

ORDINANCE

AN ORDINANCE FOR THE CITY OF BURLESON, TEXAS, AMENDING SECTION 100-115 “SPECIFIC USE PERMIT” OF SECTION 100 “OT, OLD TOWN OVERLAY DISTRICT” OF ARTICLE IV “OVERLAY ZONING DISTRICTS” OF APPENDIX B “ZONING” OF THE CODE OF ORDINANCES FOR THE CITY OF BURLESON FOR THE PURPOSE OF PROVIDING A SPECIFIC USE PERMIT PROCESS FOR RESTAURANTS WITH A DRIVE THROUGH IN THE OLD TOWN CENTRAL CORE AREA; PROVIDING A CUMULATIVE CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY CLAUSE; PROVIDING FOR PUBLICATION AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Burleson, Texas is a home rule city acting under its charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Local Government Code; and

WHEREAS, the City Council of the City of Burleson has adopted Ordinance B-582 (G0410), being Appendix B– Zoning, Code Of Ordinances, City of Burleson, which establishes zoning regulations and development policies in accordance with the City’s comprehensive land use plan in order to promote health, safety, morals and the general welfare within the City of Burleson; and

WHEREAS, the City Council desires to amend certain portions of Appendix B, Zoning, Article IV, Overlay Zoning Districts, Code of Ordinances, City of Burleson, for the purpose of providing a specific use permit process for restaurants with a drive through in the central core area of the old town overlay district; and

WHEREAS, the City Council desires to amend certain portions of Appendix B, Zoning, Article IV, Overlay Zoning Districts, Code of Ordinances, City of Burleson, for the purpose of providing a specific use permit process for restaurants with a drive through in the central core area of the old town overlay district; and

WHEREAS, the City of Burleson has complied with the notification requirements of the Texas Local Government Code and the Burleson Zoning Ordinance; and

WHEREAS, a public hearing was duly held by the Planning and Zoning Commission of the City on October 11, 2022, and by the City Council of the City on November 14, 2022 with respect to the use changes described herein; and

WHEREAS, the City Council has determined that the proposed ordinance amendment promotes the health, safety, morals and the general welfare within the City of Burleson and is in the best interest of the City of Burleson.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BURLESON, TEXAS:

Section 1. Subsection (a) entitled “Uses allowed with a specific use permit” of Section 100-115 “Specific Use Permit” of Section 100 “OT, old town overlay district” of Article IV “Overlay Zoning Districts” of Appendix B – Zoning of the Code of Ordinances of the City of Burleson is hereby amended to add the following to the list of uses allowed with a specific use permit after “Restaurant or cafeteria (drive in type)” and before “School, business”:

“Restaurant or cafeteria (drive through type) [Old Town central core area only] *[A restaurant or cafeteria (drive-through type) is defined as an establishment principally for the sale and consumption of food which has window service allowing customers to pick up food for off-site consumption; this use may also serve food for consumption on site within the restaurant or for carry-out for off-site consumption, and may or may not have on-site dining facilities.]; however, a specific use permit for this use is allowed only if the following conditions are met:*

- a. The site must be located east of the Union Pacific railroad tracks that run through the area defined as the Old Town Overlay District; and*
- b. A new specific use permit must be applied for with each change of occupancy, land use, and/or Certificate of Occupancy request; and*
- c. A Traffic Impact Analysis shall be required with each specific use permit request for a drive-through to be reviewed and approved by the City’s Traffic Engineer; and*
- d. A commercial site plan showing the placement of the customer ordering windows or ordering devices with adequate stacking of no less than 5 spaces from the customer ordering location, unless otherwise approved by City Council, will be required with each change of occupancy.*

If the specific use permit request is denied following any of the future events specified in (b) above, the site shall be modified to remove or restrict the use of any previously existing drive through.”

Section 2. The findings set forth above in the recitals of this Ordinance are incorporated into the body of this Ordinance as if fully set forth herein.

Section 3. This ordinance shall be cumulative of all provisions of ordinances of the City of Burleson, Texas, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances, in which event the conflicting provisions of such ordinances are hereby repealed. To the extent that the provisions of the City of Burleson’s various development ordinances conflict with this ordinance, the terms of this ordinance shall control.

Section 4. That the terms and provisions of this ordinance shall be deemed to be severable and that if any section, subsection, sentence, clause, or phrase of this ordinance shall be declared to be invalid or unconstitutional, the same shall not affect the validity of any other section, subsection, sentence, clause, or phrase of this ordinance and the remainder of such ordinance shall continue in

full force and effect the same as if such invalid or unconstitutional provision had never been a part hereof.

Section 5. Any complaint, notice, notice of violation, action, cause of action, hearing request, appeal, or claim which prior to the effective date of this Ordinance that has been initiated or arisen under or pursuant to any other ordinance(s) shall continue to be governed by the provision of that ordinance or ordinances, and for that purpose that ordinance or ordinances shall be deemed to remain and shall continue in full force and effect.

Section 6. That it is the intention of the City Council and is hereby ordained that the provisions of this ordinance shall become a part of the Code of Ordinances of the City of Burleson, and that the sections of this ordinance may be renumbered or relettered to accomplish such intention.

Section 7. That it is hereby officially found and determined that the meeting at which this ordinance is passed is open to the public and that public notice of the time, place, and purpose of said meeting was given as required by law.

Section 8. Pursuant to Section 36 of the Charter of the City of Burleson, that this ordinance shall take effect after its passage and publication, and that the City Secretary is hereby directed to give notice of the passage of this ordinance by causing the caption or title and the penalty clause of this ordinance to be published once in a newspaper of general circulation in the city and on the city's website.

Section 9. Any person, firm, association of persons, company, corporation, or their agents, servants, or employees violating or failing to comply with any of the provisions of this article shall be fined, upon conviction, not less than one dollar (\$1.00) nor more than two thousand dollars (\$2,000.00), and each day any violation of noncompliance continues shall constitute a separate and distinct offense. The penalty provided herein shall be cumulative of other remedies provided by State Law, and the power of injunction as provided in V.T.C.A. Local Government Code 54.012 and as may be amended, may be exercised in enforcing this article whether or not there has been a complaint filed.

PASSED AND APPROVED:

First Reading: the _____ day of _____, 20____.

Second Reading: the _____ day of _____, 20____.

Chris Fletcher, Mayor
City of Burleson, Texas

ATTEST:

Amanda Campos, City Secretary

APPROVED AS TO FORM:

E. Allen Taylor, Jr., City Attorney