

ORDINANCE NO. _____

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BRENTWOOD EXTENDING, FOR A PERIOD OF TEN MONTHS AND FIFTEEN DAYS, THE INTERIM URGENCY ORDINANCE AMENDING BRENTWOOD MUNICIPAL CODE SECTION 16.120.120 TO AUTHORIZE THE CITY ENGINEER TO WAIVE LIMITED UNDERGROUND UTILITY REQUIREMENTS, AND FINDING THE ACTION EXEMPT FROM CEQA.

WHEREAS, the City of Brentwood ("City") presently requires development projects that include a land subdivision to install utility distribution facilities, including, but not limited to, electric, communication, street lighting and advanced technology systems installed in and for the purpose of supplying service to any development, to be placed underground as governed by Chapter 16.120.120 of the Brentwood Municipal Code ("BMC"); and

WHEREAS, according to multiple media sources, as well as developer testimonials, the construction industry is currently experiencing a severe shortage of subsurface electric distribution transformers; and

WHEREAS, the causes for this shortage are complex, and include increases in demand for such facilities due to growth in EV charger installation and the use of renewable energy sources, federal investment, storms and political events that have disrupted the global supply chain, the imposition of tariffs on foreign transformers, and the impacts of the COVID pandemic; and

WHEREAS, the lead time for the receipt of subsurface electric distribution transformers may delay the completion of construction projects by years if this requirement continues to be implemented; and

WHEREAS, the City desires to allow currently entitled development projects subject to BMC Chapter 16.120.120 to move forward with construction, while also enacting this interim urgency moratorium on new entitlements for projects with land subdivisions, in order to ensure electricity is available to future homeowners and businesses; and

WHEREAS, this interim urgency moratorium on undergrounding requirements in the city will give the City sufficient time to monitor the supply of subsurface transformers; and

WHEREAS, the City Council of the City of Brentwood is authorized, pursuant to Article 11, Section 7 of the California Constitution, to make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws; and

WHEREAS, California Government Code Section 65858 authorizes the City Council to adopt, by a four-fifths vote and without following the procedures otherwise required for the adoption of a zoning ordinance, an interim urgency ordinance prohibiting any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the City Council, planning commission, or planning department is considering, or studying, or intending to study within a reasonable time; and

WHEREAS, on March 26, 2024, the City Council adopted Urgency Ordinance No. 1072, amending Brentwood Municipal Code Section 16.120.120 to authorize the City Engineer to waive limited underground utility requirements and find the act exempt from CEQA; and

WHEREAS, Government Code section 65858(a) further provides that, prior to the expiration of such urgency ordinances, the City may extend the ordinance for a period of an additional 10 months and 15 days; and

WHEREAS, the City desires to extend the Urgency Ordinance for 10 months and 15 days while a permanent ordinance addressing these matters is passed and put into place.

NOW, THEREFORE, the City Council of the City of Brentwood does ordain as follows:

SECTION 1. Recitals.

The recitals set forth above are hereby adopted as the findings of the City Council in connection with the adoption of this ordinance. In support of the recitals stated above, the City Council hereby finds and determines that it is necessary to adopt an extension to the interim urgency ordinance to allow pad-mounted transformers for projects applicable to BMC Chapter 16.120.120 with additional screening requirements for residential applications, while City staff continues to monitor the availability of subsurface transformers.

SECTION 2. Urgency Findings.

In addition to the recitals adopted pursuant to Section 1 of this ordinance, the City Council also hereby finds and determines that the continued absence of subsurface transformers nation-wide constitutes an immediate threat to the public health, safety, and welfare.

Specifically, the City Council finds as follows:

A. The proposed extension to the Urgency Ordinance is consistent with the General Plan, inasmuch as it will allow for the continued provision of high quality design and installation of electric distribution transfers in new commercial and residential development, thus implementing General Plan Policy ED 6-1 ("Strive for high quality in all types of development.")

B. The City Council hereby finds that there is a current and immediate threat to the public health, safety and/or welfare and a need for immediate preservation of the public peace, health, or safety that warrants the adoption of this extension to the Urgency Ordinance, given that:

1. The Brentwood Municipal Code does not provide a practical exception for pad-mounted in its regulations governing land subdivisions. Specifically, to allow pad-mounted transformers would require currently entitled and future projects to request Planning Commission recommendation and City Council approval on an individual basis. In addition, those projects that are subject to processing under the Housing Crisis Act of 2019 (SB 330) are only subject to five hearings. For those projects that do not require City Council approval, or those that have already received approval, adding a further hearing for the limited purpose of issuing a waiver of this type could be infeasible. Additionally, the requirement to form an underground, reimbursement or improvement district would be infeasible for a single commercial property owner or a group of 6-8 single-family homeowners for each transformer. There would also be an issue due to the uncertainty of the availability of subsurface transformers.

2. The failure to provide a timely mechanism for waiving this requirement, in light of the ongoing shortage of subsurface electric distribution transformers, could imperil the ability of entitled residential projects to complete construction, thereby delaying or perhaps precluding the construction of housing, including needed affordable housing.

3. Many other Cities in Contra Costa County and the Bay Area either allow pad-mounted transformers or provide exceptions under unreasonable or unfeasible circumstances.

C. It is necessary for the City to give staff time to monitor the subsurface transformer availability.

D. The City finds that the extension of an interim allowance for pad-mounted transformers for projects applicable to BMC Chapter 16.120.120 with additional screening requirements for residential applications is necessary for a further period of 10 months and 15 days.

1. Based on the foregoing, continuing to prohibit pad-mounted transformers would result in a current and immediate threat to the public health, safety, and welfare.

2. An extended period of 10 months and 15 days will permit City staff to undertake an initial investigation of these matters and recommend a course of action to the City Council. These suggestions will likely involve the City amending, repealing, and/or adding certain language to the BMC to address the lack of availability of sub-surface transformers and to provide an allowance for pad-mounted transformers similar to other Cities.

E. Brentwood Municipal Code Section 16.120.120 is therefore hereby amended as set forth in Exhibit 'A', attached hereto and incorporated herein, for the duration of this Urgency Ordinance extension. Newly adopted language is underlined.

SECTION 3. This Urgency Ordinance extension will be published in accordance with Government Code Section 36933 by either posting or publishing the Urgency Ordinance in accordance with that law.

SECTION 4. This Urgency Ordinance is adopted by a four-fifths vote of the Brentwood City Council. It shall take effect immediately upon its adoption and remain in effect for 10 months and 15 days as provided by Government Code Section 65858(a). Any further extension of this Urgency Ordinance will require a four-fifths vote of the City Council.

SECTION 5. Ten days prior to the expiration of this extended Urgency Ordinance or any additional extension, the City Council will issue a written report describing the measures taken to alleviate the condition which led to the adoption of this Urgency Ordinance, as required under Government Code Section 65858(d).

THE FOREGOING URGENCY ORDINANCE was adopted by the City Council of the City of Brentwood at a special meeting held on the 8th day of May 2024 by the following vote:

EXHIBIT 'A'

BRENTWOOD MUNICIPAL CODE

TITLE 16 ('Subdivisions and Land Development')

§ 16.120.120 Undergrounding—Electric, communication, street lighting and advanced technology systems.

A. General Provisions.

1. Utility distribution facilities, including, but not limited to, electric, communication, street lighting and advanced technology systems installed in and for the purpose of supplying service to any development, shall be required to be placed underground. "Advanced technology systems" shall be defined as all necessary appurtenances, equipment and facilities required for the provision of Internet, computer, fiber optic, cable television, telephone, and other communication services within the public right-of-way and upon private property. The design, installation, inspection and testing requirements for city acceptance of such system shall meet the minimum requirements as outlined in the city of Brentwood standard plans and specifications as approved by the city engineer. The developer shall also dedicate to the city that portion of the system within the public right-of-way and shall dedicate to the property owner the portion of the system within the private property.
2. All existing facilities except transmission facilities either along abutting streets or within a development shall also be underground at the time of development. "Along abutting streets" means on the same side of the abutting street as the property being developed, not the other side of the street.
3. The developer is responsible for complying with all requirements of this subsection, and shall make the necessary arrangements with the utility companies for the installation of such facilities.
4. The city council, following the consideration by the planning commission, may waive undergrounding requirements if unusual topographical, soil or any other unusual problems (such as prolonged supply chain delays) make such underground installations unreasonable or impractical in accordance with the following:
 - a. If the requirement to underground utilities is waived, the city council may require the recordation of an improvement agreement, requiring the property owner and any subsequent owner of the subject property to join an underground utility assessment district, reimbursement district or similar improvement district, when such a district is formed, and to guarantee participation in such district by posting an improvement bond and recording a lien on subject property.

- b. The affected developer or any utility company may submit information supporting a request for such waivers.
- c. No waiver shall be granted in any undergrounding district previously established.
- d. In the event such a waiver is granted as to a residential development, the developer shall be responsible for installing screening to the satisfaction of the City Engineer.

5. The City Engineer may waive undergrounding requirements as to equipment appurtenant to underground facilities (such as surface-mounted transformers, pedestal-mounted terminal boxes and meter cabinets, and concealed ducts) if unusual topographical, soil, or any other unusual problems (such as prolonged supply chain delays) make such underground installations unreasonable or impractical in accordance with the following:

- a. The affected developer or any utility company may submit information supporting a request for such waiver.
- b. In the event such a waiver is granted as to a residential development, the developer shall be responsible for installing screening to the satisfaction of the City Engineer.
- c. The City Engineer's authority to waive such requirement shall sunset on December 31, 2028, unless otherwise amended by the city council.

B. Electric, Communication, Street Lighting and Advanced Technology Systems. All costs of placing existing or new facilities, required to be undergrounded by the developer, shall be paid for by the developer subject to the current California Public Utility Commission rules and regulations.

C. Advanced Technology Systems.

- 1. The developer shall design, install, test and dedicate to the city two advanced technology system conduits, size to be determined, within the public right-of-way. The developer shall install, in one of the conduits, a fiber optic system designed to serve the subject development for use by the city of Brentwood or one of its licensed franchisee. The fiber optic system shall be installed in accordance with the citywide advance technology master plan and approved by the city engineer. The second conduit shall remain empty and shall be reserved to serve the subject development for the use of a city licensed franchisee not wishing to utilize the city's fiber optic system. Both conduits shall be installed to each lot line. The developer shall bear all design, construction, inspection, and testing costs associated with these underground requirements. Furthermore, the developer shall design, install, test and dedicate to the city all necessary components of the advanced technology system as depicted on the citywide advanced technology master plan.

2. The developer shall design, install, test and dedicate to the property owner two advanced technology system conduits, size to be determined, to connect the public advanced technology system to the individual home or building. The developer shall install, in one of the conduits, a fiber optic system designed to serve the subject property. The fiber optic system shall be installed in accordance with the citywide advance technology master plan and approved by the city engineer. The second conduit shall remain empty and shall be reserved to serve the subject property for the use of a city licensed franchisee not wishing to utilize the city's fiber optic system. The developer shall bear all design, construction, inspection and testing costs associated with these underground requirements.
3. The cable television or advanced technology company franchisee that elects to install facilities in the city's vacant conduit shall provide plans and specifications to the developer and the city of Brentwood. The licensed franchisee shall also inspect the facilities and certify to the city prior to final approval of the development that the cable television facilities or advanced technology systems are properly installed and serviceable. The design and installation shall meet the minimum criteria as outlined in the city of Brentwood standard plans and specifications.

(Ord. 471 § 3, 1990; Ord. 609, 1999)