

Pedestrian and Bicycle Access at Drive-Through Facilities: Staff Report

Background:

In the fall of 2016, both the Bicycle Advisory Council (BAC) and Pedestrian Advisory Council (PAC) discussed city policies regarding access at drive-through facilities, and in particular how the following City Codes are interpreted and enforced:

25-2-813 - DRIVE-THROUGH FACILITY: A business that has a drive-through facility but does not have walk-in service must provide safe and convenient access for pedestrians to the drive-through facility.

25-2-592 - DRIVE-IN SERVICES: A business that offers a drive-in service must provide a similar service for a pedestrian that does not require the pedestrian to stand or walk in a vehicle lane. *Note: this only applies to property zoned central business (CBD) or downtown mixed use (DMU).*

Key questions raised during BAC and PAC discussions:

- How are the above ordinances currently interpreted and enforced by the City?
- Does the City currently require that businesses with drive-through facilities also service people walking and people on bikes at all times of day? If so, how? If not, why?
- Do current practices allow businesses to discriminate against certain modes of travel and people with disabilities?
- What could be done through enforcement of current policy or through policy change, if anything, to require access to these businesses' services for all modes at all times of day? I.e., where in city ordinance is this issue addressed and which department(s) address this issue?

Resulting PAC/BAC motions on this topic:

Bicycle Advisory Council, October 18, 2016: *The BAC requests that city staff, including Austin Transportation, Planning and Zoning, Law, and others provide a report looking into how the City of Austin can require that businesses offer bicycle access concurrently with motor vehicle access in a drive-through.*

Pedestrian Advisory Council, November 7, 2016: *The PAC requests that city staff, including Austin Transportation, Planning and Zoning, Law, and others provide a report looking into how the City of Austin can require that businesses across the city offer pedestrian service concurrently with drive-through and drive-in motor vehicle service. This includes, among other issues, considering amending the Land Development Code as it pertains to drive-in and drive-through services.*

Staff response:

Staff from the Austin Transportation Department contacted the Law Department, Planning and Zoning Department, the Austin Police Department, the Development Services Department and the Americans with Disabilities Act (ADA) Office to compile the following information.

The Land Development Code Section 25-2-813 (Drive-Through Facility) and 25-2-592 (Drive-In Service) are both construction/development regulations intended to outline provisions for drive through facility requirements as it relates to their design, planning and/or construction phases. These regulations apply to new construction projects that begin after the effective date of the ordinance that created the City Code section. Compliance with Section 25-2-813 and 25-2-592 are evaluated by the Development Services Department during site plan review and construction processes.

These requirements do not currently provide a right to service or obligate a business to serve a pedestrian or cyclist in a drive-through. To require all businesses to allow all pedestrians and cyclists to use a drive-through if walk-in service is not available, then the City Code must be amended. City staff does not have a specific recommendation to offer at this time regarding which section of the code would need to be amended or proposed language for such an amendment.

Changes to the Land Development Code are currently being pursued through the City's CodeNEXT process, led by the Planning and Zoning Department. In the recently-released CodeNEXT Tracking Matrix, which compares the current Title 25 Land Development Code (LDC) to the proposed Title 23 LDC, CodeNEXT staff noted that Section 25-2-813 Drive-Through Facility in the current LDC is reflected in Section 23-4E-6140 Drive Through in the proposed LDC, and that the proposed LDC "rolled forward and expanded existing regulations." The proposed requirements for pedestrian access in the draft LDC state that "[a] business that has a drive-through facility but does not have walk-in service must provide safe and convenient access for pedestrians to the drive-through facility" and that "[a]n on-site pedestrian walkway shall not intersect a drive-through aisle."

The Americans with Disabilities Act (ADA) dictates federal accessibility requirements on public accommodations. The Americans with Disabilities Act (ADA) Title 3 enforcement guidelines generally require that mobility devices, such as wheelchairs, scooters, etc., be allowed where pedestrians are allowed. If all pedestrians are restricted from walking or riding a bicycle through a drive-through lane at a business, this may not be a disability access issue. There is a federal class action lawsuit pending on this topic that may offer more clarity once the court's opinion is delivered. City staff do not have any additional information on this pending law suit at this time.

If an individual with a disability feels they have been denied access to obtain goods and services in a public accommodation (such as a restaurant), then they may file a complaint with the City's Equal Employment/Fair Housing Office, which enforces the City's public accommodations requirements in Chapter 5-2 (Discrimination in Public Accommodations).

Staff recommendations:

Staff recommends that PAC and BAC members interested in pursuing this type of requirement consider:

- Taking action on a recommendation regarding this topic.
- Participating in the CodeNEXT public input process.
- Contacting relevant boards and commissions, specifically the Planning Commission, the Codes and Ordinances Joint Committee, and the Human Rights Commission, to request that they consider taking action on this topic.
- Contacting their Council member to discuss this idea.

Resources:

- CodeNEXT Community Engagement webpage
 - Full Draft Land Development Code + CodeNEXT Tracking Matrix
- Development Services Department code amendment process webpage (includes a visual flowchart)
- New drive-through proposals come with east Portland ban and bicycle access requirement
 - Blog post covering a proposed zoning code change in the city of Portland that could require all businesses to serve bicycle riders when other entrances are closed.