand, and retain businesses that offer high quality jobs, generate local sales tax revenue, and/or provide needed goods or services to residents.

Staff believes that the City Council can make the required findings (Attachment III) to support the Zoning Text Amendment to allow additional flexibility in the location of drive-through restaurants and coffee/espresso shops within the City of Hayward, provided that new establishments conform to the criteria and findings set forth in proposed amendments (Attachment II). These findings will safeguard that new drive-through establishments do not become established in over-concentrated areas of the City or in corridors that do not align with the intent of the zoning district (i.e. Mission Boulevard Corridor Specific Plan Area or Central City Downtown districts). Instead, where appropriate, the drive-through establishments may be allowed to apply close to freeway rights-of-way that already

accommodate traffic and trips to and from the freeway. The placement of drive-through restaurants near freeways allows for motorists and patrons to easily access these establishments for the public convenience.

Staff analysis has determined that based on existing zoning districts coupled with the flexibility granted by the proposed text amendment, potential new opportunity sites for drive-in and drive-through restaurants and coffee/espresso shops would be limited to the following areas: Southland Mall area, portions of “A” Street to and from the I-880, West Winton Avenue and Amador Street (adjacent to County buildings), commercial properties adjacent to the SR-92 entrance at West Jackson and Santa Clara Street, and areas of the Industrial zoning district along the SR-92 and I-880. Attachment VI includes a map indicating the half-mile buffer from the Interstate-880 and State-Route 92 freeways with the existing zoning districts that would conditionally permit drive-in establishments.

In addition, through the Use Permit process, City staff would evaluate that all proposed drive-through restaurants be designed to be compatible and sensitive to the adjacent land uses and structures. The CN and CG districts include general location and design criteria standards that exist today which mandate that drive-in uses not be near sensitive receptors such as schools, parks, playgrounds, libraries, churches, and other public or semi-public uses if pedestrian hazards may result.

Environmental Review. The proposed project is exempt from the California Environmental Quality Act (CEQA) under Section 15061(b)(3), as an activity that is covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment. The proposed project includes a Zoning Text Amendment to the Hayward Zoning Ordinance that will alleviate prohibitions related to the conditionally permitted locations of drive-through restaurants from each other. Future development projects shall still be required to apply for either an AUP or a CUP and would be evaluated on a case-by-case basis for environmental impacts pursuant to CEQA at that time.

ECONOMIC IMPACT

The proposed zoning text amendment would incorporate flexibility into the HMC for the potential development of new drive-in and drive-through restaurants or coffee/espresso shops within the City of Hayward that may provide both direct and indirect economic benefits. Direct economic benefits would include new sources of property and sales taxes from underutilized or vacant properties, whereas the indirect economic benefits would include the creation of new jobs related to the construction, employment, and management of such uses.

Economic impacts related to drive-in and drive-through restaurants and coffee/espresso shops would be more thoroughly evaluated once a site-specific location is identified by a developer and/or tenant that seeks to take advantage of the flexibility proposed by this zoning text amendment.

FISCAL IMPACT

The proposed text amendment would have a neutral fiscal impact in that the proposed regulations would be implemented on a case-by-case basis through the developer funded Use Permit application process.

STRATEGIC INITIATIVES

The proposed text amendment will continue to support the goals and objectives of the Complete Streets Strategic Initiative by requiring that all future developments including drive-in and drive-through restaurants or coffee/espresso shops are evaluated to ensure that multi-modal improvements are incorporated into the project, where possible. These multi-modal improvements may include, but may not be limited to the construction, repair, or replacement of sidewalks, bike lanes, crosswalks, curb ramps, and/or streetlights as determined by the nexus of the impact of any development to the public right-of-way. Thus, the project will continue to support the following goal and objective from the Complete Streets Initiative:

Goal 2: Provide complete streets that balance the diverse needs of users of the public right-of-way.

Objective: Increase walking, biking, transit usage, carpooling and other sustainable modes of transportation by designing and retrofitting streets to accommodate all modes.

SUSTAINABILITY FEATURES

The proposed text amendment only includes a modification to the Hayward Municipal Code, but any future drive-in and drive-through establishments would be reviewed to ensure conformance with State and local requirements related to sustainability (i.e. California Building Code). This includes requirements that new development provide a minimal level of energy efficiency, resource conservation, material recycling, air quality, solar readiness, electrical vehicle charging infrastructure, etc.

PUBLIC CONTACT

On July 13, 2018, a Notice of this Public Hearing for the City Council meeting was published in The Daily Review. If the application is approved by Council, separate Notices of Application Receipt will be sent for any site-specific location that is proposed to develop a drive-through establishment.

NEXT STEPS

If the City Council approves the application, the decision will be effective and final. A second reading and adoption of the Ordinance will occur at the next scheduled City Council meeting.

Prepared by: Marcus Martinez, Assistant Planner

Recommended by: Laura Simpson, AICP, Development Services Director

Approved by:

A handwritten signature in black ink, appearing to read 'K. McAdoo', written in a cursive style.

Kelly McAdoo, City Manager