



OFFICE OF THE CITY ATTORNEY
Long Beach, California

H-1

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City Attorney

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May 7, 2019

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HONORABLE MAYOR AND CITY COUNCIL
City of Long Beach
California

RECOMMENDATION:

Recommendation to receive supporting documentation into the record, conclude the hearing, and declare ordinance relating to the temporary limitation (moratorium) on the issuance of building permits, conditional use permits, or other entitlements for new drive-through lanes throughout the City, read for the first time and laid over to the next regular meeting of the City Council for final reading; declaring the urgency thereof; and declaring this ordinance shall take effect immediately. (Citywide)

DISCUSSION


On April 9, 2019, the City Council adopted a minute order pursuant to an agenda request which initiated a moratorium relating to the issuance of building permits, conditional use permits, or other entitlements for new drive-through lanes throughout the City. The moratorium was initiated pursuant to the provisions of Chapter 21.50 of the Municipal Code, "Interim Prohibition of Uses."

The attached ordinance, which has been prepared for Council's consideration, establishes a six (6) month moratorium period. During this time, the Development Services Department and the Planning Commission will undertake a study of potential amendments to the Zoning or Building regulations of the City relating to the entitlement or construction of drive-through lanes in the City. The six (6) month moratorium will apply to any application for permits received after April 9, 2019. As of April 9, 2019, there were nine (9) applications on file related to the above described uses. Therefore, for the purpose of this moratorium, there are nine (9) drive-through lane applications that would be exempt from the provisions of the proposed moratorium.

SUGGESTED ACTION:

Approve recommendation.

CHARLES PARKIN, City Attorney

By 
MICHAEL J. MAIS
Assistant City Attorney

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ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF LONG BEACH IMPOSING INTERIM
REGULATIONS ON THE ISSUANCE OF BUILDING
PERMITS, CONDITIONAL USE PERMITS, OR OTHER
ENTITLEMENTS FOR NEW DRIVE-THROUGH LANES
THROUGHOUT THE CITY; DECLARING THE URGENCY
THEREOF; AND DECLARING THAT THIS ORDINANCE
SHALL TAKE EFFECT IMMEDIATELY

WHEREAS, concerns have been raised over the number of applications for
Conditional Use Permits and other entitlements for new drive-through lanes at food and
other business establishments in all parts of the City; and

WHEREAS, residents, Councilmembers, and other stakeholders and
individuals have expressed concern that the current Zoning Regulations may not fully
address the impacts that drive-through lanes may have in the community, especially in
the underserved communities, and the effects of drive-through lanes on the City's major
streets; and

WHEREAS, maintaining the status quo with respect to drive-through lanes
in the City by assuring that no new applications for Conditional Use Permits or other
entitlements are accepted, and no new Conditional Use Permits or other entitlements are
issued, while the City conducts a study on drive-through lanes is consistent with good
planning; and

WHEREAS, the City's planning staff and the Planning Commission will
begin a study of drive-through lane regulations and prepare an implementation plan for
the roll-out of any new regulations; and

WHEREAS, the goal of any new drive-through regulations is to develop

1 comprehensive regulations which recognize and balance the various interests related to
2 drive-through-lanes in a manner tailored to the City's unique needs and community
3 vision, and which are supportive of more walkable and pedestrian friendly environments,
4 and which reflect the land use and zoning policy choices of the City; and

5 WHEREAS, until the drive-through lane policy study is complete and any
6 new regulations are adopted, there is a significant risk that some individuals or entities
7 may make investments in new drive-through lanes that would soon thereafter be illegal,
8 nonconforming, or subject to an amortization program; and

9 WHEREAS, the possibility that construction of drive-through lanes could be
10 incompatible with any new drive-through lane regulations constitutes a current and
11 immediate threat to the public health, safety, or welfare, and approval of Conditional Use
12 Permits or other entitlements for such drive-through lanes would result in a threat to
13 public health, safety, and welfare; and

14 WHEREAS, Chapter 21.50 of the Long Beach Municipal Code empowers
15 the City to enact interim zoning regulations which takes effect immediately upon a
16 showing of urgency;

17 WHEREAS, on April 9, 2019, the City Council adopted a minute order
18 pursuant to an agenda request which initiated a moratorium relating to the issuance of
19 building permits, conditional use permits, or other entitlements for new drive-through
20 lanes throughout the City, and declaring the urgency thereof;

21 NOW, THEREFORE, the City Council of the City of Long Beach ordains as
22 follows:

23 Section 1. Purpose and Findings. At the direction of the City Council, the
24 Development Services Department and the Planning Commission will undertake a study
25 of potential amendments to the Zoning Regulations and Building Codes of the City of
26 Long Beach regulating, limiting or prohibiting drive-through lanes at new establishments
27 throughout the City. The City Council specifically finds that the existing regulations
28 contained in the City's Zoning and Building regulations may be in conflict with the Zoning

1 and Building regulations that are or will be studied by the Development Services
2 Department and the Planning Commission pursuant to the City Council's direction.

3 Section 2. Estimated Time for Completion of Study. It is estimated that
4 the study or studies undertaken in connection with the adoption of this interim ordinance
5 may take the Development Services Department and the Planning Commission
6 approximately six (6) months to complete.

7 Section 3. Prohibition.

8 Notwithstanding any provision of the Long Beach Municipal Code to the
9 contrary, for a period of six (6) months from the effective date of this Ordinance, which
10 would be October 20, 2019, or until a permanent ordinance becomes effective, whichever
11 occurs first:

12 A. No application for a Conditional Use Permit, building permit, or other
13 entitlement for a drive-through lane at any facility, building, or structure in the City shall
14 be accepted.

15 B. No Conditional Use Permit, building permit, or other entitlement for a
16 drive-through lane at any facility, building, or structure in the City shall be issued.

17 C. No building or other permit shall be issued that would result in the
18 conversion of any existing establishment to include a drive-through lane anywhere in the
19 City.

20 Section 4. Exceptions.

21 A. The prohibitions specified in Section 3 of this Ordinance shall not
22 apply to any drive-through construction for which a permit application is required as
23 follows:

24 1. In order to comply with an order issued by the Department of
25 Development Services to repair, remove, demolish or maintain any unsafe or a
26 substandard condition with respect to any existing drive-through lane.

27 2. In order to replace or repair a drive-through lane damaged as
28 a result of fire, earthquake, or other natural disaster, provided that the replacement or

1 repair is not prohibited by any other provision of the Long Beach Municipal Code.

2 B. The prohibitions specified in Section 3 of this Ordinance shall not
3 apply to any Conditional Use Permit, building permit or other entitlement issued for a
4 drive-through lane prior to the effective date of this Ordinance.

5 C. The prohibitions specified in Section 3 of this Ordinance shall not
6 apply to the routine maintenance or repair of existing drive-through lanes provided that
7 the drive-through lane is not enlarged in any manner. During the period of this interim
8 ordinance no drive-through lane shall be removed and replaced for the purposes of
9 modernization, except pursuant to an order issued by the Department of Development
10 Services.

11 D. The prohibition specified in Section 3 of this Ordinance shall not
12 apply to those certain properties as set forth in Exhibit "A" of this Ordinance for which
13 Conditional Use Permits have been approved and building permits are pending or for
14 those properties for which the City has received a complete project application and fees
15 have been paid, all as is specified in Exhibit "A", a copy of which is attached hereto, and
16 incorporated herein, by this reference.

17 Section 5. Severability. If any provision of this Ordinance is found to be
18 unconstitutional or otherwise invalid by any court of competent jurisdiction, that invalidity
19 shall not affect the remaining provisions of this Ordinance which can be implemented
20 without the invalid provision, and, to this end, the provisions of this Ordinance are
21 declared to be severable.

22 Section 6. Applicability of the Zoning Code. The regulations of this
23 Ordinance are in addition to those set forth in the planning and zoning provisions of
24 Chapter 21 of the Long Beach Municipal Code and any other ordinances adopted by the
25 City Council, and do not contain any rights not otherwise granted under the provisions
26 and procedures contained in that Chapter or any other ordinances.

27 Section 7. Urgency Clause. The City Council finds and declares that this
28 ordinance is required for the immediate preservation of the public peace, health and

1 safety for the following reasons. This ordinance is necessary to prevent irreversible
2 development from occurring pending adoption of a permanent ordinance by preventing
3 the issuance of Conditional Use Permits, or other permits for the construction of drive-
4 through lanes at new establishments throughout the City and possibly undermine the
5 recommendations for updating the zoning regulations regarding drive-through lanes.
6 Therefore, this Ordinance shall become effective upon adoption pursuant to Long Beach
7 City Charter Sections 211 and 212.

8 Section 8. The City Council finds and determines that the proposed
9 interim ordinance is not in conflict with the various provisions of the California Coastal Act
10 because, among other things, the proposed interim ordinance does not in any way affect
11 access to or the enjoyment of coastal related activities.

12 Section 9. Declaration of Urgency. This ordinance is an emergency
13 measure, and it is urgently required for the reason that, pending completion of the
14 necessary planning study, and a determination relative to the potential need to amend
15 the Zoning or Building regulations of the City, it is necessary to temporarily prohibit the
16 issuance of Conditional Use Permits, and the development, operation or construction of
17 new drive-through lanes at establishments throughout the City, in order to avoid the
18 adverse impacts that might be inconsistent with the pending revisions to the Zoning or
19 Building regulations of the City being considered during the interim period.

20 Section 10. This ordinance is an emergency ordinance duly adopted by
21 the City Council on May 7, 2019, by a vote of at least five (5) of its members and shall
22 take effect immediately. The City Clerk shall certify to a separate roll call and vote on the
23 question of the emergency of this ordinance and to its passage by the vote of five
24 members of the City Council of the City of Long Beach, and cause the same to be posted
25 in three conspicuous places in the City of Long Beach.

26 Section 11. This ordinance shall also be adopted by the City Council as a
27 regular ordinance, to the end that in the event of any defect or invalidity in connection
28 with the adoption of this ordinance as an emergency ordinance, the same shall,

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1 nevertheless, be and become effective on the thirty-first day after it is approved by the
2 Mayor.

3 Section 12. The City Clerk shall certify to the passage of this ordinance by
4 the City Council of the City of Long Beach and shall cause the same to be posted in three
5 (3) conspicuous places in the City of Long Beach.

6
7 I hereby certify that on a separate roll call and vote which was taken by the
8 City Council of the City of Long Beach upon the question of emergency of this ordinance
9 at its meeting of _____, 2019, the ordinance was declared to be an
10 emergency by the following vote:

11 Ayes: Councilmembers: _____

12 _____

13 _____

14 Noes: Councilmembers: _____

15 _____

16 Absent: Councilmembers: _____

17 _____

18 _____

19 I further certify that on _____, 2019, upon a roll call and
20 vote on first reading of the ordinance, it was adopted by the City Council of the City of
21 Long Beach by the following vote:

22 Ayes: Councilmembers: _____

23 _____

24 _____

25 Noes: Councilmembers: _____

26 _____

27 Absent: Councilmembers: _____

28 _____

1 I further certify that the foregoing ordinance was thereafter adopted on final
2 reading by the City Council of the City of Long Beach at its meeting of
3 _____, 2019, by the following vote:

4 Ayes: Councilmembers: _____
5 _____
6 _____

7 Noes: Councilmembers: _____
8 _____

9 Absent: Councilmembers: _____
10 _____

11 _____
12 Clerk

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15 Approved: _____
16 (Date)

17 _____
18 Mayor

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