

ORDINANCE NO. 86 0424-D

AN ORDINANCE AMENDING CHAPTERS 13-2 (ZONING) AND 13-2A (REVISED ZONING REGULATIONS) OF THE AUSTIN CITY CODE OF 1981, AS AMENDED; AMENDING THE DEFINITION OF RESTAURANT USES IN SECTIONS 13-2-1, 13-2A-1725, 13-2A-1726 AND 13-2A-1727 THEREOF; ADDING NEW SECTIONS 13-2-104 AND 13-2A-4300 THERETO PROVIDING FOR A DETERMINATION OF RESTAURANT USES AT APPLICATION AND PROVIDING REGULATIONS FOR SERVICE OF ALCOHOLIC BEVERAGES IN RESTAURANT USES; PROVIDING FOR ENFORCEMENT BY AUDIT UPON COMPLAINT; AMENDING THE USE DISTRICT REGULATIONS IN ACCORDANCE WITH THE PROVISIONS OF THIS ORDINANCE; AMENDING SUBSECTION 13-2A-6850(a) TO PROVIDE FOR A MONTHLY AUDIT UPON COMPLAINT; PROVIDING FOR SEVERABILITY; SUSPENDING THE RULE REQUIRING THE READING OF ORDINANCES ON THREE SEPARATE DAYS; AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. That the definition of "restaurant" in Section 13-2-1 of the Austin City Code of 1981, as amended, be and is hereby amended to read as follows:

Restaurant The term "restaurant" may refer to one of the following use types: restaurant (drive-in, fast-food), restaurant (limited), or restaurant (general).

PART 2. That definitions for the terms restaurant (drive-in, fast-food), restaurant (limited), and restaurant (general) be and are hereby added to Section 13-2-1 of the Austin City Code of 1981, as amended, to read as follows:

Restaurant (Drive-in, Fast-food).

A use engaged in the preparation and retail sale of food and beverages, excluding alcoholic beverages, in a ready-to-consume state, with one or more of the following characteristics: (1) it serves ready-to-eat foods, frozen deserts, or beverages in edible or paper, plastic or disposable containers; (2) it serves foods that customers carry to the restaurant's seating facilities, to motor vehicles, or off-premises; (3) it serves foods through a drive-through window. This includes any and all drive-in restaurants.

Restaurant (limited). A use engaged in the preparation and retail sale of food and beverages, excluding alcoholic beverages, for on-premise consumption. Typical uses include soda fountains, ice cream parlors, and coffee shops. Fast-food and drive-in restaurants are deemed not to be within this definition.

Restaurant (general). A use engaged in the preparation and retail sale of food and beverages, which may include the on-premise sale,

service, and consumption of alcoholic beverages as an accessory and secondary use. Typical uses include diners, dinner-houses, fast food restaurants. A business offering only hors d'oeuvres or desserts is deemed not to be within this definition.

PART 3. That a new Section 13-2-104 be and is hereby is added to the Austin City Code of 1981, as amended, to read as follows:

(a) Determination of Restaurant Use

A restaurant (general), as defined in Section 13-2-1 of this Chapter, shall demonstrate the following at the time of any permit application:

- (1) The restaurant must contain adequate kitchen facilities for the preparation of the food to be sold. The adequacy of the kitchen facilities shall be based upon the seating capacity of the restaurant and the type of menu offered.
- (2) The menu must provide a variety of entrees to be available to the general public and list all food items for sale and the price of each item.

(b) Service of Alcoholic Beverages

Beer and wine and alcoholic beverages may be served in a use designated as a restaurant (general), in accordance with Section 13-2-1 of this Chapter, under the following conditions:

- (1) At least fifty-one (51) percent of the gross income of a restaurant shall be derived from the sale of prepared food.
- (2) A restaurant use for which a late-hours permit has been applied for from the Texas Alcoholic Beverage Commission shall require a special permit if located on property to which the compatibility standards (section 13-2A-4700 et. seq.) would apply under the conditions described in section 13-2A-4702 and are not waived pursuant to section 13-2A-4740.
- (3) An outside sign, separate identification, or advertising of any type shall be allowed for the area within the restaurant devoted to the preparation, sale and primary consumption of alcoholic beverages only if such advertising is incidental to, in conjunction with, and under the name of the primary restaurant use. The area within the restaurant devoted to the preparation, sale and primary consumption of alcoholic beverages may not be operated or advertised under a name other than that of the primary restaurant use.

- (4) Live entertainment may be permitted; provided, however, that amplified sound not exceed 70 decibels when measured at the property line of the licensed premises, as that term is defined in the Texas Alcoholic Beverage Code.

(c) Audit Procedure

Whenever the building official, on the basis of a sworn complaint from any credible person, determines that a violation of this chapter exists, he may require any person serving alcoholic beverages as an incidental use to provide the City, within ten days of notification, a verified audit for each month of the previous calendar year, showing the gross income derived from the sale of alcoholic beverages and the gross income derived from the sale of food. The audit report shall include any documents requested by the building official, including tax documents submitted to the State taxing authorities. Failure to produce documents requested under this paragraph shall constitute prima facie evidence of a violation of this chapter.

PART 3. That section 13-2A-1725 of the Austin City Code of 1981, as amended, be and is hereby amended to read as follows:

1725 RESTAURANT (DRIVE-IN, FAST-FOOD)

A use engaged in the preparation and retail sale of food and beverages, excluding alcoholic beverages, in a ready-to-consume state, with one or more of the following characteristics: (1) it serves ready-to-eat foods, frozen deserts, or beverages in edible or paper, plastic or disposable containers; (2) it serves foods that customers carry to the restaurant's seating facilities, to motor vehicles, or off-premises; (3) it serves foods through a drive-through window. This includes any and all drive-in restaurants.

PART 4. That section 13-2A-1726 of the Austin City Code of 1981, as amended, be and is hereby amended to read as follows:

1726 RESTAURANT (LIMITED)

A use engaged in the preparation and retail sale of food and beverages, excluding alcoholic beverages, for on-premise consumption. Typical uses include soda fountains, ice cream parlors, and coffee shops. Fast-food and drive-in restaurants are deemed not to be within this definition.

PART 5. That section 13-2A-1727 of the Austin City Code of 1981, as amended, be and is hereby amended to read as follows:

1727 RESTAURANT (GENERAL)

A use engaged in the preparation and retail sale of food and beverages, which may include the on-premise sale, service,

and consumption of alcoholic beverages as an accessory and secondary use. Typical uses include diners, dinner-houses, fast-food restaurants. A business offering only hors d'oeuvres or desserts is deemed not to be within this definition.

PART 6. That section 13-2A-4300 be and is hereby added to the Austin City Code of 1981, as amended, to read as follows:

4300 RESTAURANTS

(a) Determination of Restaurant Use

A restaurant (general), as defined in Section 13-2A-1727 of this Chapter, shall demonstrate the following at the time of any permit application:

- (1) The restaurant must contain adequate kitchen facilities for the preparation of the food to be sold. The adequacy of the kitchen facilities shall be based upon the seating capacity of the restaurant and the type of menu offered.
- (2) The menu must provide a variety of entrees to be available to the general public and list all food items for sale and the price of each item.

(b) Service of Alcoholic Beverages

Beer and wine and alcoholic beverages may be served in a use designated as a restaurant (general), in accordance with Section 13-2A-1727 of this Chapter, under the following conditions:

- (1) At least fifty-one (51) percent of the gross income of a restaurant shall be derived from the sale of prepared food.
- (2) A restaurant use for which a late-hours permit has been applied for from the Texas Alcoholic Beverage Commission shall require a special (conditional use - instead of special) permit if located on property to which the compatibility standards (section 13-2A-4700 et. seq.) would apply under the conditions described in section 13-2A-4702 and are not waived pursuant to section 13-2A-4740.
- (3) An outside sign, separate identification, or advertising of any type shall be allowed for the area within the restaurant devoted to the preparation, sale and primary consumption of alcoholic beverages only if such advertising is incidental to, in conjunction with, and under the name of the primary restaurant use. The area within the restaurant devoted to the preparation, sale and primary consumption of alcoholic beverages may not be

operated or advertised under a name other than that of the primary restaurant use.

- (4) Live entertainment may be permitted; provided, however, that amplified sound not exceed 70 decibels when measured at the property line of the licensed premises, as that term is defined in the Texas Alcoholic Beverage Code.
- (5) The building official may order a verified audit, including documents submitted to taxing authorities, pursuant to section 13-2A-6850. Failure to timely produce requested documents shall be prima facie evidence of a violation of this chapter.

PART 7. That subsection 13-2A-6850 (a) of the Austin City Code of 1981, as amended, be and is hereby amended to read as follows:

- (a). For restaurants serving alcoholic beverages as an incidental use, or for establishments selling alcoholic beverages as provided in section 13-2A-1680 ("Food Sales") of this chapter, a verified audit for each month of the previous calendar year, showing the gross income derived from the sale of alcoholic beverages and the gross income derived from the sale of food. The audit report shall include any documents requested by the building official, including tax documents submitted to the State taxing authorities. Failure to produce documents requested under this paragraph shall constitute prima facie evidence of a violation of this chapter.

PART 8. That restaurant (convenience) be and is hereby deleted from the list of permitted uses in sections 13-2A-2477(a), 13-2A-2502(a), 13-2A-2453(a), 13-2A-2512(b), 13-2A-2527(b), 13-2A-2537(b), 13-2A-2552(b), 13-2A-2562(a), 13-2A-2577(b), 13-2A-2627(a), 13-2A-2642(a), 13-2A-2652(a), and 13-2A-2677(a) of the Austin City Code of 1981.

PART 9. That restaurant (limited) be and is hereby added to the alphabetical listing of permitted uses in sections 13-2A-2477(a), 13-2A-2453(a), and 13-2A-2677(a) of the Austin City Code of 1981.

PART 10. That restaurant (general) be and is hereby added to the alphabetical listing of conditional uses in section 13-2A-2678(a) of the Austin City Code of 1981.

PART 11. That restaurant (drive-in, fast-food) be and is hereby added to the alphabetical listing of permitted uses in sections 13-2A-2502(a), 13-2A-2512(b), 13-2A-2527(b), 13-2A-2537(b), 13-2A-2552(a), 13-2A-2562(a), 13-2A-2577(b), 13-2A-2627(a), 13-2A-2642(a), 13-2A-2652(a), and 13-2A-2677(a) of the Austin City Code of 1981.

PART 12. That a new subsection 13-2A-2478(b) be and is hereby added to the Austin City Code of 1981, to read as follows:

(b). Conditional Uses

Restaurant (drive-in, fast-food)

PART 13. That Table 2900 of Chapter 13-2A of the Austin City Code of 1981 be and is hereby amended in accordance with the provisions of this ordinance.

PART 14. If any provision, section, subsection, sentence, clause or phrase of this ordinance, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void, or invalid, the invalidity of the remaining portions of this ordinance shall not be affected thereby, it being the intent of the City Council in adopting this ordinance that no portion thereof or provisions, or regulations contained herein, shall become inoperative or fail by reason of any unconstitutionality of any other portion hereof and all provisions of this ordinance are declared to be severable for that purpose.

PART 15. The rule requiring that ordinances shall be read on three separate days is hereby suspended.

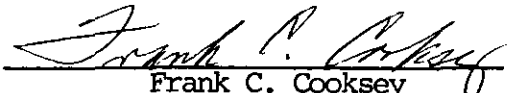
PART 16. That this ordinance shall become effective ten days after its passage.

PASSED AND APPROVED

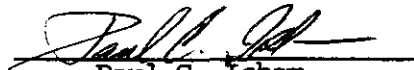
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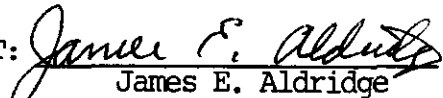
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Frank C. Cooksey
Mayor

APPROVED:


Paul C. Isham
City Attorney

ATTEST:


James E. Aldridge
City Clerk

Wmc:saf
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