

Attachment B
Resolution – Finding of Consistency

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF FRESNO, CALIFORNIA, TO FIND THE CITY OF FRESNO'S LAND USE PLANS AND REGULATIONS CONSISTENT WITH THE AIRPORT LAND USE COMPATIBILITY PLAN OF 2018

WHEREAS, in December of 2018 the Fresno County Airport Land Use Commission (ALUC) adopted a new Fresno County Airport Land Use Compatibility Plan (ALUCP); and

WHEREAS, the new ALUCP significantly expands the scope and scale of airport land use planning, including expanding the Airport Influence Area for Chandler airport by 67%, and expanding the Airport Influence Area for Fresno-Yosemite International by 84%; and

WHEREAS, Government Code Section 65302.3(a) states that a county's or city's land use plans and regulations shall be consistent with an ALUCP; and

WHEREAS, this matter was considered by the Airport Land Use Commission on May 13, 2019, and June 3, 2019, at which time they rejected the City of Fresno's proposed Consistency Finding; and

WHEREAS, the Citywide Development Code implements the General Plan by regulating land use within Fresno's City Limits; and

WHEREAS, in any instance of conflict between the ALUCP and any City of Fresno planning documents, including the Citywide Development Code and the General Plan, the Citywide Development Code states unequivocally that all such conflicts shall be resolved in favor of the ALUCP; and

Date Adopted:

Date Approved:

Effective Date:

City Attorney Approval:



Resolution No.

WHEREAS, all discretionary planning entitlements require that the Director of Planning and Development or the Planning Commission must find the project to be consistent with the ALUCP before the application is approved; and

WHEREAS, the above measures in the Citywide Development Code are the most effective way to achieve consistency with the ALUCP and provide for public health by ensuring immediate compliance with the most current version of the ALUCP and eliminating the risk of conflicts between City of Fresno Regulations and the ALUCP; and

WHEREAS, California Public Utilities Code Section 21676(a) provides that a local agency may propose to overrule the ALUC's determination that a land use plan is inconsistent with the ALUCP if by a two-thirds vote of its governing body it makes specific findings that the proposed action is consistent with the purposes of California Public Utilities Code Section 21670.; and

WHEREAS, California Public Utilities Code Section 21676(b) provides that a local agency may propose to overrule the ALUC's determination that a proposed amendment to the zoning ordinance is inconsistent with the ALUCP if by a two-thirds vote of its governing body it makes specific findings that the proposed action is consistent with the purposes of California Public Utilities Code Section 21670; and

WHEREAS, pursuant to the requirements of California Public Utilities Code Sections 21676(a) and (b) the City provided a copy of its proposed decision and findings to the ALUC on [insert date], 45 days prior to the anticipated date of the proposed decision to overrule the ALUC; and

WHEREAS, the California Department of Transportation, Division of Aeronautics was also provided with a copy of the proposed decision and accompanying findings; and

WHEREAS, the ALUC and the California Department of Transportation, Division of Aeronautics were allowed to provide comments within 30 days of receiving the proposed decision and findings and any such comments received have been included in the public record.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Fresno as follows:

1. Pursuant to California Public Utilities Code Section 21676(a) and (b), The City of Fresno hereby overrules the May 13, 2019, inconsistency determination of the ALUC and finds the City's land use plans and regulations, inclusive of the proposed text amendment attached as Exhibit A, are consistent with the Fresno County Airport Land Use Compatibility Plan, and with the purposes of California Public Utilities Code Section 21670.

2. Based on its independent judgment, the Council finds that the proposed text amendment is consistent with the purpose set forth in Public Utilities Code Section 21670(a)(2) of protecting the public health, safety, and welfare by ensuring the orderly expansion of airports and the adoption of land use measures that minimize the public's exposure to excessive noise and safety hazards within areas around public airports to the extent that these areas are not already devoted to incompatible uses as follows:

- a. Development Permits, Conditional Use Permits, Variances, Text Amendments, Planned Development Permits, Development Agreements, and

Annexations require a specific finding that the approval is consistent with the most current version of the Airport Land Use Compatibility Plan (ALUCP) as adopted by the ALUC. Without this finding, proposed projects cannot be approved.

b. By requiring that projects shall be consistent with the ALUC's adopted plan, the proposed text amendment prioritizes the ALUC's planning document such that the land use measures contained in the ALUCP cannot be set aside or superseded by provisions of the Fresno Municipal Code.

c. Deference to the provisions of the ALUCP ensures strict adherence to land use measures that protect the public and minimize their exposure to excessive noise and safety hazards within areas around public airports to the extent that these areas are not already devoted to incompatible uses.

d. Requiring compliance with the provisions of the ALUCP as a specific finding eliminates the risk of conflicting provisions between the Fresno Municipal Code, adopted planning documents within the City of Fresno, and future updates to the ALUCP because the most current adopted version of the ALUCP is the basis for the proposed findings.

e. Because the ALUCP was adopted by the ALUC to fulfill the purpose set forth in Public Utilities Code Section 21670(a)(2), required compliance with the ALUPC, by its nature, is consistent with that purpose.

f. Upon adoption of the proposed text amendment, development within all planning areas within the City of Fresno will be subject to its provisions. In addition, the proposed text amendment states that the ALUCP shall supersede

all other land use plans within the City of Fresno. Therefore, the Council also finds that based on its independent judgment, upon adoption of the proposed text amendment, the City's land use plans and regulations are consistent with the purpose set forth in Public Utilities Code Section 21670(a)(2) of protecting the public health, safety, and welfare by ensuring the orderly expansion of airports and the adoption of land use measures that minimize the public's exposure to excessive noise and safety hazards within areas around public airports to the extent that these areas are not already devoted to incompatible uses.

* * * * *

STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, YVONNE SPENCE, City Clerk of the City of Fresno, certify that the foregoing resolution was adopted by the Council of the City of Fresno, at a regular meeting held on the _____ day of _____ 2019.

AYES :
NOES :
ABSENT :
ABSTAIN :

YVONNE SPENCE, MMC CRM
City Clerk

By: _____ Date
Deputy

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By: _____ Date
Talía Kolluri-Barbick
Supervising Deputy City Attorney

Attachment: Exhibit A

Exhibit A

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF FRESNO, CALIFORNIA, AMENDING SECTIONS 15-104-B-4; 15-5206; 15-5306; 15-5506-D; 15-5811-A; 15-5905-A; 15-6006-A; AND 15-6104-B OF THE FRESNO MUNICIPAL CODE

THE COUNCIL OF THE CITY OF FRESNO DOES ORDAIN AS FOLLOWS:

SECTION 1. Section 15-104-B-4 of the Fresno Municipal Code is amended as follows:

SECTION 15-104-B-4. PRIORITY OF PLANS

[a. In the event of a conflict between this Code and any operative plan, or between two operative plans, the conflict shall be resolved in the following order:

- (a) Fresno County Airport Land Use Compatibility Plan (as may be amended) adopted by the Fresno County Airport Land Use Commission pursuant to California Public Utilities Code Sections 21670-21679.5
- (b) Adopted Design Guidelines
- (c) Development Code
- (d) General Plan
- (e) Specific Plan
- (f) Concept Plan
- (g) Community Plan
- (h) Neighborhood Plan
- (i) Redevelopment Agency Guidelines]

~~[a. In the event of a conflict between this Code and the General Plan or any applicable operative plan or Redevelopment Agency guidelines, this Code shall control.~~

Date Adopted:
Date Approved
Effective Date:

City Attorney Approval: 

Ordinance No.

- ~~i. Exception: If the project is located within an area with adopted design guidelines, such design guidelines shall control.~~
- ~~b. In the event of a conflict between the General Plan and any applicable operative plan, the General Plan shall control. However, for areas within the Downtown Neighborhoods Community Plan (DNCP), the Fulton Corridor Specific Plan (FCSP), or operative airport plan, the DNCP, FCSP, and airport plan shall govern.~~
- ~~c. In the event of a conflict between a Specific Plan and a Concept Plan, Community Plan, or Neighborhood Plan, the Specific Plan shall control.~~
- ~~d. In the event of a conflict between a Concept Plan and a Community Plan or Neighborhood Plan, the Concept Plan shall control.]~~
- e[b]. To maintain and improve the consistency between plans, the adoption or amendment of a plan shall be accompanied by corresponding amendments to the General Plan and other plans which affect the same geographic area.

SECTION 2. Section 15-5206 of the Fresno Municipal Code is amended as follows:

SECTION 15-5206. REQUIRED FINDINGS

The Director or Planning Commission may only approve a Development Permit application if it finds that the application is consistent with the purposes of this article and with the following:

- A. The applicable standards and requirements of this Code.
- B. The General Plan and any operative plan or policies the City has adopted.
- C. Any applicable design guidelines adopted by the City Council.
- D. Any approved Tentative Map, Conditional Use Permit, Variance, or other planning or zoning approval that the project required.
- E. Fresno County Airport Land Use Compatibility Plan (as may be amended) adopted by the Fresno County Airport Land Use Commission pursuant to California Public Utilities Code Sections 21670-21679.5.]

SECTION 3. Section 15-5306 of the Fresno Municipal Code is amended as follows:

SECTION 15-5306. REQUIRED FINDINGS

A Conditional Use Permit shall only be granted if the decision-maker determines that the project as submitted or as modified conforms to all of the following criteria. If the decision-maker determines that it is not possible to make all of the required findings, the application shall be denied.

- A. The proposed use is allowed within the applicable zoning district and complies with all other applicable provisions of this Code and all other chapters of the Municipal Code;

B. The proposed use is consistent with the General Plan and any other applicable plan and design guideline the City has adopted;

C. The proposed use will not be substantially adverse to the public health, safety, or general welfare of the community, nor be detrimental to surrounding properties or improvements;

D. The design, location, size, and operating characteristics of the proposed activity are compatible with the existing and reasonably foreseeable future land uses in the vicinity; and

E. The site is physically suitable for the type, density, and intensity of use being proposed, including access, emergency access, utilities, and services required. and

F. The proposed use is consistent with the Fresno County Airport Land Use Compatibility Plan (as may be amended) adopted by the Fresno County Airport Land Use Commission pursuant to California Public Utilities Code Sections 21670-21679.5.]

SECTION 4. Section 15-5506-D of the Fresno Municipal Code is amended as follows:

D. The granting of the Variance will be consistent with the general purposes and objectives of this Code, any applicable operative plan, [the Fresno County Airport Land Use Compatibility Plan (as may be amended) adopted by the Fresno County Airport Land Use Commission pursuant to California Public Utilities Code Sections 21670-21679.5,] and of the General Plan.

SECTION 5. Section 15-5811-A of the Fresno Municipal Code is amended as follows:

SECTION 15-5811. DEVELOPMENT CODE TEXT AMENDMENT FINDINGS

A. Development Code Text Amendment findings:

1. The Code text amendment is consistent with the General Plan[, the Fresno County Airport Land Use Compatibility Plan (as may be amended) adopted by the Fresno County Airport Land Use Commission pursuant to California Public Utilities Code Sections 21670-21679.5,] and any applicable operative plans; and

2. The amendment is consistent with the purpose of the Development Code to promote the growth of the city in an orderly and sustainable manner and to promote and protect the public health, safety, peace, comfort, and general welfare.

SECTION 6. Section 15-5905-A of the Fresno Municipal Code is amended as follows:

A. The proposed development is consistent with the General Plan, [the Fresno County Airport Land Use Compatibility Plan (as may be amended) adopted by the Fresno County Airport Land Use Commission pursuant to California Public Utilities Code Sections 21670-21679.5,] any applicable operative plan, and adopted policies, including the density and intensity limitations that apply;

SECTION 7. Section 15-6006-A of the Fresno Municipal Code is amended as follows:

SECTION 15-6006-A. REQUIRED FINDINGS

A. Required Findings. The City Council shall not approve a proposed Development Agreement unless it finds the following:

1. That its provisions are consistent with the General Plan[, the Fresno County Airport Land Use Compatibility Plan (as may be amended)]

adopted by the Fresno County Airport Land Use Commission pursuant to California Public Utilities Code Sections 21670-21679.5,] and any applicable operative plan. This requirement may be satisfied by a finding that the provisions of a proposed Development Agreement are consistent with proposed General Plan or applicable operative plan provisions to be adopted concurrently with the approval of the proposed Development Agreement; and

2. The proposed Development Agreement will provide substantial public benefit.

SECTION 8. Section 15-6104-B of the Fresno Municipal Code is amended as follows:

SECTION 15-6104-B. PLAN CONSISTENCY

B. Plan Consistency. The proposed annexation and parcel configuration is consistent with the General Plan, [the Fresno County Airport Land Use Compatibility Plan (as may be amended) adopted by the Fresno County Airport Land Use Commission pursuant to California Public Utilities Code Sections 21670-21679.5,] Concept Plan, and any applicable operative plan; and

SECTION 2. This ordinance shall become effective and in full force and effect at 12:01 a.m. on the thirty-first day after its final passage.

* * * * *

STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, YVONNE SPENCE, City Clerk of the City of Fresno, certify that the foregoing ordinance was adopted by the Council of the City of Fresno, at a regular meeting held on the _____ day of _____, 2019.

AYES :
NOES :
ABSENT :
ABSTAIN :

Mayor Approval: _____, 2019
Mayor Approval/No Return: _____, 2019
Mayor Veto: _____, 2019
Council Override Vote: _____, 2019

YVONNE SPENCE, MMC CRM
City Clerk

BY: _____
Deputy Date

APPROVED AS TO FORM:
DOUGLAS T. SLOAN,
City Attorney

BY: _____
Talia Kolluri-Barbick Date
Supervising Deputy City Attorney