

**PLANNING COMMISSION AGENDA ITEM NO. H.4  
01/16/2024**

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**SUBJECT:** An amendment to Title 17 (Zoning) of the Brentwood Municipal Code regarding oil and gas regulations

**DEPARTMENT:** Community Development Department

**STAFF:** Erik Nolthenius, Planning Manager

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**TITLE/RECOMMENDATION**

A Resolution recommending the City Council adopt an ordinance removing oil and gas development as conditionally permitted uses in Planned Development District No. 17 and Planned Development District No. 55, requiring oil and gas development uses to be expressly listed as permitted or conditionally permitted uses in a district to be permitted or eligible for conditional use permits, amending oil and gas production regulations, and finding the action exempt from CEQA (RZ 23-003).

The adoption of the proposed ordinance is a discretionary action by the City Council and; therefore, subject to consideration under the California Environmental Quality Act (CEQA). The ordinance has been assessed in accordance with the authority and criteria contained in CEQA, the State CEQA Guidelines, and the environmental regulations of the City. Pursuant to CEQA and the CEQA Guidelines, it has been determined that the proposed ordinance is exempt from CEQA, including without limitation, requirements for CEQA review, pursuant to the following exemptions: the "common sense" exemption under CEQA Guidelines Section 15061(b)(3), and the categorical exemption under CEQA Guidelines Section 15308 for Class 8 - Actions by Regulatory Agencies for the Protection of the Environment.

**OWNER/APPLICANT**

City of Brentwood

**GENERAL PLAN**

Citywide

**ZONING/SURROUNDING LAND USES**

Citywide

**PREVIOUS ACTION(S)**

Previous actions related to this agenda item that were taken by the Planning Commission and City Council are listed in Attachment 1.

**BACKGROUND**

The City of Brentwood regulates oil and gas development within the City via Brentwood Municipal Code (BMC) Chapter 17.680. Oil and gas uses are currently only



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explicitly authorized with a conditional use permit in the Garin Ranch specific plan area of the PD-17 zone, pursuant to BMC section 17.467.002, and in subareas 3 and 4 of the PD-55 zone, pursuant to section 17.505.004(E)(12). The City Council previously directed staff to examine the feasibility of a stronger set of regulations, including but not limited to, considering an increased buffer zone for sensitive receptor areas and a total ban on new oil and gas development within City limits.

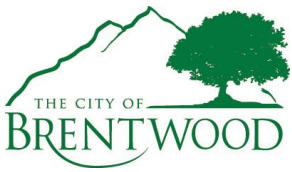
On April 12, 2022, the City Council adopted an Interim Urgency Ordinance imposing a temporary moratorium on new oil and gas development within the city, to allow staff to study and analyze the subject and prepare a comprehensive update to the BMC to regulate oil and gas activities moving forward. On May 24, 2022, the City Council adopted a first extension to the moratorium, for a period of 10 months and 15 days. On March 28, 2023, the City Council adopted a second and final extension to the moratorium, for an additional one-year period. No further extensions of the Interim Urgency Ordinance are allowed under state law.

On August 3, 2023, the Supreme Court of California issued a ruling in the case [\*Chevron U.S.A., Inc., et al. v. County of Monterey, et al. \(2023\) 15 Cal.5th 135.\*](#) There, the Court considered a County ballot measure that would have imposed severe restrictions on oil and gas development by banning the drilling of new oil and gas wells in the County and phasing out the use of wastewater injection and impoundment for new and existing wells in the County. The Court determined that the measure was invalid because it conflicted with state law. Specifically, the Court held that [Public Resources Code section 3106](#) preempted the County's measure, as the local measure conflicted with section 3106's grant of authority to a State official to approve "methods and practices" of oil and gas production that the State official deemed suitable.

While the Court held that state law preempted the Monterey County measure as it pertained to local regulation of methods and practices of oil extraction, it did not necessarily preclude a city's ability to regulate **where** oil and gas extraction could occur. The Court did not address whether a jurisdiction-wide prohibition that only regulated the **locations** of oil and gas activities, which would arguably be a permissible exercise of a jurisdiction's traditional zoning powers, would be preempted.

To address the Court's decision, staff has prepared a revised ordinance that focuses narrowly on the specific locations in the City in which oil and gas development may occur. The revised ordinance takes a number of steps:

- [PD-17 and PD-55](#). Currently, oil and gas development uses are only designated as conditionally permitted uses in PD-17 and PD-55. The revised ordinance



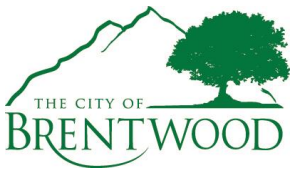
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removes oil and gas development uses as conditionally permitted uses in these districts.

- All districts. The proposed ordinance states that oil and gas development uses may be permitted or conditionally permitted uses in a district only if those uses are expressly listed as permitted or conditionally permitted uses in those districts. As a result, oil and gas development uses would not be permitted or conditionally permitted uses in any district within the City.
  
- Citywide. To take into account the *Chevron* decision and to address concerns related to the local health effects of oil and gas activities, the proposed ordinance further revises Chapter 17.680 in case a future city council decides to allow oil and gas development uses as permitted or conditionally permitted uses in a zoning district or districts. Additional revisions to the ordinance's regulatory provisions from the previously proposed version reviewed by the Planning Commission in May 2023 include the following:
  - Recognizing that the State regulatory agency for oil and gas operations is the California Geologic Energy Management Division (CalGEM) and making minor modifications to ensure consistency with CalGEM regulations;
  
  - Retaining the appeal procedures for suspended or revoked permits, to protect a permittee's due process rights; and
  
  - Retaining the amended regulatory provisions contained in Chapter 17.680 instead of having them become effective only upon a judicial ruling.

After studying and analyzing the potential economic, health, safety, and community effects of long-term changes to the City's regulation of oil and gas developments, staff's recommendation is that the Planning Commission recommend City Council adoption of the proposed ordinance removing oil and gas development as conditionally permitted uses in planned development districts 17 and 55, requiring oil and gas development uses to be expressly listed as permitted or conditionally permitted uses in a district to be permitted or eligible for conditional use permits, amending oil and gas production regulations, and finding the action exempt from CEQA.

**PROJECT DESCRIPTION**



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Pursuant to Chapter 17.680, the BMC presently authorizes oil and gas drilling, production, and exploratory operations in certain areas of Brentwood, subject to permitting obligations and imposition of site conditions. For instance, under the current regulations, an applicant for an oil and gas permit or land use entitlement must comply with all development standards applicable to drilling or production operations, including a minimum production site size, fencing, screening and landscaping restrictions, setbacks, soundproofing, signs, storage tanks and equipment size and locations, and safety restrictions, among other things.

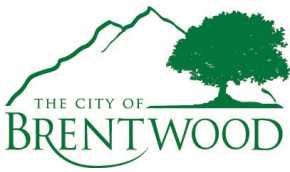
There are not currently any pending applications for oil and gas operation permits or associated land use entitlements in the City.

Oil and gas production activities can have significant and prolonged environmental and health effects. For example, oil and gas production can substantially increase air pollution and related adverse health effects in the areas where permitted, and fossil fuel extraction contributes to emissions that create long-term climate change effects.<sup>1</sup> There are also health risks specifically associated with residential proximity to oil and gas drilling, including but not limited to adverse effects on reproductive health and birth weights.<sup>2</sup> According to the U.S. Occupational Safety and Health

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<sup>1</sup> See, e.g., Gonzalez, David J.X. et al. "Upstream Oil and Gas Production and Ambient Air Pollution in California." *Science of the Total Environment* vol. 806, part 1 (Feb. 2022), available at <https://www.sciencedirect.com/science/article/pii/S0048969721053754> (concluding that "proximity to oil and gas wells in both preproduction and production increased concentrations of PM<sub>2.5</sub>, CO, NO<sub>2</sub>, O<sub>3</sub>, and VOCs at distances up to 4km downwind of wells. These findings indicate that proximity to wells is an appropriate metric for air-pollution related exposures in population health studies. Notably, increases in PM<sub>2.5</sub> concentrations near wells could be a mediating factor for previously reported increases in risk of adverse birth outcomes with proximity to wells in California."); see also Sadd, James et al., "Oil Extraction in Los Angeles: Health, Land Use, and Environmental Justice Consequences," "Drilling Down: The Community Consequences of Expanded Oil Development in Los Angeles" Liberty Hill Foundation (2015), available at [https://libertyhill-assets-2.s3-us-west-2.amazonaws.com/media/documents/Drilling\\_Down\\_Report\\_-\\_Full.pdf](https://libertyhill-assets-2.s3-us-west-2.amazonaws.com/media/documents/Drilling_Down_Report_-_Full.pdf);

<sup>2</sup> Willis, Mary D et al. "Associations between Residential Proximity to Oil and Gas Drilling and Term Birth Weight and Small-for-Gestational-Age Infants in Texas: A Difference-in-Differences Analysis." *Environmental Health Perspectives* vol. 129,7 (2021) available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8293911/>. See also Apergis, N., Hayat, T., & Saeed, T., "Fracking and infant mortality: Fresh evidence from Oklahoma." *Environmental Science and Pollution Research*, 26(31), 32360–32367 (2019) available at <https://doi.org/10.1007/s11356-019-06478-z>; Shonkoff et al., "Response to CalGEM Questions for the California Oil and Gas Public Health Rulemaking Scientific Advisory Panel" (Oct. 2021) available at [https://www.conservation.ca.gov/calgem/Documents/public-health/Public%20Health%20Panel%20Responses\\_FINAL%20ADA.pdf](https://www.conservation.ca.gov/calgem/Documents/public-health/Public%20Health%20Panel%20Responses_FINAL%20ADA.pdf); Shamasunder, Bhavna et al. "Community-Based Health and Exposure Study around Urban Oil Developments in South Los Angeles," *International Journal of Environmental Research and Public Health* 15(1):138 (Jan. 15, 2018) (finding increased asthma in residential areas



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Administration, other safety hazards associated with oil and gas drilling uses include vehicle collisions, explosions and fires, and other related and indirect risks.<sup>3</sup> Brentwood prides itself on caring for the health and well-being of its residents, workers, and visitors; restricting the location of new development of oil and gas operations within the City will protect the continued ability of the Brentwood community to enjoy clean air and water, and live and work in a healthy and thriving community.

PD-17 and PD-55 are largely built out. Uses in these districts include residential homes, public parks, daycare facilities, and preschools. Oil and gas uses in these districts would be in close proximity to these sensitive uses. In light of the health risks discussed above, oil and gas development is no longer appropriate in these areas.

Further, in light of the health risks associated with oil and gas development and because the City as a whole is largely built out, it is no longer appropriate for determinations about the districts in which oil and gas development uses may be permitted or conditionally permitted to be made by staff evaluating whether those uses are similar to the uses expressly permitted or conditionally permitted in given districts. Rather, to better protect public health, and in the interests of greater transparency, decisions about the districts in which oil and gas development uses may be permitted or conditionally permitted should be made by the City Council.

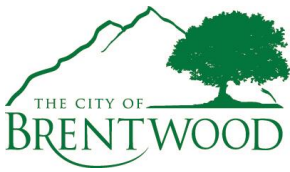
The proposed ordinance restricting the locations of oil and gas development uses and amending the regulatory requirements for oil and gas operations within City limits are consistent with concerns raised by community members, direction provided by the City Council, and with the City's General Plan and Strategic Plan.

There are no active/pending permit or entitlement applications relating to proposed oil and gas development projects within the City. Accordingly, the ordinance will not have any immediate or anticipated effect on private property or development rights. Further, staff's research indicates that there no active wells – including idle wells which may be re-engaged in the future – in City limits, meaning there are no vested

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located within 1,500 feet of oil development sites in Los Angeles), *available at* <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5800237/>; City of Los Angeles, Department of City Planning, Recommendation Report to City Planning Commission (Sept. 22, 2022), Case No. CPC-2022-4864-CA; CF No. 17-0447, pages A1-A3, *available at* [https://planning.lacity.org/plndoc/Staff\\_Reports/2022/09-13-2022/CPC\\_2022\\_4864.pdf](https://planning.lacity.org/plndoc/Staff_Reports/2022/09-13-2022/CPC_2022_4864.pdf).

<sup>3</sup> U.S. Department of Labor, Occupational Safety and Health Administration, "Oil and Gas Extraction" (accessed December 2023), *available at* <https://www.osha.gov/oil-and-gas-extraction/hazards>.



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rights to continue drilling or any related oil and gas operations that will be affected by this action. The apparent lack of oil and gas activity, combined with recent research demonstrating the adverse health impacts of residing within close proximity of oil and gas development sites detailed above, shows that the economic and other benefits of oil and gas development to the community have come to be outweighed by the considerable environmental-, health-, and quality of life-related costs.

Staff did confirm with the County that there is one pending land use entitlement on behalf of Sunset Exploration to drill in an unincorporated area outside Brentwood City limits (APN 019-120-002) and (to the best of staff's knowledge, after consulting with the County's permitting division) five existing land use entitlements in unincorporated/County areas held by Sunset Exploration;<sup>4</sup> these entitlements will not be affected by the City's action to ban oil and gas land uses within its boundaries.

In the event that an oil and gas producer comes forward with evidence demonstrating the existence of a vested right to conduct oil and gas production operations within the city, the proposed ordinance includes language providing an exception from its provisions for producers with such vested rights.

### DATE OF NOTICE

The City of Brentwood published a notice of public hearing in the Brentwood Press on January 5, 2024.

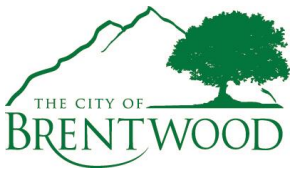
### ENVIRONMENTAL DETERMINATION

The adoption of the proposed ordinance is a discretionary action by the City Council, and therefore, subject to consideration under the California Environmental Quality Act (CEQA). The ordinance has been assessed in accordance with the authority and criteria contained in CEQA, the State CEQA Guidelines, and the environmental regulations of the City. Pursuant to CEQA and the CEQA Guidelines, it has been determined that the proposed ordinance is exempt from CEQA, including without limitation, requirements for CEQA review, pursuant to the following exemptions: the "common sense" exemption under CEQA Guidelines Section 15061(b)(3), and the categorical exemption under CEQA Guidelines Section 15308 for Class 8 - Actions by Regulatory Agencies for the Protection of the Environment.

In connection with making the determination as to whether the proposed ordinances are exempt from CEQA, staff evaluated the potential for environmental effects associated with the elimination of oil and gas development uses as permitted or

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<sup>4</sup> Per correspondence with the County, there is a current land use permit for active drilling on APN 057-060-008, and between 2001 and 2009, four other land use permits were approved on sites in Knightsen, unincorporated Brentwood, unincorporated Concord, and unincorporated Antioch areas.



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conditionally permitted uses in PD-17 and PD-55 and the new regulations applicable to oil and gas uses, and evaluated the applicability of certain exemptions to these proposed ordinances.

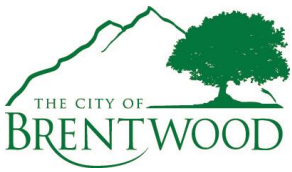
Ultimately, due to the long-term cessation of oil and gas uses within the city and the imposition of enhanced regulatory requirements on oil and gas operators in the city, the proposed ordinance will result in beneficial effects that would promote protection of the environment. Such benefits include, but are not limited to:

- Improved land use consistency and compatibility between oil production areas and other surrounding community uses;
- As to air quality, incremental reductions in air pollutants locally and assisting the region in meeting clean air goals, and as to climate change, incremental reductions in the State's contribution to GHG emissions;
- Improved visual character and aesthetics by restoration of the areas affected by oil and gas land use activities to as near a natural state as practicable; and
- Enhanced public health, welfare, and safety, and protection of the environment by further restricting locations in which oil and gas development uses may occur and regulating aged and outdated infrastructure that is vulnerable to failure and poses a threat to public safety and to the environment.

Staff considered whether restricting oil and gas production uses within City limits would have any negative environmental effects. Staff determined that, because there is currently no oil and gas production activity within the City, there would be no adverse impacts related to relocation of any such activities or related to any purported need for oil and gas resources to travel farther to refineries or end-users. Staff has not identified any evidence that oil and gas produced in Brentwood, if any, would be refined or consumed within or near the City; and even if it were, the relatively small population of Brentwood (approximately 66,000 as of July 2022)<sup>5</sup> and its correspondingly-sized demand for oil and gas products suggests that any increase in greenhouse gas emissions related to increased movement of oil and gas into the City would be insignificant. Moreover, the oil and gas extraction industry in the United

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<sup>5</sup> "QuickFacts: Brentwood city, California," United States Census Bureau, *available at* <https://www.census.gov/quickfacts/brentwoodcitycalifornia> (accessed December 2023).



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States alone produces over ten thousand barrels of crude oil per day;<sup>6</sup> any effects related to the redistribution of any contribution from within the City of Brentwood, should any occur, would be negligible. Finally, because there are no currently active oil and gas wells within the city or idle wells that may be re-engaged in the future, the changes to the regulatory provisions in Chapter 17.680 cannot lead to any impacts on the environment.

**ATTACHMENT(S)**

1. Previous Action(s)
2. Planning Commission Resolution No. 24-004

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<sup>6</sup> "U.S. Field Production of Crude Oil," U.S. Energy Information Administration, *available at* <https://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=PET&s=MCRFPUS2&f=M> (accessed December 2023).