

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, AMENDING THE TOWN'S ZONING ORDINANCE BY AMENDING EXISTING SUBPART 26, "RESTAURANT," OF SECTION 3.1.4, "CONDITIONAL DEVELOPMENT STANDARDS," OF DIVISION 1, "USE OF LAND AND BUILDINGS," OF ARTICLE 3, "PERMITTED USES AND DEFINITIONS," OF THE TOWN'S ZONING ORDINANCE TO REMOVE THE REGULATION REGARDING RESTAURANTS WITH DRIVE-THROUGHS DEVELOPED ON ADJACENT LOTS; AND AMENDING DIVISION 9, "ADDITIONAL AND SUPPLEMENTAL," OF ARTICLE 4, "DEVELOPMENT REQUIREMENTS," OF THE TOWN'S ZONING ORDINANCE BY ADDING SUBSECTION 4.9.16. REGARDING DRIVE-THROUGH ADJACENCY STANDARDS; PROVIDING FOR A PENALTY; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, after public notice and public hearing as required by law, the Planning and Zoning Commission of the Town of Prosper, Texas, has recommended amending the Town's Zoning Ordinance to encompass those amendments as set forth herein; and

**WHEREAS**, after public notice and public hearing as required by law, and upon due deliberation and consideration of the recommendation of said Planning and Zoning Commission and of all testimony and information submitted during said public hearing, the Town Council of the Town of Prosper, Texas, has determined that it is in the public's best interest and in furtherance of the health, safety, morals, and general welfare of the citizens of the Town to amend the Town's Zoning Ordinance as set forth herein.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, THAT:**

### **SECTION 1**

All of the above premises are hereby found to be true and correct legislative and factual findings of the Town of Prosper, and they are hereby approved and incorporated into the body of this Ordinance as if restated herein in their entirety.

### **SECTION 2**

From and after the effective date of this Ordinance, existing Subpart 26, "Restaurant," of Section 3.1.4, "Conditional Development Standards," of Division 1, "Use of Land and Buildings," of Article 3, "Permitted Uses and Definitions," of the Town's Zoning Ordinance, is hereby amended by removing the regulation regarding restaurants with drive-throughs developed on adjacent lots, to read as follows:

#### **"Article 3     PERMITTED USES AND DEFINITIONS**

#### **Division 1     USE OF LAND AND BUILDINGS**

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#### **§ 3.1.4. Conditional development standards.**

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1. Restaurant.

- a) A Restaurant is permitted by Specific Use Permit in the NS Zoning District and is permitted by right in the O, DTR, R, DTC, C, and CC Zoning Districts subject.
- b) Restaurants with a drive-through are only permitted in the R, C, and CC Zoning Districts upon approval of a Specific Use Permit.
- c) Restaurants are only permitted in the O Zoning District, if the subject property is located along a roadway classified as a major or minor thoroughfare as defined by the Thoroughfare Plan.
- d) The distance requirement from any residential zoning district as established in § 4.9.11 of article 4 applies to restaurants with a drive-through.
- e) Restaurants that sell Alcoholic Beverages for on-premises consumption shall be subject to compliance with the Texas Alcoholic Beverage Code, as amended, and any applicable local option elections.
- f) A Restaurant that sells Alcoholic Beverages for on-premises consumption shall not be located within the following:
  - 1. Three hundred feet from a church, public hospital, public school and/or private school. However, Alcoholic Beverage Sales may be located within 300 feet of a private school if the holder of a license or permit holds a food and beverage certificate covering a premises that is located within 300 feet of a private school; or
  - 2. One thousand feet from a private school if the Town Council receives a request for this additional spacing requirement from the board of the private school, and the Town Council adopts such additional spacing requirements by resolution. Measurement for the distance between a Restaurant or Cafeteria where Alcoholic Beverages for on-premises consumption are sold and a church or public hospital shall be along the property lines of the street fronts, from front door to front door, and in a direct line across intersections.
- g) Measurement for the distance between a Restaurant where Alcoholic Beverages for on- premises consumption are sold and a public and/or private school shall be:
  - 1. In a direct line from the Property Line of the public and/or private school to the Property Line of the place of business, and in a direct line across intersections; or
  - 2. If the Restaurant that sells Alcoholic Beverages for on-premises consumption is located on or above the fifth story of a multistory building, in a direct line from the Property Line of the public and/or private school to the Property Line of the place of business, in a direct line across intersections, and vertically up the building at the Property Line to the base of the floor on which the Restaurant or Cafeteria is located.

- h) If a Restaurant receives 75 percent or more of its gross revenue on a quarterly basis from the sale or service of Alcoholic Beverages for on-premises consumption, the use will no longer qualify as a Restaurant and will be classified and regulated by the Town as an Alcoholic Beverage Establishment under the Zoning Ordinance.
- i) There shall be no variances considered with regard to the regulations set forth herein."

### **SECTION 3**

From and after the effective date of this Ordinance, existing Division 9, "Additional and Supplemental," of Article 4, "Development Requirements," of the Town's Zoning Ordinance, is hereby amended by adding Subsection 4.9.16. regarding drive-through adjacency standards, to read as follows:

#### **"Article 4 DEVELOPMENT REQUIREMENTS**

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#### **Division 9 ADDITIONAL AND SUPPLEMENTAL**

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#### **§ 4.9.16 Drive-through Adjacency Standards.**

Buildings with a drive-through, regardless of the use or size of the drive-through, shall not be adjacent to each other. There shall be a building without a drive-through between any two buildings with a drive-through."

### **SECTION 4**

Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. The Town hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional or invalid.

### **SECTION 5**

All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict, and any remaining portions of said ordinances shall remain in full force and effect.

### **SECTION 6**

Any person, firm or corporation violating any of the provisions or terms of this Ordinance shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by fine not to exceed the sum of two thousand dollars (\$2,000.00) for each offense.

### **SECTION 8**

This Ordinance shall become effective from and after its adoption and publication as required by law; however, the provisions of this Ordinance shall not be applicable to any

residential development or tract of land for which one or more final plats has been approved by the Town as of the effective date of this Ordinance.

**DULY PASSED, APPROVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, ON THIS \_\_ DAY OF \_\_\_\_\_, 2025.**

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**David F. Bristol, Mayor**

**ATTEST:**

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**Michelle Lewis Sirianni, Town Secretary**

**APPROVED AS TO FORM AND LEGALITY:**

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**Terrence S. Welch, Town Attorney**