

## Calif. Cities' Drilling Bans May Face Pushback In State Courts

By **Thomas Manakides and Joseph Edmonds** (March 28, 2022, 4:36 PM EDT)

The city of Los Angeles and the neighboring city of Long Beach both recently took substantial steps toward banning future oil and gas drilling, as well as phasing out existing oil and gas operations.

While the specifics of the proposed bans are yet to be detailed, prior attempts by cities to ban oil production have faced mixed results in the courts. Given the long history of oil and gas operations in Southern California, any ban will likely face judicial scrutiny.

The Los Angeles City Council approved its measure in support of a ban on new oil and gas wells, and phasing out existing ones, on Jan. 26. Specifically, it directed the city attorney to draft an ordinance "to prohibit new oil and gas extraction and make extraction activities a nonconforming use in all zones."<sup>[1]</sup>

The council also called for the Office of Petroleum and Natural Gas Administration and Safety to retain an expert to implement "an amortization period for existing wells," and called for the drafting of a policy that would hold oil companies responsible for ensuring "proper plugging and abandonment of wells and comprehensive site remediation to be completed within 3-5 years of those sites ceasing active oil production."<sup>[2]</sup>

On Jan. 27, the Long Beach Sustainable City Commission recommended to the mayor and city council that the city stop issuing new drilling permits, and "explore opportunities to work with Los Angeles County's third-party amortization study to accelerate the phase out of all oil operations."<sup>[3]</sup>

The significance of these proposed bans is best understood in connection with the historical context of oil production in the Los Angeles area — and in particular its close connection to residential and urban uses. While oil production from the Los Angeles basin began in the 1800s, most of the subsequent production and exploration occurred after World War I, and grew in tandem with the increased prevalence of automobiles in Los Angeles.

Significant oil operations occurred throughout the Los Angeles basin during those years, with residential and commercial structures frequently coexisting with and on these oil fields. Oil well derricks and other equipment remained prevalent in the Los Angeles basin through the 1950s and 1960s.



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The number of oil wells eventually tapered off, as fields became depleted, conservation measures were adopted and wells serviced an increased area. But mixed oil and urban land use continued for decades.

To be sure, significant oil reserves remain in the area. Indeed, the "the Wilmington Oil Field is the third largest field in the contiguous United States with an ultimate recovery estimated at three billion barrels of oil."<sup>[4]</sup> As of 2020, Los Angeles County was reportedly home to 8,371 active oil wells, producing a total of more than 18 million barrels — approximately 8% of California's oil production.<sup>[5]</sup>

Given the sweeping nature of the proposed ban on new wells, and the phasing out and remediation of existing wells, the Los Angeles and Long Beach ordinances — if passed — will likely be challenged in the courts. The proposed bans have not yet been reduced to written form as ordinances, but Los Angeles and Long Beach are not the first cities to propose or enact bans on urban oil production.

The body of California case law considering challenges to city prohibitions on oil wells — including one involving Los Angeles — is instructive as to arguments to potentially attack the latest bans, as well as to how courts may view these challenges.

In 1925, the California Supreme Court, in *Pacific Palisades Association v. City of Huntington Beach*, considered a challenge to a Huntington Beach ordinance making it unlawful within a portion of the city to operate oil wells or drill for oil.<sup>[6]</sup>

The challenger owned a piece of property within the designated portion of the city that would otherwise be "of great value for the purpose of producing oil."<sup>[7]</sup> The trial court sustained the defendant city's demurrer, but the Supreme Court reversed, and allowed the challenge to proceed.

The high court discussed the extensive oil activity that was already present throughout the city, noting that within 900 feet of the subject property there were "no less than 20 completed wells," and that "numerous oil wells have been drilled" in close proximity to the nearby schoolhouse and in the "section of the city more densely populated than the restricted area."<sup>[8]</sup>

The court recognized that "the use to which one may put his property may be restricted or regulated by the state, in the exercise of its police power, so far as it may be necessary to protect others from injury from such use" — including "the unquestioned right to regulate the business of operating oil wells within its city limits, and to prohibit their operation within delineated areas and districts" — but held that "it is elementary that the enjoyment of the property cannot be interfered with or limited arbitrarily."<sup>[9]</sup>

In *Beverly Oil Co. v. City of Los Angeles*, decided by the California Supreme Court in 1953, an oil company challenged a Los Angeles city zoning ordinance that banned, in certain designated areas, new oil wells and redrilling existing oil wells deeper, but did not prohibit production of oil using existing wells.<sup>[10]</sup>

The court, in a split decision, rejected the oil company's challenge, holding that it is "well settled that the enactment of an ordinance which limits the owner's property interest in oil bearing lands located within the city is not of itself an unreasonable means of accomplishing a legitimate objective within the police power of the city."<sup>[11]</sup>

However, in a forceful dissent, Justice Benjamin Schauer opined that "the plaintiff is being quite unnecessarily, arbitrarily, and to no substantially good end, deprived without compensation of valuable property rights," and lambasted the ordinance at issue as "useless, unnecessary and wholly

arbitrary." [12]

In 1987, in what was basically the inverse of the 1953 action, the California Court of Appeal in *No Oil Inc. v. City of Los Angeles* considered the validity of the Los Angeles ordinances that authorized the drilling project at issue. [13]

The challenger argued that the drilling ordinances were inconsistent with the city plan, and that the court should defer to interpretations of the ordinance made by city officials and in the legislative history, which interpreted the ordinance to prohibit the project at issue. However, the court rejected these arguments and reversed the trial court's order, which had blocked the drilling project.

In 2001, the California Court of Appeal in *Hermosa Beach Stop Oil Coalition v. City of Hermosa Beach* considered an oil company's argument that Hermosa Beach's prohibition on oil drilling was an unconstitutional interference with its vested contractual rights contained in a previously executed lease agreement with the city to conduct oil exploration. [14]

The court rejected this challenge, but did so based on the early stage of the oil exploration under the lease that had been conducted to that point.

The court held that "no right to develop vests until all final discretionary permits have been authorized and significant 'hard costs' have been expended in reliance on those permits — that is, until substantial construction has occurred in reliance on a building permit," and that the project at issue had not yet reached those milestones, because the oil company "had not obtained building or drilling permits from the City." [15]

This standard, if applied to the proposed city bans on existing oil wells — some of which have been in place for decades — could provide a substantial impediment to enforcement of such an ordinance.

Most recently, in 2021, the California Court of Appeal in *Chevron USA Inc. v. County of Monterey* affirmed a trial court decision striking down a Monterey County ordinance enacted as part of a voter-approved initiative "banning 'land uses in support of' new oil and gas wells" in unincorporated areas. [16]

The court held that the ban was preempted by a California statute that "explicitly provides that it is the State of California's oil and gas supervisor who has the authority to decide whether to permit an oil and gas drilling operation to drill a new well." [17] The court recognized that "[i]f a local regulation conflicts with a state law, the local regulation exceeds the local entity's power." [18]

Thus, the court held that "[t]he fact that state law leaves room for some local regulation of oil drilling, such as zoning regulations identifying where oil drilling will be permitted in a locality, does not mean that the County has the authority to ban all new wells." [19] This decision is under review by the California Supreme Court.

While California case law provides insight as to potential arguments to challenge a future ban on oil and gas drilling in Los Angeles or Long Beach, the specifics of the final ordinances could be critical as to whether they will ultimately survive judicial scrutiny.

**Disclosure: Gibson Dunn represents Chevron USA in Chevron USA v. County of Monterey.**

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[1] Los Angeles City Council, Journal/Council Proceeding (Jan. 26, 2022) at 30.

[2] *Id.*

[3] City of Long Beach, Memorandum (Jan. 27, 2022), available at <http://longbeach.legistar.com/View.ashx?M=F&ID=10423777&GUID=CE2373C6-1897-4A8F-9FE8-858224EC882E>.

[4] <https://longbeach.gov/energyresources/about-us/oil/history/>.

[5] <http://www.laalmanac.com/energy/en14.php#:~:text=Los%20Angeles%20County's%20total%202020,more%20than%20785%20million%20gallons> (the number of active wells includes both onshore and offshore wells); [https://www.eia.gov/dnav/pet/pet\\_crd\\_crpdn\\_adc\\_mbbbl\\_a.htm](https://www.eia.gov/dnav/pet/pet_crd_crpdn_adc_mbbbl_a.htm).

[6] *Pac. Palisades Ass'n v. City of Huntington Beach*, 196 Cal. 211, 215 (1925).

[7] *Id.* at 214.

[8] *Id.* at 215-16.

[9] *Id.* at 216-17.

[10] *Beverly Oil Co. v. City of Los Angeles*, 40 Cal. 2d 552 (1953).

[11] *Id.* at 558.

[12] *Id.* at 563-64 (Schauer, J., dissenting).

[13] *No Oil Inc. v. City of Los Angeles*, 196 Cal. App. 3d 223, 232 (1987).

[14] *Hermosa Beach Stop Oil Coalition v. City of Hermosa Beach*, 86 Cal. App. 4th 534, 544 (2001).

[15] *Id.* at 552.

[16] *Chevron USA Inc. v. County of Monterey*, 70 Cal. App. 5th 153, 158-59 (2021). Gibson Dunn represents Chevron USA Inc. in this ongoing matter.

[17] *Id.* at 159.

[18] *Id.* at 168.

[19] *Id.* at 172.