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**SUBJECT:** Consideration and possible amendment of a conditional use permit (CUP 00-04-A1) for the Deer Ridge clubhouse, located at 801 Foothill Drive, south of Balfour Road (APN 007-100-131).

**DEPARTMENT:** Community Development Department

**STAFF:** Erik Nolthenius, Planning Manager

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### **TITLE/RECOMMENDATION**

Staff recommends that the Planning Commission adopt Resolution No. 24-008, approving an amendment to Conditional Use Permit No. 00-04 (CUP 00-04-A1) for the Deer Ridge clubhouse, located at 801 Foothill Drive, south of Balfour Road (APN 007-100-131).

Amendment of the conditional use permit is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 (Existing Facilities) of the CEQA Guidelines and; therefore, no further environmental review is required.

### **OWNER/APPLICANT**

Sean McCauley Investments/City of Brentwood

### **GENERAL PLAN**

The General Plan designates the project site as Semi-Public Facility (SPF), consistent with its historical use associated with the Deer Ridge Golf Club.

### **ZONING/SURROUNDING LAND USES**

The zoning of the project site is PD (Planned Development) No. 20 (Open Space/Golf Course). Surrounding land uses are as follows:

North – Deer Ridge Golf Club

East – Foothill Drive with single-family homes beyond

South – Single-family homes and Spyglass Drive beyond

West – Deer Ridge Golf Club

### **PREVIOUS ACTION(S)**

Previous actions related to this agenda item are listed on Attachment 1.



## **BACKGROUND**

### **DEER RIDGE DEVELOPMENT AND GOLF COURSE**

The Deer Ridge development, which includes over 1,000 single-family homes and the currently closed Deer Ridge Golf Club, was approved by the City Council in 1993. Project construction began in the late 1990's, and on August 29, 2000, the Planning Commission approved a conditional use permit (CUP 00-04) to allow for various improvements associated with the golf course. This included a 9,000 square foot clubhouse, a driving range and putting green, a 500 square foot pool cabana with a 260 square foot restroom facility, and a 4,000 square foot maintenance building.

CUP 00-04 provided that it would "terminate on August 29, 2001, one (1) year from the effective date of the granting, unless actual operation under valid permits has begun within said period or written request has been submitted to the City for an extension of time as allowed under the Zoning Ordinance." That termination date was later extended to August 29, 2002.

### **DEER RIDGE CLUBHOUSE**

Among other uses, CUP 00-04 allowed for the development of a clubhouse of up to 9,000 square feet, consisting of a "pro-shop, dining room/bar, office and bathrooms, a driving range and putting green, a 500 square foot pool cabana with a 260 square foot restroom facility, and a 4,000 square foot maintenance building." While the golf course was in operation, the pro-shop, dining room and bar, office and bathrooms, driving range and putting green were all developed. The pool/cabana facility and maintenance building were never constructed.

In addition to permitting construction and use of the clubhouse, the CUP contains 19 specific conditions of approval (see attached Resolution No. 00-57). Construction of the clubhouse and related improvements began in 2002, and was completed in 2004.

The irregularly-shaped 8.34-acre clubhouse parcel is located on the west side of Foothill Drive, approximately  $\frac{3}{4}$  mile south of Balfour Road. It is currently developed with the clubhouse, a parking lot, landscaping, lighting, entry monumentation, cart paths and other hardscape areas, and a vacant pad for a previously approved temporary "hospitality pavilion" that was removed several years ago. While the golf course and clubhouse have been closed for some time, the clubhouse parcel was purchased by Sean McCauley Investments in 2023.



### **PARAMETER PLAN OVERVIEW**

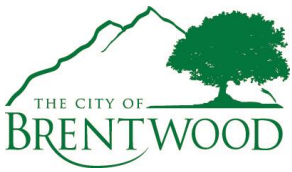
On April 16, 2023, the new property owner sent the City a letter, which was accompanied by a preliminary conceptual proposal for the reuse and redevelopment of portions of the Deer Ridge clubhouse site. The proposal was titled a "Parameter Plan Overview," and was not a final or complete development application. The property owner asked for staff's guidance on which of the elements of the "Parameter Plan Overview" could be allowed under the property's existing CUP and applicable land use regulations. Among other elements, the Parameter Plan Overview included a proposal to open a new restaurant in the existing clubhouse building and install new landscaping on the property.

Staff responded with a letter that provided guidance regarding which of the proposed uses could be allowed under Measure Q (the ballot measure approved by voters in November 2022) and CUP 00-04, based on the information provided in the Parameter Plan Overview. However, staff noted that it could not provide definitive answers, both because the Parameter Plan Overview was not a final or complete development application, and because the property is covered by Measure Q, which is subject to final interpretation by the City Council.

### **FUTURE AGENDA ITEM REQUEST**

At the Planning Commission's June 6, 2023 meeting, Commissioner Flohr made a future agenda item request to review CUP 00-04. In addition to requesting copies of the CUP and supporting documentation, the Planning Commission's motion included a request for staff to respond to several questions presented by Commissioner Flohr. The Planning Commission then reviewed CUP 00-04 in detail on August 15, 2023. The staff report for that item includes responses to the Planning Commission's questions, beginning with background on the nature and scope of conditional use permits. During the public comment portion of the item, the property owner and several residents offered their perspectives. After closing public comment and deliberating, the Planning Commission adopted a motion (by a 4-0 vote with Vice Chairperson Sparling recusing) to request that staff:

1. Work with the current property owner to identify potential additional uses (and any conditions necessitated thereby) permissible on the project site under Measure Q;
2. Investigate whether modified conditions of approval may be needed to address the impacts of the proposed use, particularly regarding the hours of operation,



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amplification of music, and rules governing events, as well as the possible clarification of the use itself; and

3. Notice the Planning Commission's future review of the conditional use permit to allow the Planning Commission to consider and take action on any proposed modifications.

**LANDSCAPE IMPROVEMENTS**

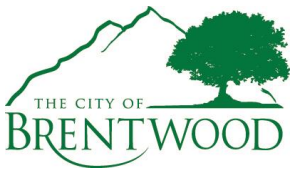
At the same time, the property owner submitted a design review application (DR 23-007) for a series of landscaping and outdoor patio improvements to be installed on the project site. The improvements are summarized as follows:

- Planting 405 grape vines in 12 rows at various locations on the site, including five rows behind the clubhouse, a single row along the north side of the driveway, four single rows in the parking lot, and two single rows along Foothill Drive between the parking lot and sidewalk;
- Planting 420 olive trees in various rows at various locations on the site, including nine rows behind the clubhouse, three rows south of the clubhouse, and two rows along the north side of the driveway;
- Pouring a new concrete patio approximately 750 square feet in size along the north side of the clubhouse to match the existing patio on the west side of the clubhouse; and
- Constructing a wood trellis feature along the north and east boundaries of the new patio.

This application was approved by the Planning Commission on August 15, 2023, following the future agenda item discussion.

**MEASURE Q**

The site containing the Deer Ridge clubhouse is located within the Open Space Overlay established by Brentwood voters in 2022 as part of Measure Q. This measure generally restricts the allowable uses of land to "open space, parks, agricultural, and recreational uses." However, Measure Q includes an exception for uses that have previously obtained a "vested right" pursuant to state or federal law. Vested rights provide protection to property owners from changes in land use laws. Generally speaking, when a land use has obtained a vested right, the property owner may continue to use their property for the use that has vested, even if a later change in land use regulations would no longer allow that use.



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Here, the uses allowed under the CUP that have vested include the pro-shop, dining room/bar, office and bathrooms, and driving range and putting green. Given that the 500 square foot pool cabana with a 260 square foot restroom facility, and the 4,000 square foot maintenance building were never built, there are no vested rights as to those uses.

**CONDITIONAL USE PERMITS**

When issuing a CUP, cities have broad authority to include reasonable conditions of approval, which the property owner must follow. However, after a CUP has been issued, a city's authority to modify or revoke the CUP is more limited. Generally speaking, a city can make such a modification or revocation only in the following circumstances:

- (1) the property owner requests the modification;
- (2) the operation of the property is dangerous or constitutes a public nuisance;
- (3) the property owner has violated conditions in the CUP or other applicable laws; or
- (4) the permit itself envisions that new conditions will be added in the future.

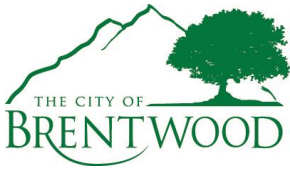
Constitutional requirements for due process apply before a city can modify or revoke a CUP. Those requirements include notice to the permittee and a hearing on the violation or proposed action. Although the property owner is not the applicant for this project, the property owner has agreed to amend CUP 00-04 to clarify the approved uses and certain operational characteristics.

**RECENT EFFORTS BY STAFF AND PROPERTY OWNER**

Staff and the property owner have been working for the last several months to ensure that information is presented to the Planning Commission in accordance with the motion it made when it last considered this item. The three parts of the motion referenced above are reiterated below along with a brief explanation of their status:

1. Work with the current property owner to identify potential additional uses (and any conditions necessitated thereby) permissible on the project site under Measure Q;

*The property owner has not identified any other potential uses in the clubhouse building, leaving operation of the existing clubhouse/proposed restaurant as the only issue to address.*



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2. Investigate whether modified conditions of approval may be needed to address the impacts of the proposed use, particularly regarding the hours of operation, amplification of music, and rules governing events, as well as the possible clarification of the use itself; and

*The property owner has clarified the use of the clubhouse and property overall. Staff also recommends that the Planning Commission consider a clarified set of conditions of approval to govern the property, including those that address hours of operation, noise, etc. (as detailed further below) as voluntarily agreed to by the property owner.*

3. Notice the Planning Commission's future review of the conditional use permit to allow the Planning Commission to consider and take action on any proposed modifications.

*Staff prepared a notice of public hearing and published it in the Brentwood Press on February 9, 2024. Staff also mailed the notice to all property owners within 300 feet of the project site.*

## **PROJECT DESCRIPTION**

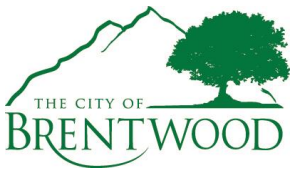
According to the property owner, the clubhouse is intended to operate as a full service restaurant and bar, with outdoor dining and periodic special events (both indoor and outdoor). A full description is attached for what will be known as "The Ridge Grill and Bar." The restaurant is proposed to utilize both floors of the clubhouse building, or slightly over 8,000 square feet of floor area. This includes seating/dining, a bar, a large commercial kitchen, and restrooms on the top floor. It would also include expanded seating/dining, a bar, and restrooms on the bottom floor. The intent is to provide "casual to fast-casual" dining, with full brunch, lunch, and dinner menus.

The property owner also intends to utilize the existing outdoor patio space on both the north and west sides of the building to enhance the dining experience. According to the property owner, reopening the restaurant and bar will contribute to dining options for west Brentwood residents, as that area is currently underserved. No other changes to the existing site improvements (i.e., landscaping, architecture, parking, etc.) are proposed.

## **ANALYSIS**

### **HOURS OF OPERATION**

While the originally approved CUP does not restrict hours of operation for the clubhouse property, it was originally approved in the context of a golf course amenity and was thus anticipated to be open during the hours of golf course operations. This



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lack of prescribed operating hours is one of the primary concerns identified by the Planning Commission last year, and the property owner has indicated a willingness to clarify that the hours of operation for the restaurant would be until 11:00 PM daily, including holidays. Given the proximity of residential uses to the project site, these hours appear to be reasonable, with the exception that staff would recommend limiting Sunday hours to 10:00 PM. The proposed hours are identified in the attached draft resolution.

**NOISE**

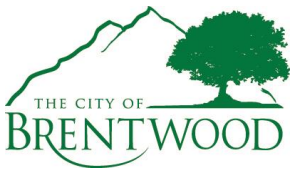
Like many older conditional use permits, the originally approved CUP does not include any explicit restrictions on noise. However, the property owner recognizes the importance of minimizing noise impacts on the surrounding neighborhood and has agreed to a clarifying condition of approval that addresses them.

The City's noise regulations, as found in Brentwood Municipal Code Chapter 9.32, regulate both acceptable hours for noise and acceptable limits. In conjunction with the hours of operation referenced above and to be consistent with the City's noise regulations, staff recommends that any music (live or otherwise) not extend past 10:00 PM, with the exception of special events, as identified below. This coincides with the nighttime hours identified in the City's noise regulations and means that, as recommended, music would not be played for the last hour of operation Monday through Saturday. In addition, all exterior noise levels must be consistent with the decibel limits set out in BMC Chapter 9.32. These requirements are reflected in a draft condition of approval for the attached resolution.

**SPECIAL EVENTS**

The originally approved CUP contemplated the operator offering special events, as it required the permittee to "notify the Police Department in advance of special events or activities at the dining room/bar or clubhouse" (condition of approval #9). Other than this requirement; however, the approved CUP did not place limitations on the amount or type of special events that could be held at the site.

For purposes of the CUP, a 'special event' is any event with impacts greater than those associated with typical restaurant and bar uses. It may include use of the patio area on the west side of the building or the adjacent lawn area beyond the patio, but could also be an event conducted wholly inside the restaurant, if it had greater impacts.



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Given the property owner's desire to host special events, and taking into consideration the proximity of residential uses and the relatively low existing ambient noise levels, staff recommends that special events be regulated as follows:

- Indoor special events: limited to four per month on Fridays, Saturdays, and holidays only.
- Outdoor special events: limited to four per month on the existing patio and lawn areas that surround the clubhouse building. In addition, staff recommends that any music associated with outdoor special events be limited to Fridays, Saturdays, and holidays, only until 8:00 PM.

**DATE OF NOTICE**

On February 9, 2024, the City of Brentwood published a notice of public hearing in the Brentwood Press and mailed it to property owners within 300 feet of the project site. As of February 15, 2024, 5 written comments have been received in support of the property owner's proposed restaurant.

**ENVIRONMENTAL DETERMINATION**

Amendment of the conditional use permit is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 (Existing Facilities) of the CEQA Guidelines and; therefore, no further environmental review is required.

**ATTACHMENT(S)**

1. Previous Actions
2. PC Resolution No. 24-008
3. Conditional Use Permit (CUP) Outline for Deer Ridge Project
4. CUP 00-04-A1 – 801 Foothill Drive – Site Plan
5. CUP 00-04-A1 – 801 Foothill Drive – Proposed Main Level Floor Plan
6. CUP 00-04-A1 – 801 Foothill Drive – Proposed Lower Level Floor Plan
7. Clubhouse parcel – 801 Foothill Drive – aerial photograph
8. Clubhouse portion of project site – 801 Foothill Drive – aerial photograph
9. CUP 00-04-A1 – 801 Foothill Drive – Comments Received Before Packet Publication
10. Deer Ridge CUP – Future Agenda Item Staff Report – 08.15.23
11. PC Resolution No. 00-57 – CUP 00-04