

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BRENTWOOD APPROVING A ZONING TEXT AMENDMENT TO THE BRENTWOOD MUNICIPAL CODE (RZ 24-004), WHICH WOULD AMEND CHAPTER 17.850 (TEMPORARY USE PERMITS) TO ADD REGULATIONS RELATED TO MOBILE VENDING FACILITIES AND COMMISSARIES**

**WHEREAS**, City staff prepared a zoning text amendment (“the Ordinance”) that would amend Brentwood Municipal Code Chapter 17.850 (Temporary Use Permits) to add regulations related to Mobile Vending Facilities; and

**WHEREAS**, the Ordinance would amend Title 17 (Zoning) of the Brentwood Municipal Code, and the Planning Commission is charged with reviewing amendments to said title prior to their consideration by the City Council; and

**WHEREAS**, pursuant to the police powers delegated to it by the California Constitution, the City has the authority to enact laws which promote the public health, safety, and general welfare of its citizens, including mobile vending on both public and private property; and

**WHEREAS**, the City may regulate mobile food facilities operating in the right-of-way, pursuant to Vehicle Code section 22455 and Health and Safety Code section 114315; and

**WHEREAS**, vehicles that produce, prepare, cook, and carry food, foodstuffs, food products, and all associated wares and merchandise for purposes of sale on the public streets pose special danger to the public health, safety, and welfare of children and residents in the City; and

**WHEREAS**, the sale of food, foodstuffs, food products, and all associated wares and merchandise on public streets from vehicles can cause dangerous conditions on the City’s roads and streets through the congregation of large crowds and imposition of the flow of traffic on the public right-of-way. In addition, mobile vending from both public and private property creates the potential for increased safety hazards, such as, but not limited to: inhibiting the ability of disabled individuals and other pedestrians to follow a safe path of travel; interfering with the performance of police, firefighter, and emergency medical personnel services; encouraging pedestrians to cross mid-block or stand in roadways to purchase food; and creating obstacles and contributing to congestion for pedestrian, vehicle, and bicycle traffic; and

**WHEREAS**, the City has the authority to regulate the type of vending, and the time, place, and manner of vending from vehicles upon the street in order to promote public safety; and

**WHEREAS**, the City desires to regulate mobile vending, while also safeguarding the flow of pedestrian movement on public and private sidewalks and in the

public right-of-way, and ensure no interference with the performance of police, firefighter, and emergency medical personnel services; and

**WHEREAS**, the regulation of mobile vendors engaged in the sale of food and food products will help to ensure that mobile vendors obtain all necessary permits and comply with applicable sanitation, food preparation, and food handling laws, and thereby will protect the public health and safety against health problems such as food contamination, poor hygienic practices, and the threat of food poisoning; and

**WHEREAS**, on August 23, 2024, the City gave public notice of a Planning Commission public hearing to be held to consider this Ordinance by advertisement in the Brentwood Press, a newspaper of general circulation; and

**WHEREAS**, on September 3, 2024, the Planning Commission held a duly-noticed public hearing to consider the staff report, recommendation by staff, and public testimony concerning this Ordinance. Following the public hearing, the Planning Commission voted to recommend that the City Council adopt the proposed Ordinance by a vote of 5-0; and

**WHEREAS**, the City published a notice of public hearing in the Brentwood Press on October 11, 2024, in accordance with City policies and Government Code Section 65090; and

**WHEREAS**, on October 22, 2024, the City Council held a duly-noticed public hearing to consider the Ordinance, including: (1) the public testimony and agenda reports prepared in connection with the Ordinance, (2) the policy considerations discussed therein, and (3) the consideration by the City's Planning Commission; and

**WHEREAS**, this amendment is exempt from the California Environmental Quality Act ("CEQA") pursuant to Section 15061(b)(3) of the CEQA Guidelines, in that CEQA applies only to projects which have the potential for causing a significant effect on the environment, and it can be seen with certainty that there is no possibility that the Ordinance may have a significant effect on the environment since the proposed ordinance would only establish and clarify administrative processes and would not facilitate new construction or other groundbreaking activities. In addition to CEQA Guidelines Section 15061(b)(3), the proposed ordinance would also be exempt from the CEQA pursuant to CEQA Guidelines Section 15311(c) in that the proposed ordinance relates to the placement of seasonal or temporary use mobile food units, in generally the same locations from time to time in areas designed for public use.

**WHEREAS**, all legal prerequisites to the adoption of the Ordinance have occurred.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BRENTWOOD DOES ORDAIN AS FOLLOWS:**

**SECTION 1. Recitals.** The above recitals are incorporated into this Ordinance as though fully set forth herein.

**SECTION 2. CEQA.** Pursuant to California Environmental Quality Act (“CEQA”) Section 15061(b)(3) of the CEQA Guidelines, this project is exempt from CEQA as it applies only to projects which have the potential for causing a significant effect on the environment, and it can be seen with certainty that there is no possibility that the Ordinance may have a significant effect on the environment since the proposed ordinance would only establish and clarify administrative processes and would not facilitate new construction or other groundbreaking activities. In addition to CEQA Guidelines Section 15061(b)(3), the proposed ordinance would also be exempt from the CEQA pursuant to CEQA Guidelines Section 15311(c) in that the proposed ordinance relates to the placement of seasonal or temporary use mobile food units, in generally the same locations from time to time in areas designed for public use.

**SECTION 3. Rezoning.** Brentwood Municipal Code Section 17.870.008 provides:

*No rezoning of property or text amendment shall occur which is inconsistent with the city’s community development plan. In making a decision, the planning commission and council shall consider the consistency of the proposed action to the community development plan and other applicable city plans, and shall consider whether the proposed action is inappropriate or otherwise contrary to the public interest.*

The zoning text amendments set forth in Exhibit A1 are consistent with the General Plan, as amended from time to time, inasmuch as they are responsive to the changing needs of the local businesses and community. The amendments are consistent with Brentwood General Plan Economic Development Goal ED 1 to “Establish and maintain a healthy, balanced approach to economic development that encourages a diversity of businesses which provide employment, services, and goods.” In addition, the zoning text amendments will help to regulate the type of vending, and the time, place, and manner of vending from vehicles upon the private property and public streets in order to promote public safety.

**SECTION 4. Severability.** If any section, sentence, clause or phrase of this Ordinance or the application thereof to any entity, person or circumstance is held for any reason to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The City Council of the City of Brentwood hereby declares that it would have adopted this Ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

**SECTION 5. Amendment.** The Brentwood Municipal Code is hereby amended to update Brentwood Municipal Code Chapter 17.850 (Temporary Use Permits) as provided in Exhibit A1, attached hereto and incorporated herein.

Revisions to existing sections are reflected in ~~striketrough~~ for deletions and underline for additions.

**SECTION 6. Effective Date.** This Ordinance shall become effective March 1, 2025.

**SECTION 7. Publication Date.** This ordinance shall be published in accordance with Government Code Section 36933. The City Clerk is directed to cause the Municipal Code text to be entered in the Brentwood Municipal Code of the City of Brentwood to be modified accordingly.

**THE FOREGOING ORDINANCE** was introduced with the first reading waived at a regular meeting of the City Council of the City of Brentwood on the 22<sup>nd</sup> day of October 2024 by the following vote:

- AYES:
- NOES:
- ABSENT:
- RECUSE:

APPROVED

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Joel R. Bryant  
Mayor

ATTEST:

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Amanda McVey  
Interim City Clerk

**EXHIBIT "A1"****Chapter 17.850****TEMPORARY USE PERMITS****§ 17.850.001 Purpose.**

This chapter establishes procedures and standards for the granting of temporary use permits for short-term activities on private property. Compliance with applicable standards ensures that the establishment, maintenance, or operation of the short-term activity would not be detrimental to the public health, safety, and welfare of persons residing or working in the neighborhood of the proposed activity.

**§ 17.850.002 Applicability of provisions.**

This chapter shall apply to those uses for which a temporary use permit is required by the zoning ordinance.

**§ 17.850.003 Temporary use defined.**

A temporary use is defined as "a short-term activity established for a fixed period of time on private property, with the intent to discontinue such use upon the expiration of the permitted time period that does not meet the normal development or use standards of the applicable zone." This definition does not include "special events," as those are defined and regulated in accordance with Title 7.

**§ 17.850.004 Temporary use permit required.**

A temporary use shall not be conducted, established, or operated in any manner without the approval and maintenance of a valid temporary use permit in compliance with this chapter, unless otherwise exempt under the provisions of this chapter.

**§ 17.850.005 Review authority.**

- A. Temporary use permits shall be reviewed and approved or denied administratively by the community development director, in compliance with this chapter.
- B. The community development director may refer any permit to the planning commission.
- C. The decision of the community development director or planning commission regarding a temporary use permit shall be final, subject to appeal in compliance with Chapter 17.880 (Appeal).
- D. No public hearing is required before the community development director's decision on a temporary use permit. A public hearing shall, however, be required for any permit that is referred by the community development director to the planning commission.

**§ 17.850.006 Exempt temporary uses.**

The following temporary uses are allowed without the necessity of obtaining a temporary use permit:

- A. Construction Yards—On-Site. On-site contractors' construction yards, including one manufactured unit for temporary office use during normal business hours, for an approved construction project that is within the city. The construction yard shall be removed immediately upon completion of the construction project, or the expiration of the building permit authorizing the construction project, whichever occurs first.
- B. Emergency Facilities. Emergency public health and safety needs/land use activities, as determined by the city manager.
- C. Events on Sites Approved for Public Assembly. An event on the site of, or within, a golf course, meeting hall/facility, school, theater, or other similar facility designed, and approved by the city for public assembly.
- D. Fund-Raising Car Washes.
  - 1. Car washes on property within a nonresidential zone, limited to a maximum of two days per month for each sponsoring organization.
  - 2. Sponsorship shall be limited to educational, fraternal, religious, or service organizations directly engaged in civic or charitable efforts, or to tax exempt organizations in compliance with Section 501(c) of the Federal Revenue and Taxation Code.
- E. Garage Sales. Garage sales, not to exceed three per year and two consecutive days.

**§ 17.850.007 Allowed temporary uses.**

The city, through the community development director, may grant a temporary use permit for the following temporary uses on nonresidential properties or on private properties approved with an institutional use, for the specified time limits, but in no event for more than twelve months, except model home complexes and construction yards, which may be approved for any length of time, provided the community development director finds that the use meets any conditions or requirements set forth herein and that the use will not be detrimental to the public health, safety and welfare of persons residing or working in the neighborhood of the proposed activity. Other temporary uses that do not fall within the categories defined below shall instead comply with the planning permit requirements and development standards that otherwise apply to the property.

- A. Agricultural Produce Sales. Retail sales of agricultural produce at produce stands or in a certified farmer's market.
- B. Construction Yards—Off-Site. Off-site offices, contractors' construction, corporation, or storage yards for an approved construction project that is within

the city. The yards shall be removed immediately upon completion of the construction project, or the expiration of the building permit authorizing the construction project, whichever occurs first.

- C. Events. Animal rides, art and craft exhibits, bike rodeos, car shows, carnivals, circuses, concerts, egg hunts, fairs, farmer's markets, festivals, flea markets, food events, holiday events, runs, marathons, walk-a-thons, and bike-a-thons or similar activities, open air theaters but excluding drive-in theaters, outdoor entertainment/sporting events, parades, petting zoos, processions, rallies, religious revivals, rodeos, rummage sales, runs, secondhand sales, swap meets, and other similar special events for up to five consecutive days, or six two-day weekends, or twelve individual days, within a twelve-month period, allowed only on non-residentially zoned properties, or on private properties approved with an institutional use.
- D. Location Filming. The temporary use of a specific site for the location filming of commercials, movies, videos, etc., for the time specified by the community development director, but not to exceed twelve months.
- E. Model Homes. A model home or model home complex may be authorized before the completion of subdivision improvements in compliance with the following standards:
  - 1. Provisions for suitable off-street parking with adequate ingress and egress to serve the model home complex.
  - 2. Provision of suitable landscaping to enhance the model home complex.
  - 3. When the builder submits an application for the final permits to build on the lots utilized for the model home complex, the parking lot and trap fences shall be removed and the driveway slabs shall be poured in front of each of the garages of all model homes. This will require the removal of all landscaping in front of the garages for the model homes.
  - 4. The poured driveway slabs and on-street parking will temporarily serve as the required parking for the model home complex and the sales office may remain in the model until all models in the subdivision have been sold.
  - 5. The sales office shall be converted back to residential use and/or removed before the issuance of the final building permit.
  - 6. The review authority may require other conditions of approval deemed necessary to protect the public health, safety, and general welfare of persons residing or working in the neighborhood.
- F. Outdoor Retail Sales within Nonresidential Zones.
  - 1. Sales of merchandise customarily sold on the premises by an established business physically located and doing business at the same location as the

temporary use. The sales of merchandise are limited to four events per calendar year per business conducting the sale, not exceeding four consecutive days per event.

2. Sales of merchandise not customarily sold on the premises, when the sales will be by an established business physically located and doing business in the city. The entity conducting the temporary sale shall dedicate all retail sales tax collected at the sale to accrue to the city. The sales are limited to four events per calendar year per business conducting the sale, not exceeding four consecutive days per event.

G. Pyrotechnics. Events proposing the use of pyrotechnics.

H. Seasonal Sales Lots. Seasonal sales lots (e.g., Halloween, Thanksgiving, Christmas, etc.) including temporary residence/security trailers on non-residentially zoned properties. However, a permit shall not be required when the sales are in conjunction with an established commercial business holding a valid city business license, or produce stands or farmer's markets; provided, the activity shall be limited to forty-five days of operation per calendar year.

I. Temporary Occupancy During Construction.

1. Major Development Projects. Temporary structures on the subject property may be used during the construction phase of an approved major development project (e.g., residential projects with five or more dwelling units or any commercial or industrial project). The structures or property may be used as offices or for the storage of equipment and/or tools, provided the temporary structures and the project itself are located within the city.
2. Minor Development Projects. An existing dwelling unit or a temporary structure on the subject property may be used during the construction phase of an approved minor development project (e.g., residential projects with four or fewer dwelling units). The structure or property may be used as a temporary residence, an office, or for the storage of equipment and/or tools.
3. Appropriate Conditions. The temporary use permit shall contain reasonable and necessary conditions regarding the following matters:
  - a. Required permits for the provision of sewer, gas, electricity and water services.
  - b. Provisions for adequate ingress and egress.
  - c. Provisions for the work to be performed on-site.
  - d. Provisions for the storage of asphalt, concrete, and dirt at designated sites within the subject property; provided, the applicant furnishes a schedule, acceptable to the community development director, for the periodic disposal or recycling of these materials.



- e. Provisions designed to minimize potential conflicts between the work to be performed on-site and the ordinary business and uses conducted within the city.
  - f. Length of Permit. The permit may be approved for up to twelve months following the issuance of the companion building permit, or upon completion of the subject development project, whichever occurs first.
  - g. Condition of Site Following Completion. All temporary structures and related improvements shall be completely removed from the subject site following expiration of the temporary use permit or upon completion of the development project, whichever occurs first.
- J. Temporary Real Estate Sales and/or Rental Offices. A temporary real estate sales and/or rental office may be established within the area of an approved subdivision, solely for the first sale or rental of homes or units, provided a temporary use permit has been approved for the model home complex and construction of the model homes is being diligently pursued in compliance with subsection E of this section (Model homes). An application for a temporary real estate office may be approved for a maximum of twelve months from the date of approval.
- K. Temporary Work Structures/Trailers. A temporary classroom, office, or similar structure, including a manufactured or mobile unit, may be approved for a maximum of twelve months from the date of approval, as an accessory use or as the first phase of a development project provided:
- 1. The use is authorized by a building permit for the mobile unit or trailer, and the building permit for the permanent structure;
  - 2. The use is appropriate because:
    - a. The mobile unit or trailer will be in place for a maximum of twelve months during construction or remodeling of a permanent approved commercial type structure, or upon expiration of the building permit for the permanent structure, whichever occurs first, or
    - b. The applicant has demonstrated that the temporary work site is a short-term necessity for a maximum of twelve months, while a permanent work site is being obtained; and
  - 3. The mobile unit or trailer is removed before final building inspection or the issuance of a certificate of occupancy for the permanent structure.
- L. Long-Term Mobile Vending Facilities. A Long-Term Mobile Vending Facility as defined in Chapter 5.68 may be approved for a maximum of twelve months from the date of approval, on private property so long as it is an ancillary use to a permitted use in the zone where the mobile vending is conducted in compliance with the following standards:

1. Setbacks. Long-term mobile vending facilities must be located at least five feet from the edge of any driveway or public sidewalk, utility boxes and vaults, accessible ramp, building entrance, exit or emergency access/exit way, or emergency call box and be located a minimum distance of 15 feet in all directions of a fire hydrant.
  2. Parking Requirements. Long-term mobile vending facilities are only permitted to be parked in a designated parking space(s) on a paved surface outside any designated fire lane. The mobile vending facility and associated seating, if any, shall also be located outside any parking or loading space that is required to fulfill the minimum parking requirements for the principal use on the property, during the principal use's hours of operation.
  3. Seating Requirements. All associated tables, seating, and/or shade structures shall be removed at the end of each business day and shall not be permanently erected outside of the mobile vending facilities business hours. In addition, all associated furnishings shall be maintained in a clean manner such that it does not create an unsightly appearance.
  4. Utilities. Electric outlet hookups are required to be installed for long-term mobile vending facilities and must be used while the mobile vending facility is on the premises. No generators shall be utilized on-site. If extension cords, hoses or other utilities are required, they shall be safely secured and not impede any path of travel.
  5. Accessibility Requirements. Long-term mobile vending facilities must operate in a manner and have access to restrooms consistent with current California Building Code (CBC) standards, which shall be provided on site and located within a maximum of 50 feet from the proposed long-term mobile vending facility parking location, unless otherwise approved by the community development director. Restrooms shall be provided, at no charge, for customer use during normal business hours and shall be continuously maintained in a clean and sanitary manner.
- M. Commissary. A Commissary as defined in Chapter 5.68 may be approved for a maximum of twelve months from the date of approval, on private property so long as it is an ancillary use to a permitted use in the zone where the commissary is conducted in compliance with the following standards:
1. All associated mobile vending facilities approved to be on the site of a commissary must be directly owned or operated by the commissary.
  2. Number of Mobile Vending Facilities per Commissary. No more than two mobile vending facilities may be approved through the Temporary Use Permit process for each commissary.
  3. Parking Requirements. The mobile vending facility associated with the commissary is only permitted to be parked in a designated parking space(s) on a paved surface outside any designated fire lane. The mobile vending

facility and associated seating, if any, shall also be located outside any parking or loading space that is required to fulfill the minimum parking requirements for the principal use on the property, during the principal use's hours of operation.

4. County Approval. Prior to operating, a commissary shall obtain a commissary permit issued by Contra Costa County, if applicable.

↳ N. Similar Temporary Activities. A temporary activity that the community development director determines is similar to the other activities listed in this section, and compatible with the applicable zone and surrounding land uses.

**§ 17.850.008 Minor temporary use permit.**

Allowed temporary uses, as defined in Section 17.850.007, including annual renewals for long-term mobile vending facilities and commissaries ~~and~~ occurring entirely upon private property not zoned for residential use or on private property with an approved institutional use and located within an existing development of sufficient size to provide adequate space, circulation and parking for the anticipated attendance, as determined by the community development director, may be permitted with a minor temporary use permit for any time period less than twelve months as approved by the community development director. With the exception of annual renewals for long-term mobile vending facilities and commissaries, which must continue to follow regulations as outline in Section 17.850.007(L and M), all minor temporary use permit approvals may be permitted if the applicant can demonstrate that the following performance standards are met:

- A. A minor temporary use permit application shall be completed and submitted to the community development director for approval prior to the start of the short-term activity.
- B. Hours of operation are limited to seven a.m. to ten p.m. daily.
- C. Adequate parking for the anticipated attendance shall be provided.
- D. All trash generated by the use shall be picked up both on- and off-site at the end of each event.
- E. The applicant shall obtain county health department approval and submit such documentation with the application for any food service beyond what is allowed for existing permitted businesses on-site.
- F. No consumption or sales of alcohol shall be allowed as part of the event, other than as permitted within existing businesses licensed by the California Department of Alcoholic Beverage Control located within the shopping center.
- G. Any amplified sound used at the event or other noise generation activities shall be subject to Chapter 9.32 (Noise Regulations) of the Brentwood Municipal Code.
- H. No additional lighting is allowed.

- I. Adequate provision for safety and security measures shall be provided. The applicant shall be responsible for ensuring the safety and welfare of the attendees, as determined by the chief of police or designee. The police department may close the event due to failure to satisfy conditions of the permit.
- J. Prior to the event, the applicant shall provide a statement to the city stating that the organizers of the event agree to indemnify, hold harmless, and defend the city, its officers, agents and employees from any and all liability or claims that may be brought against the city arising out of its approval of the minor temporary use permit, or arising out of the operation of the use or uses allowed under the permit, save and except that caused solely by the city's active negligence.
- K. The applicant shall adhere to all building and fire codes and obtain any necessary permits and inspections prior to the event.
- L. The applicant shall make a good faith effort to work with city staff in addressing any concerns that arise relating to the placement or operation of the event.

**§ 17.850.009 Development standards.**

The community development director shall review temporary use permits based on conformance to the following standards and the type of temporary use, using the requirements of the applicable zone, and Chapter 17.820 (Design and Site Development Review) and the specific site zoning standards for guidance:

- A. Provision for access, floor areas, landscaping, utilities, and other structure and property development improvements and features.
- B. Measures for removal of the activity and site restoration, to ensure that no changes to the site would limit the range of possible future land uses otherwise allowed by this title.
- C. Unless an alternative time period is specified in Section 17.850.007 (Allowed temporary uses), provision for a fixed period not to exceed twelve months for all temporary uses or structures. The community development director may grant time extensions, provided such time extension is clearly demonstrated as necessary, and regulate operating hours and days.
- D. Provision for parking facilities, including vehicular ingress and egress.
- E. Regulation of potential nuisance factors (e.g., dirt, dust, glare, light, noise, odors, smoke, and vibration).
- F. Regulation of temporary structures and facilities, including buffer areas, height, location of equipment, placement, setbacks, and size.
- G. Provision for sanitary facilities.
- H. Provision for waste collection and disposal.

- I. Provision for safety and security measures. The chief of police may close the event due to failure to satisfy conditions of the permit.
- J. Regulation of signs.

**§ 17.850.010 Conditions of temporary use permit approval.**

Temporary use permits shall include the following conditions of approval:

- A. Provision of a certificate of insurance acceptable to the city's risk manager.
- B. Submission of a performance bond or other surety devices, if necessary, to ensure that any temporary facilities or structures used will be removed from the site within a reasonable time following the event and that the property will be restored to its former condition, to the satisfaction of the community development director.
- C. Prior to the event, the applicant shall provide a statement to the city stating that the organizers of the event agree to indemnify, hold harmless, and defend the city, its officers, agents and employees from any and all liability or claims that may be brought against the city arising out of its approval of the minor temporary use permit, or arising out of the operation of the use or uses allowed under the permit, save and except that caused solely by the city's active negligence.
- D. Each site occupied by a temporary use shall be cleaned of debris, litter, or other evidence of the temporary activity on completion or removal of the activity, and shall thereafter be used in compliance with the provisions of this title.
- E. Other conditions determined by the community development director to ensure the operation of the proposed temporary use in a compatible, efficient, harmonious, nuisance-free, orderly, and safe, manner.

**§ 17.850.011 Revocation.**

A temporary use permit or minor temporary use permit may be revoked or modified by the community development director when it is determined that any of the following occurs:

- A. That circumstances have changed so that one or more of the provisions of this chapter are not being met or complied with.
- B. That the temporary use permit was obtained by misrepresentation or fraud.
- C. That one or more of the conditions of approval of the temporary use permit have not been met.
- D. That the use is in violation of any statute, ordinance, policy, law or regulation.