

**ROSEVILLE**  
**REQUEST FOR CITY COUNCIL ACTION**

Agenda Date: July 22, 2019

Agenda Item: 7.d

Department Approval

*Janice Gundlach*

City Manager Approval

*Sam Truog*

Item Description: Consider adoption of an ordinance amending §1009.02.D.12.c Drive-Through Facilities

**BACKGROUND**

On August 27, 2018, the City Council adopted an interim ordinance (moratorium) in order to review drive-through conditions for properties in the Neighborhood Business District. The purpose of the interim ordinance was to conduct research and determine if the City’s existing conditions are appropriate when applied to a drive-through adjacent to a residentially-used or zoned property. Council was interested in whether a conditional use for a drive-through is appropriate within the NB, Neighborhood Business zoning district. Council expressed particular concern with drive-through users who may not have been the original requestor of the conditional use and whether the controls in place were adequate to address future concerns that may arise.

On May 13, 2019, the Planning Division presented its research from 11 metro area cities zoning regulations to the City Council and sought direction regarding changes to the existing conditional use criteria found in §1009.02.D.12.c of the City Code. As a part of the report, the Planning staff included a recommended change to condition “c” that provides heightened design around the queuing lane. The Council agreed with the proposed changes, but also requested additional language making the criteria a formal condition of approval.

Per direction of the City Council, the Planning Division has revised condition “c”. Below for Planning Commission consideration is the proposed amendment to §1009.02.D.12.c:

**12. Drive-through Facilities:**

- c. The applicant shall submit a circulation plan that demonstrates that the use will not interfere with or reduce the safety of pedestrian and bicyclist movements. Site design shall accommodate a logical and safe vehicle and pedestrian circulation pattern. ~~Adequate~~ **Queuing lane space shall be provided, sufficient to accommodate demand, without interfering with primary driving, entrance, exit, pedestrian walkways, or parking facilities on site. on-site parking/circulation. Such circulation plan meeting the intent of this section shall be made a condition of approval and shall survive any and all users of the drive-through and may need to be amended from time to time to ensure continued compliance with this condition. Said amendments to the circulation plan will require an amendment to the conditional use.**

**PLANNING COMMISSION ACTION**

On July 10, 2019, the Roseville Planning Commission held the duly noticed public hearing regarding the proposed amendment to §1009.02.D.12.c of the Roseville City Code. At the meeting Commissioners did have a few questions of staff pertaining to the intent and expected outcome of the proposed new language. City Planner Paschke and Community Development

35 Director Gundlach provided the Commission with responses to those questions, which provided  
36 the clarity the Commission sought in regards to the revised ordinance language (see Attachment  
37 B). No persons from the public addressed the Planning Commission.

38 The Planning Commission voted 5-0 to recommend approval of the proposed text change to  
39 §1009.02.D.12.c of the Roseville City Code.

40 **SUGGESTED CITY COUNCIL ACTION**

41 Adopt an ordinance amending §1009.02.D.12 Drive-Through Facilities of the Roseville City  
42 Code found in Attachment C.

43 **ALTERNATIVE ACTIONS**

- 44 **a.** Pass a motion to table the item for future action. An action to table must be tied to the need  
45 for clarity, analysis, and/or information necessary to make a recommendation on the request.
- 46 **b.** Pass a motion recommending denial of the proposal. A motion to deny must include findings  
47 of fact germane to the request.

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Attachments: A. CC minutes 05/13/2019 B. PC minutes 07/10/2019  
C. §1009.02.D.12.c draft ordinance

**EXTRACT OF THE MAY 13, 2019 CITY COUNCIL MEETING MINUTES****c. Discuss Possible Amendments to the City Code for Drive-Throughs Adjacent to Residentially Zoned or Used Properties**

City Planner Thomas Paschke briefly highlighted this item as detailed in the RCA and related attachments dated May 13, 2019.

Councilmember Willmus asked how New Brighton's permitting process differ from a Conditional Use Permit or an Interim Use Permit.

Mr. Paschke stated he was not sure but thought special use was not much different than a conditional use. The two are referred to similarly.

Councilmember Willmus stated the reason he was curious about it is does it run with the land. How it is recorded against the property.

Ms. Gundlach replied a special use permit is the same as a conditional use permit and is recorded against the property, runs with the land, not with the user.

Councilmember Willmus asked from staff's perspective, is there a tool that could be brought forward and implement that is specific to the particular use that sought the drive through window. He wondered how this could be tied to a specific use that sought the permit.

Mr. Paschke replied there are very few uses that are actually that similar that perhaps may be able to follow along with the conditions that are there. He used Mudslingers as an example of a small, special use. Each one is unique and if someone else came in because the business closed and that person wanted to start a different business, it would need to be reviewed prior to supporting the new business whether or not that business was able to achieve compliance with the conditions that were placed on that project. The City would require them to go through their separate and own distinct conditional use if those compliances cannot be achieved because it is not the same.

Ms. Gundlach stated her recommendation would be with each one that comes before the Council, try to identify what the Council concern is and what the negative impact is and specifically write a condition to address that, regardless of who the user is.

Mr. Paschke thought the goal throughout this is to try to analyze this accordingly and set the conditions to be set up as best as the future can be foreseen.

Councilmember Etten wondered if a way to get at some of that is to look at somewhere along the lines of the following: "If the approved pattern is changed, there is an intensification of use or conditions on the property change in a way that impacts pedestrian, bicycle or auto traffic movements, a new sight plan or traffic pattern must be approved." Essentially if there is additional or new stuff happening, then City staff would look at this again. He wondered if this was too restrictive whether it be a new applicant or someone continuing the current use.

Ms. Gundlach stated in her experience the City might want to get in the habit with every Conditional Use (CU) for a drive through to place a condition of approval that the business has to have an approved circulation plan to get at those things talked about. That could be made a specific condition of approval, get the plan, attach it to the resolution, and if the business does not comply with that plan, regardless of who the user is, then the business is

40 not complying with the condition and the business has to come back and ask for an  
41 amendment to the CU. She noted this does not necessarily need to be written into the  
42 Ordinance. The City could, as a condition of approval, but could as a habit of making that a  
43 condition on every drive through CUP the Council looks at.

44 Mr. Paschke stated the intensification aspect might be a little more difficult to monitor and  
45 measure.

46 Councilmember Etten stated to him, any of this would apply to anywhere in the City. He  
47 asked if staff wanted to create a separate condition.

48 Mr. Paschke stated currently it would.

49 Mayor Roe asked whether staff would actually make that circulation plan a part of the  
50 specific approved Conditional Use for that site.

51 Ms. Gundlach confirmed that was correct and included attaching a specific site plan to that  
52 use. She stated the City already has the regular condition in the CU language.

53 Councilmember Willmus stated when the site plan changes the conditional use comes back.

54 Mr. Paschke stated or if the site plan changes too dramatically it would come back.

55 Councilmember Etten supported that.

56 Ms. Gundlach reported staff did add the language in the one condition, “sufficient to  
57 accommodate demands”.

58 Mayor Roe questioned if it made sense in the Ordinance to state “The circulation plan that  
59 demonstrates all that, which shall be made a part of the CU permit,” more specific language  
60 that states the plan actually becomes a part of the Conditional Use approval so future  
61 councils and future Staff know that a plan just does not need to be submitted but rather the  
62 plan is part of the approval and it goes with the approval.

63 Mr. Paschke stated that could be added and there will be other conditions that typically  
64 become part of those approvals as well that are not really discussed either.

65 Ms. Gundlach stated the nice thing about adding it to the Ordinance as well is that the users  
66 that are looking at the Ordinance before contacting staff are already put on notice that this is  
67 an expectation.

68 Mayor Roe did not think there were any other questions or comments from the Council.

69 Mr. Paschke stated staff will work on adding what was discussed and will go forward to the  
70 Planning Commission and then the City Council.

**Extract of the Draft Minutes from the July 10, 2019, Roseville Planning Commission Meeting**

**6. Public Hearing**

**a. Consideration of a Proposed Amendment to Section 1009.02.D.12, Drive Through Facilities (PROJ0017-Amdt 36)**

Chair Gitzen opened the public hearing for PROJ0017-Amdt 36 at approximately 6:41 p.m. and reported on the purpose and process of a public hearing. He advised this item will be before the City Council on July 22, 2019.

City Planner Paschke summarized the request as detailed in the staff report dated July 10, 2019.

Member Pribyl asked in the research staff did of other Metro Area cities, did most of them also have a requirement for a circulation plan that might be amended.

Mr. Paschke stated not all of them did. He thought there may have been two related to that. He would have to say that out of all of the community's staff looked at that had requirements, Roseville's was either as consistent or had more criteria or conditions to be reviewed to better protect the adjacent property owners. This one was something staff gleaned from just one community in particular.

Member Pribyl stated specifically what she was wondering about was the phrase "need to be amended from time to time", she wondered if other jurisdictions had more specifics on when that would be triggered. As a business owner she would like to know what would trigger this amendment.

Mr. Paschke thought this was an unknown and there are times that projects have conditions on them that leave certain things to the discretion of the City. It is going out and inspecting the site to determine whether or not the traffic flow for instance, more through a drive through or the stacking isn't being achieved because of the use or maybe the demand on parking is such that there needs to be additional parking installed. This is a way to get at that and from time to time staff might have to review a site because of calls or see an issue and then decide afterwards. It gives staff flexibility to not have to put in an emphatic type of determination as to when something might occur. It gives staff some discretion to work with property owners.

Member Kimble asked if there were any known drive throughs where there is not a circulation and that have been problematic. She wondered if that was part of the background for bringing this forward.

Mr. Paschke stated he did not know of one in particular, specifically.

Member Sparby stated he was a little unclear from the staff report just exactly what outcome the City gets by adding this specific language.

Mr. Paschke thought the outcome the City gets is that the person going through the process understands that if the business is super successful there might be problems in the future and that will need to be remedied somehow because the business may not achieve compliance with this condition. Those are things that nobody can determine at this point

39 in time, how success a business might be. This allows the City to deal with that and also  
40 allows the City to work with sites that staff determines might be having an issue.

41 Member Sparby asked if this will allow for a permitted use of just updating the language  
42 for a Conditional Use.

43 Mr. Paschke stated this will be across the board and not just for neighborhood business.  
44 This is for every District that would be allowed a drive through. The moratorium was  
45 specific for Neighborhood Business, but this condition is unilateral to every drive  
46 through. The conditions are not just for District specific.

47 Member Sparby asked if this is giving the City more authority to come in and make  
48 amendments to circulation plans.

49 Mr. Paschke stated this will allow the City to work with individuals on making the drive  
50 through flow and work better, whatever that might be.

51 Member Kimble thought the practical outcome is a little bit interesting because a person  
52 would assume for the most part if it is being paid attention to going in that there would be  
53 circulation in the plan and if there is a problem, she questioned how much would be able  
54 to be fixed. How much land is left, etc. because there usually is not a lot of excess land  
55 left on these kinds of sites. She thought it seemed odd to her.

56 Member Sparby stated he was trying to get more clarity as to how this is going to help the  
57 City staff work with an applicant that wants to have a drive through. What benefit does  
58 the City get for adding this language.

59 Mr. Paschke thought the City staff gets awareness and everyone will have to pay  
60 attention to circulation, the drive through in particular because those are two different  
61 things. The drive through is separate from site circulation and there should not be too  
62 many conflicts.

63 Member Sparby asked if this gives the City a better avenue for staff to go in and work on  
64 an ongoing basis on the circulation plan.

65 Mr. Paschke stated it is tied to the drive through but circulation of vehicles on the site.

66 Community Development Director Gundlach stated a point to make and which has not  
67 been made yet is when staff discussed this issue with the City Council and one of the  
68 Council's concerns was the drive through that was in question there was not necessarily a  
69 concern, it was once those Conditional Uses were approved for that initial business that  
70 asked for it and that business left and some other business came in and picked up under  
71 that same Conditional Use would that drive through work for the new business even if the  
72 new business was so much different than the business that originally got the Conditional  
73 Use.

74 Ms. Gundlach stated the idea behind the research was how could staff tweak the language  
75 to better be able to work with the people who maybe were not the original applicants for  
76 those Conditional Uses and then bring them back to the table to make some tweaks to that  
77 site to comply with the intent of the Ordinance. That is where the "Sufficient to  
78 Accommodate Demand" came in and where some of that more specific language about  
79 "primary driving entrance/exit, pedestrian walkways" and the second two sentences she

80 thought Mr. Paschke already alluded to is that it is already kind of engrained in a  
81 Conditional Use so why does the City have to have it as language in the Condition,  
82 Ms. Gundlach thought the Council's concern was for those people who are coming in and  
83 picking up on a Conditional Use that was already granted, those new owners are already  
84 aware that this is the expectation, regardless of this site already having a Conditional Use.  
85 Member Sparby indicated the clarification helped a lot.  
86 Chair Gitzen indicated the Conditional Use goes with the property so this will alert the  
87 new owners that there are some things that will needed to be looked at. He thought the  
88 intent was to make it clear on how the City can control it with the new owner.

89 **Public Comment**

90 No one came forward to speak for or against this request.

91 **MOTION**

92 **Member Kimble moved, seconded by Member Kruzel, to recommend to the City**  
93 **Council approval of the proposed Amendment to Section 1009.02.D.12, Drive**  
94 **Through Facilities (PROJ0017-Amdt36).**

95 **Ayes: 5**

96 **Nays: 0**

97 **Motion carried.**

98

City of Roseville

ORDINANCE NO. \_\_\_\_

AN ORDINANCE AMENDING §1009.02.D (CONDITIONAL USE – SPECIFIC CRITERIA) OF THE ROSEVILLE CITY CODE

The City Council of the City of Roseville does ordain:

SECTION 1. §1009.02.D.12.c (Conditional Use – Specific Criteria for Drive-Throughs) is hereby amended as follows:

12. Drive-through Facilities:

- c. The applicant shall submit a circulation plan that demonstrates that the use will not interfere with or reduce the safety of pedestrian and bicyclist movements. Site design shall accommodate a logical and safe vehicle and pedestrian circulation pattern. Adequate-Queuing lane space shall be provided, **sufficient to accommodate demand,** without interfering with **primary driving, entrance, exit, pedestrian walkways, or parking facilities on site.** ~~on-site parking/circulation.~~ **Such circulation plan meeting the intent of this section shall be made a condition of approval and shall survive any and all users of the drive-through and may need to be amended from time to time to ensure continued compliance with this condition. Said amendments to the circulation plan will require an amendment to the conditional use.**

SECTION 2. Effective Date. This ordinance amendment to the Roseville City Code shall take effect upon passage and publication.

Passed this 22nd day of July, 2019.