



AGENDA REPORT

Meeting Date: March 1, 2011
Item Number: D-3
To: Honorable Mayor & City Council
From: Susan Healy Keene, AICP, Director of Community Development
Subject: AN ORDINANCE OF THE CITY OF BEVERLY HILLS EXTENDING AN INTERIM ORDINANCE TO PROHIBIT THE DRILLING AND EXTRACTION OF OIL, GAS AND OTHER HYDROCARBON SUBSTANCES FROM SURFACE LOCATIONS IN THE CITY, AMENDING THE BEVERLY HILLS MUNICIPAL CODE AND DECLARING THE URGENCY THEREOF

Attachments:

1. Ordinance Extending Interim Ordinance No. 11-O-2603
2. City Council Agenda Report dated January 25, 2011

RECOMMENDATION

It is recommended that the City Council adopt the attached Ordinance extending Interim Ordinance No. 11-O-2603 for ten months and fifteen days, to allow time for the development of permanent regulations for extraction of soil, gas and other hydrocarbon substances.

INTRODUCTION

At its meeting of January 25, 2011, the City Council adopted Ordinance No. 11-O-2603, an interim ordinance. The interim ordinance was prepared in response to Council direction to develop regulations to prohibit future oil drilling and oil extraction from drill sites within the City of Beverly Hills. The interim ordinance establishes the requested prohibitions, but is only effective for a period of 45 days from its adoption. The recommended City Council action will extend the prohibitions of the interim ordinance for an additional 10 months and 15 days, such that it would expire on January 25, 2012.

DISCUSSION

The previously adopted interim ordinance was prepared by the City Attorney's Office to establish temporary regulations to prohibit oil drilling and extraction within the City. The Ordinance attached hereto would extend the previously adopted interim ordinance for an additional ten months and fifteen days, as permitted by Government Code Section 65858. The Ordinance contains urgency findings such that it would take effect immediately upon adoption.

Consistent with State Planning and Zoning laws, during this period, the Planning Commission will commence the study of a permanent ordinance, ultimately concluding in a recommendation to the City Council regarding a permanent ordinance. Thereafter, the City Council would consider the Commission's recommendation and hold a public hearing before making a final decision regarding adoption of a permanent ordinance.

As indicated in the attached January 25th Agenda Report, the City's Planning staff believes that the public welfare is presently impacted adversely by the industrial activity inherent in the surface operations of oil drilling and extraction within the City. No similar industrial activity is currently permitted within the City due to the incompatibility of such industrial uses with the residential and commercial uses permitted within the City. Any establishment of new surface level oil drilling or extraction activities, and any extension of the current activities after December 31, 2016 would exacerbate that incompatibility by impacting additional properties or by extending in time the impact on existing properties from existing operations.

ENVIRONMENTAL REVIEW

The proposed ordinance has been environmentally reviewed pursuant to the California Environmental Quality Act ("CEQA"), (Public Resource Sections 21000, et seq.), the State CEQA Guidelines (California Code of Regulations, Title 14, Sections 15000 et seq.), and the City's Local CEQA guidelines and has been determined to be exempt pursuant to the Guidelines Section 15061 (b) (3) in that it can be seen with certainty that prohibiting drilling and extraction within the City will not result in an potentially significant environmental impacts.

PUBLIC NOTICE AND COMMENTS

Notice of the City Council's public hearing regarding extension of the interim ordinance was published in the Beverly Hills Courier on Friday, February 18, 2011 and in the Beverly Hills Weekly on Thursday, February 24, 2011.

FISCAL IMPACT

The interim ordinance would have no fiscal impact on the City as it will not alter current oil extraction operations during the term of the interim ordinance.

Meeting Date: March 1, 2011

Susan Healy Keene, AICP
Director of Community Development


Approved By

ATTACHMENT 1

ORDINANCE EXTENDING INTERIM ORDINANCE NO. 11-O-2603

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BEVERLY HILLS
EXTENDING AN INTERIM ORDINANCE TO PROHIBIT THE
DRILLING AND EXTRACTION OF OIL, GAS AND OTHER
HYDROCARBON SUBSTANCES FROM SURFACE
LOCATIONS IN THE CITY, AMENDING THE BEVERLY
HILLS MUNICIPAL CODE AND DECLARING THE
URGENCY THEREOF

THE CITY COUNCIL OF THE CITY OF BEVERLY HILLS HEREBY ORDAINS AS
FOLLOWS:

Section 1. Legislative Findings.

The City Council of the City of Beverly Hills is concerned that oil and gas drilling and production may not be compatible with other land uses in the City. Such uses generate odors and noise, and reduce the value and enjoyment of nearby properties. No similar industrial activity is currently permitted within the City. Oil and gas extraction may not be compatible with the residential and commercial uses allowed in the City. As such, the City Council wishes to consider a permanent prohibition on the drilling and extraction of oil, gas, and other hydrocarbon substances from drill sites that surface in the City and to require that existing uses discontinue no later than December 31, 2016.

Because the public process of adopting permanent regulations may be lengthy, and because the further establishment or extension of drilling and extraction operations during the public process might frustrate the ultimate regulation adopted, the City Council adopted Ordinance No. 11-O-2603, and interim ordinance that took effect immediately on January 25, 2011, to preserve the status quo while the City considers a permanent prohibition (the "Interim Ordinance").

Section 2. Authority.

Pursuant to Government Code Section 65858, the City Council may adopt, as an urgency measure, an interim ordinance that prohibits any uses that may be in conflict with a contemplated zoning proposal that the City Council is considering, studying or intends to study within a reasonable period of time. After public notice, the City Council may extend the interim ordinance by a period of 10 months and 15 days, pursuant to Government Code Section 65858.

Section 3. Urgency Findings.

The City Council finds and determines that there is an immediate threat to the public health, safety, or welfare and that the approval of new oil wells or the extension of life of existing oil wells would result in that threat to the public health, safety or welfare. As described

in Section 1, surface level operations for oil and gas drilling and production generate odors and noise that are currently and adversely affecting the public welfare. The extension of drilling and extraction activities during the Council's review and consideration of a permanent prohibition could frustrate the ultimate regulation adopted by potentially extending these impacts and an incompatible use for a significant period of time. Any new or extended surface oil operations would generate additional noise, odor and similar impacts or extend those impacts in time. Thus, to preserve the public health, safety and welfare, it is necessary that this Ordinance take effect immediately to prevent such harm.

Section 4. CEQA Findings.

The City Council hereby finds that it can be seen with certainty that there is no possibility that the adoption and implementation of the Interim Ordinance or extension thereof may have a significant effect on the environment. This extension of the Interim Ordinance does not authorize construction and, in fact, imposes greater restrictions on certain development in order to protect the public health, safety and general welfare. This extension is therefore exempt from the environmental review requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations.

Section 5. Severability.

If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, the remainder of this Ordinance shall be and remain in full force and effect.

Section 6. Approval and Extension of Ordinance.

This Ordinance, adopted as an urgency measure for the immediate protection of the public safety, health, and general welfare, containing a declaration of the facts constituting the urgency, and passed by a minimum four-fifths (4/5) vote of the City Council, shall take effect immediately upon its adoption and shall extend the effect of the Interim Ordinance for a period of ten (10) months and fifteen (15) days. After notice pursuant to Section 65090 of the California Government Code and public hearing, the City Council may extend the effectiveness of the Interim Ordinance for an additional one year period, as provided in Government Code Section 65858.

Section 7. Publication.

The City Clerk shall certify to the adoption of this Ordinance and shall cause this Ordinance and his certification, together with proof of publication, to be entered in the Book of Ordinances of the Council of this City.

ADOPTED:

JIMMY DELSHAD
Mayor of the City of Beverly Hills,
California

ATTEST:

(SEAL)
BYRON POPE
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

LAURENCE S. WIENER
City Attorney

JEFFREY KOLIN
City Manager

ATTACHMENT 2

CITY COUNCIL AGENDA REPORT DATED JANUARY 25, 2011



AGENDA REPORT

Meeting Date: January 25, 2011
Item Number: E-3
To: Honorable Mayor & City Council
From: Laurence S. Wiener, City Attorney
Subject: AN INTERIM ORDINANCE OF THE CITY OF BEVERLY HILLS TO PROHIBIT DRILLING AND EXTRACTION OF OIL, GAS AND OTHER HYDROCARBON SUBSTANCES FROM SURFACE LOCATIONS IN THE CITY, AMENDING THE BEVERLY HILLS MUNICIPAL CODE AND DECLARING THE URGENCY THEREOF

Attachments: 1. Interim Ordinance

RECOMMENDATION

If the City Council wishes to consider a permanent prohibition on oil drilling and extraction from surface locations within the City of Beverly Hills, then it is recommended that the City Council adopt this interim ordinance to preserve the status quo while the City Council considers the permanent ordinance.

INTRODUCTION

At a recent City Council study session, the City Council reviewed a proposed update of the City's current oil well regulations. At that time, the City Council directed that the City Attorney's Office also prepare an amendment to the City's oil well regulations to prohibit future oil drilling and oil extraction from drill sites within the City of Beverly Hills. City Council members commented that they were concerned that the surface operations of an oil extraction activity are not compatible with other uses within the City.

DISCUSSION

In response to the City Council's direction, the City Attorney's Office has prepared an amendment to the City's oil drilling and oil extraction regulations. The amendment would prohibit future drilling and extraction from sites within the City of Beverly Hills.

With regard to the only current drill site in the City, located adjacent to Beverly Hills High School, the amendment would provide that this use must be discontinued no later than December 31, 2016, which will coincide with the expiration of the current lease of that site.

The amendment would not impact oil wells that are drilled beneath the City from drill sites located in the City of Los Angeles. These wells will continue to require a permit from the City Council and will continue to be regulated by the current municipal code provisions.

Procedure

As this ordinance concerns the permitted use of land, it must be adopted pursuant to the procedures of the State Planning and Zoning law. Thus, the ordinance must be reviewed by the Planning Commission at a public hearing. The Planning Commission must make a recommendation concerning the ordinance, and the City Council must then hold a public hearing regarding the ordinance before making a final decision regarding whether to adopt the ordinance.

Of course, this process may be lengthy. In recognition of the fact that the public process may be lengthy, and that further establishment or extension of a use during the public process might frustrate the ultimate regulation adopted, the State planning and zoning law also provides that the City may adopt an interim ordinance that will take effect immediately, and that will preserve the status quo while the City considers a permanent regulation.

Therefore, the City Council has been presented with a proposed interim ordinance that would prohibit any new site from being used for oil drilling or extraction activity in the City of Beverly Hills. It would also prohibit any continuation of such activity on the site adjacent to Beverly Hills High School after December 31, 2016. This ordinance may be adopted by a four-fifths vote of the City Council and would be effective for 45 days. It may then be extended for up to 10 months and 15 days (thus, in combination with the 45 days, totaling one year) and may later again be extended for up to one additional year.

In order to adopt the interim ordinance, the City Council must find that there is a current and immediate threat to the public health, safety or welfare and that the approval of additional entitlements for use would result in that threat to the public health, safety or welfare. The City's planning staff believes that the public welfare is presently impacted adversely by the industrial activity inherent in the surface operations of an oil drilling and extraction facility within the City. No similar industrial activity is currently permitted within the City due to the incompatibility of industrial uses with the residential and commercial uses permitted within the City. Such uses generate odors, noise and similar impacts that reduce the value and enjoyment of nearby properties. Any establishment of new surface level oil drilling or extraction activities, and any extension of the current activities after December 31, 2016 would exacerbate that incompatibility by impacting additional properties or by extending in time the impact on existing properties.

FISCAL IMPACT

The interim ordinance would have no fiscal impact on the City as it will not alter current oil extraction operations during the term of the interim ordinance.



Laurence S. Wiener
Approved By

Attachment 1

ORDINANCE NO. _____

AN INTERIM ORDINANCE OF THE CITY OF BEVERLY HILLS TO PROHIBIT THE DRILLING AND EXTRACTION OF OIL, GAS AND OTHER HYDROCARBON SUBSTANCES FROM SURFACE LOCATIONS IN THE CITY, AMENDING THE BEVERLY HILLS MUNICIPAL CODE AND DECLARING THE URGENCY THEREOF

THE CITY COUNCIL OF THE CITY OF BEVERLY HILLS HEREBY ORDAINS AS FOLLOWS:

Section 1. Legislative Findings.

The City Council of the City of Beverly Hills is concerned that oil and gas drilling and production may not be compatible with other land uses in the City. Such uses generate odors and noise, and reduce the value and enjoyment of nearby properties. No similar industrial activity is currently permitted within the City. Oil and gas extraction may not be compatible with the residential and commercial uses allowed in the City. As such, the City Council wishes to consider a permanent prohibition on the drilling and extraction of oil, gas, and other hydrocarbon substances from drill sites that surface in the City and to require that existing uses discontinue no later than December 31, 2016.

Because the public process of adopting permanent regulations may be lengthy, and because the further establishment or extension of drilling and extraction operations during the public process might frustrate the ultimate regulation adopted, the City wishes to adopt an interim ordinance that will take effect immediately and preserve the status quo while the City considers a permanent prohibition.

Section 2. Authority.

Pursuant to Government Code Section 65858, the City Council may adopt, as an urgency measure, an interim ordinance that prohibits any uses that may be in conflict with a contemplated zoning proposal that the City Council is considering, studying or intends to study within a reasonable period of time.

Section 3. Urgency Findings.

The City Council finds and determines that there is an immediate threat to the public health, safety, or welfare and that the approval of new oil wells or the extension of life of existing oil wells would result in that threat to the public health, safety or welfare. As described in Section 1, surface level operations for oil and gas drilling and production generate odors and noise that are currently and adversely affecting the public welfare. The extension of drilling and extraction activities during the Council's review and consideration of a permanent prohibition

could frustrate the ultimate regulation adopted by potentially extending these impacts and an incompatible use for a significant period of time. Any new or extended surface oil operations would generate additional noise, odor and similar impacts or extend those impacts in time. Thus, to preserve the public health, safety and welfare, it is necessary that this ordinance take effect immediately to prevent such harm.

Section 4. The City Council hereby amends Section 10-5-301(C) of Article 3 of Chapter 5 of Title 10 of the Beverly Hills Municipal Code and adds a new Section 10-5-301(D) to Article 3 of Chapter 5 of Title 10 to read as follows:

“C. The council hereby finds and determines that the uncontrolled drilling in the subsurface for oil, gas and other hydrocarbon substances, and the uncontrolled production thereof, would be detrimental to the general welfare of the citizens and residents of the city and detrimental to the general public peace, health, safety, comfort, convenience, and prosperity. The council finds and determines that subsurface areas within the city may be explored for oil and gas, and, if such substances are found, they may be produced by directional or slant drilling methods from surface locations outside the city. Such operations must comply with the regulations of the city or county having local control of the drill site area, as well as the limitations and regulations set forth in this article to protect the citizens and residents of the city from odors, noise, dust, and the spreading of oil, dirt, and debris upon the public streets of the city, and to protect buildings and structures from vibrations, sinking, or other damages caused by the drilling for and production of oil and gas in an unrestricted location and manner.

D. No person shall drill, produce, or extract oil, gas or other hydrocarbon substances from any surface location in the city.”

Section 5. The City Council hereby amends in its entirety Section 10-5-302 of Article 3 of Chapter 5 of Title 10 of the Beverly Hills Municipal Code to read as follows:

“10-5-302: DRILLING AND PRODUCTION RESTRICTED:

A. No person shall drill for or produce oil, gas, or other hydrocarbon substances from any surface location within the city, including any controlled drill site, whether the subsurface operation from such well is within or outside the city except that production of oil, gas and other hydrocarbon substances may continue from controlled drill site no. 1 until the date specified in Section 10-5-323 for cessation of such activity.

B. The council hereby finds and determines that it is, and it is hereby declared to be unlawful and a public nuisance for any person hereafter to erect any derrick or drilling equipment and hereafter to drill a well in order to produce oil, gas or other hydrocarbon substances from drill sites that are located in the city.

C. No person shall drill for or produce oil, gas or other hydrocarbon substances from the subsurface of the city from drill sites located outside the city, except as permitted by this article.

D. The council hereby finds and determines that it is, and it is hereby declared to be, unlawful and a public nuisance for any person hereafter to drill an oil well or produce oil, gas or other

hydrocarbon substances by directional or slant drilling methods from surface locations or sites outside the city which said wells pass through or bottom in the subsurface of any property located within the city, except in the manner provided in this article.

E. No person shall drill or redrill or deepen below its present bottom any oil well for the production of or exploration for oil, gas or other hydrocarbon substances where any portion of the surface operation or the subsurface operation of such well is located within the city, except as authorized by this article.”

Section 6. The City Council hereby amends in its entirety Subsection 10-5-306 of Article 3 of Chapter 5 of Title 10 of the Beverly Hills Municipal Code to read as follows:

“10-5-306: DRILLING AND PRODUCTION WITHIN THE CITY LIMITS:

A. The council finds and determines that the location of drill sites on real property within the city is contrary to the public health, safety, and general welfare of the citizens and inhabitants of the city. Drilling from or producing oil, gas or other hydrocarbon substances from surface locations within the city is hereby prohibited except that production of oil, gas and other hydrocarbon substances may continue from controlled drill site no. 1 until the date specified in Section 10-5-323 for cessation of such activity.

B. Controlled drill site no. 1 shall be and embrace the real property in the city of Beverly Hills, County of Los Angeles, State of California, described as follows:

That portion of Lots 843 and 844, Tract No. 7710, in the city of Beverly Hills, County of Los Angeles, State of California, as recorded in Book 83, pages 94 and 95 of Maps in the office of the Recorder of said County, described as follows:

Beginning at the most southerly corner of said Lot 843; thence along the southwesterly line of said lot north 30 (30°) degrees 53'05" west 120.00 feet; thence north 59 (59°) degrees 13'04" east 233.00 feet; thence south 30 (30°) degrees 46'56" east 22.50 feet; thence north 59 13'04" east 30.50 feet; thence south 30 (30°) degrees 46'56" east 102.76 feet to a point on the northwesterly line of Olympic Boulevard, which is a curve concave to the southeast and having a radius of 593.11 feet; thence southwesterly along said curve a distance of 79.07 feet to the end of said curve; thence continuing southwesterly along said northwesterly line of Olympic Boulevard south 59 (59°) degrees 13'04" west 184.45 feet to the point of beginning.

Section 7. The City Council hereby adds a new Section 10-5-323 to Article 3 of Chapter 5 of Title 10 of the Beverly Hills Municipal Code to read as follows:

“A. Notwithstanding the provisions of Title 10, Chapter 3, Article 41, all drilling, production, and extraction activities occurring from surface locations in the city, including controlled drill site no. 1, shall cease by December 31, 2016.

B. The city council may extend the date set forth in Subsection (A) for controlled drill site no. 1 upon application of the property owner and upon finding that an extension of time would be in the public interest.”

Section 8. CEQA Findings.

The City Council hereby finds that it can be seen with certainty that there is no possibility that the adoption and implementation of this Ordinance may have a significant effect on the environment. This Ordinance does not authorize construction and, in fact, imposes greater restrictions on certain development in order to protect the public health, safety and general welfare. This Ordinance is therefore exempt from the environmental review requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations.

Section 9. Severability.

If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, the remainder of this Ordinance shall be and remain in full force and effect.

Section 10. Approval and Extension of Ordinance.

This Ordinance, being an Interim Ordinance adopted as an urgency measure for the immediate protection of the public safety, health, and general welfare, containing a declaration of the facts constituting the urgency, and passed by a minimum four-fifths (4/5) vote of the City Council, shall take effect immediately upon its adoption and shall continue in effect for a period of not longer than forty-five (45) days. After notice pursuant to Section 65090 of the California Government Code and public hearing, the City Council may extend the effectiveness of this Interim Ordinance as provided in Government Code Section 65858.

Section 11. Publication.

The City Clerk shall certify to the adoption of this Ordinance and shall cause this Ordinance and his certification, together with proof of publication, to be entered in the Book of Ordinances of the Council of this City.

ADOPTED:

JIMMY DELSHAD
Mayor of the City of Beverly Hills,
California

ATTEST:

(SEAL)
BYRON POPE
City Clerk

APPROVED AS TO FORM:



LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

JEFFREY KOLIN
City Manager