



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/Esspresso Shops in the City of Hayward by United Growth Capital Management, LLC. (Applicant), Requiring Approval of a Zoning Text Amendment. Application No. 201802227.

RECOMMENDATION

That the Planning Commission recommend to the City Council approval of the proposed Zoning Text Amendment (Attachment III) to Chapter 10, Article 1, Sections 10-1.845.j (5) and (6); and 10-2.1045.j (5) and (6) (Minimum Design and Performance Standards of the Hayward Municipal Code related to drive-through establishments in the City of Hayward based on the required Findings for Approval (Attachment II).

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/esspresso 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/expresso shops prohibit the establishment of any drive-through restaurant or drive-through coffee/esspresso 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 in order to address the problems of traffic circulation, litter, and visual impact 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 to the City’s current regulations which now specify a half-mile prohibition regardless of which side of the street becoming more restrictive.

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.

Public Outreach. On June 29, 2018, a Notice of this Public Hearing for the Planning Commission meeting was published in The Daily Review. If 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.

PROJECT DESCRIPTION

Existing Restaurants. Within the City, there are 23 existing drive-through restaurants which 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, the majority of the existing drive-through restaurants are focused and 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)

Proposed Amendment. The proposed amendments are related 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 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 III) 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 bisect 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.

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.

POLICY CONTEXT AND CODE COMPLIANCE

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.

Council 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.

STAFF ANALYSIS

Staff believes that the Planning Commission can make the required findings (Attachment II) to support the Zoning Text Amendment and recommend approval to the City Council 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 III). 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 which 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 located in close proximity to 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 which 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.

NEXT STEPS

Staff will incorporate input from the Planning Commission and forward the Commission's recommendation to the City Council at a regularly scheduled meeting, tentatively scheduled for July 24, 2018.

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Approved by:



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