# Regular Council Meeting

## March 19, 2026

# FRESNO CITY COUNCIL

City of FRESNO

## Public Comment Packet

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**ITEM(S)**

**4:00 P.M. (ID 26-297)**

HEARING to consider Plan Amendment Application No. P23-03006, Rezone Application No. P23-03006 and related Environmental Assessment pertaining to approximately 55.31 acres of property bounded by East Annadale Avenue to the north, State Route 41 to the east, South Elm Avenue to the west, and East Chester/East Samson Avenue (alignment) to the south (Council District 3)

[TITLE TRUNCATED FOR SUPPLEMENTAL PACKET COVER PAGE]

**Contents of Supplement:** Public Comment Received

**Supplemental Information:**

Any agenda related public documents received and distributed to a majority of the City Council after the Agenda Packet is printed are included in Supplemental Packets. Supplemental Packets are produced as needed. The Supplemental Packet is available for public inspection in the City Clerk's Office, 2600 Fresno Street, during normal business hours (main location pursuant to the Brown Act, G.C. 54957.5(2). In addition, Supplemental Packets are available for public review at the City Council meeting in the City Council Chambers, 2600 Fresno Street. Supplemental Packets are also available on-line on the City Clerk's website.

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The meeting room is accessible to the physically disabled, and the services of a translator can be made available. Requests for additional accommodations for the disabled, sign language interpreters, assistive listening devices, or translators should be made one week prior to the meeting. Please call City Clerk's Office at 621-7650. Please keep the doorways, aisles and wheelchair seating areas open and accessible. If you need assistance with seating because of a disability, please see Security.

**From:** [redacted]
**To:** [redacted]
**Subject:** Fresno City Council Agenda Item No. 26-297 - Comments of Concerned Citizens of West Fresno
**Date:** Tuesday, March 17, 2026 5:20:14 PM
**Attachments:** [redacted]

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**External Email:** Use caution with links and attachments

Dear Clerk and Mr. Holt:

Please see attached comments submitted on behalf of Concerned Citizens of west Fresno. Thank you!

Best,

Lucas

Lucas Williams
Community Environmental Lawyers, PC
[redacted]
SAN FRANCISCO, CA 94103
[redacted]

COMMUNITY ENVIRONMENTAL LAWYERS, PC
[redacted]

March 17, 2026

***Via Electronic Mail***
Fresno City Council
2600 Fresno Street
Fresno, CA 93721
[redacted]

**Re: Fresno City Council Agenda Item No. 26-297**

To the Fresno City Council:

We write on behalf of Concerned Citizens of West Fresno to urge you to deny the proposed plan amendment No. P23-03006, rezone application No. P23-03006, and Addendum to Final Program EIR (SCH No. 2017031012) for the Southwest Fresno Specific Plan (the "Project").

The Project, if approved, would reverse the City's unanimous decision in 2017 to rezone light industrial property in the Southwest Fresno Specific Plan (the "Specific Plan") as more inclusive and neighborhood-friendly neighborhood mixed use zoning. Indeed, the project proponents—despite failing to participate in the years-long Specific Plan public process—ask the City to carve out their properties from the land use policies adopted in the Specific Plan through a community-driven process. In addition, the project proponents are boldly asking for authority to ***increase*** their existing industrial structures by at least 10 percent. *See* Addendum, p. 2.[1] The Applicants make this request even though the Fresno Planning Commission flatly denied a nearly identical application just last year.[2]

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[1] Exhibit H to Agenda No. 26-297, CEQA Addendum to South West Specific Plan; Fresno, California (February 10, 2025), *available at* https://fresno.legistar.com/View.ashx?M=F&ID=15314544&GUID=3F0A572A-5558-42B5-B095-79EDE7CF042C.

[2] Fresno City Planning Commission Resolution No. 13894 (April 16, 2025), *available at* https://fresno.legistar.com/View.ashx?M=F&ID=15314539&GUID=47DA4A65-93A5-4663-B49C-483FDAD79792.

Although the Specific Plan expressly authorizes the project proponents to continue their existing industrial operations unimpeded as existing non-conforming uses, they allege that the neighborhood mixed use zoning should be changed due to "encumbrances to financial investment."[3] These purported "encumbrances" have never been corroborated. For instance, the project proponents have never provided any evidence that they are unable to obtain loans because of the Specific Plan.

As discussed below, the Project's approval would violate: (1) the California Environmental Quality Act's ("CEQA") environmental review requirements: (2) the City's duty to affirmatively further fair housing under Government Code section 8899.50; (3) the prohibition of eliminating housing without one-for-one replacement units under Government Code section 66300; and (4) California's antidiscrimination in land use planning mandates under Government Code section 12955. Thus, the Project should be rejected.

## I. The Addendum to the environmental impact report for the Southwest Fresno Specific Plan violates CEQA.

The City cannot approve the Project by relying on a cursory Addendum to the Final Program Environmental Impact Report for the Specific Plan (the "EIR"). CEQA requires that a city prepare an EIR whenever it intends to approve a project that may have significant impacts on the environment. Pub. Res. Code § 21151. The purpose of an EIR is to "inform the public and its responsible officials of the environmental consequences of their decisions ***before*** they are made, thereby protecting not only the environment but also informed self-government. *Friends of College of San Mateo Gardens v. San Mateo County Community College Dist.*, 1 Cal.5th 937, 944 (2016) (citation and internal quotation marks omitted). CEQA requires a city to consider all of the project's potentially significant impacts on the environment; this includes "[i]ndirect or secondary effects which are caused by the project and are later in time . . . but are still reasonably foreseeable." Cal. Code Regs., tit. 14, § 15358.

Here, the Addendum does not make any attempt to address the significant impacts the Project may cause. Instead, the Addendum assumes—without citing any evidence—that there will be no changes to light industrial uses in Southwest

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[3] Ex. F to Agenda Item No. 26-297, Fresno Municipal Code Findings Plan Amendment-Rezone Application P20-01665 p. 3, available at https://fresno.legistar.com/View.ashx?M=F&ID=15314545&GUID=CDC58868-E0FE-4169-AA7D-8425AE2D9C78.

Fresno. The Addendum makes this faulty no-growth assumption even though the Project expressly allows for a 10 percent increase in light industrial uses. Addendum, p. 2. For example, the Addendum repeatedly states, without any factual basis or legal analysis, that "the proposed project would not result in new significant impacts beyond those identified in the [Specific Plan's] EIR." Addendum, p. 4. This false assertion is fatal to the Addendum under CEQA.

An addendum to an EIR is appropriate only for minor technical changes or additions to a project that "do not raise important new issues about the significant effects on the environment." *Ventura Foothill Neighbors v. Cnty. of Ventura*, 232 Cal. App. 4th 429, 436 426 (2014), as modified on denial of reh'g (Jan. 8, 2015). CEQA "does not permit agencies to avoid their obligation to prepare subsequent or supplemental EIRs to address new, and previously unstudied, potentially significant environmental effects." *Friends of College of San Mateo Gardens v. San Mateo County Community College Dist.*, 1 Cal.5th 937 (2016).

Under CEQA, subsequent or supplemental environmental impact reports are required when: (a) substantial changes are proposed in the project which will require major revisions of the environmental impact report; (b) substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report. (c) new information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available." Pub. Res. Code § 21166.

Likewise, the CEQA Guidelines require a subsequent or supplemental EIR to address impacts not considered in the original EIR when: (1) substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; (2) substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or (3) new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following: (A) the project will have one or more significant effects not discussed in the previous EIR or negative declaration; (B) significant effects previously examined will be substantially more

severe than shown in the previous EIR; (C) mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or (D) mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative. Cal. Code Regs. tit. 14, § 15162.

Here, the Project is not a minor or technical change to the Specific Plan—it is directly counter to the Specific Plan's goal of mixed-use, neighborhood friendly, healthy, and inclusive zoning. Yet the Addendum does not bother to analyze the Project's potentially significant impacts on the environment. The Project will allow the continuance and expansion of "a diverse range of light industrial uses, including limited manufacturing and processing, research and development, fabrication, utility equipment and service yards, wholesaling, warehousing, and distribution activities." Addendum, p. 1. These light industrial uses may cause numerous impacts including increased air pollution, truck traffic, greenhouse gas emissions, heat islands, water needs, energy use, stormwater runoff, and other impacts.

The Addendum does not analyze these impacts. Instead, the Addendum consists entirely of repeated, conclusory assertions that "the proposed project represents a minor modification to the [Specific Plan]." *See, e.g.,* Addendum, p. 1. Similarly, although the Addendum includes a "CEQA Checklist," the entirety of its analysis is that "[t]he proposed project does not include any physical changes to the project site." *See, e.g.,* Addendum, B-9. This is untrue—the Project explicitly contemplates a 10 percent increase in light industrial structures, thus causing the potential for significant environmental impacts. Addendum, p. A-10. Because these environmental impacts from continuing and increasing light industrial uses were not—and could not have been—examined in the Specific Plan's EIR, a subsequent or supplemental EIR is required. *See* Pub. Res. Code § 21166; Cal. Code Regs. tit. 14, § 15162.

The Addendum's failure to analyze the Project's impacts deprives Southwest Fresno residents and City officials from informed decision-making. For example:

- The Addendum does not analyze the Project's water needs. Continuing and expanding light industrial facilities in Southwest Fresno will require water. The Addendum does not examine the amount of the water needed or how the

water will be supplied. Nor does the Addendum discuss potentially significant impacts from increased stormwater runoff from industrial facilities—especially facilities that choose to expand their footprint by 10 percent.

- The Addendum does not examine the Project's impact on heavy duty truck traffic. The Project will cause increased truck traffic that will result in increased emissions of toxic air contaminants (in particular, diesel particulate matter) and greenhouse gases. The additional truck traffic will also impact local road systems, increasing congestion and accelerating pavement wear. Similarly, the increased traffic from industrial vehicles will present safety risks to Southwest Fresno residents.

- The Addendum does not examine the Project's air quality impacts. The continued use and expansion of manufacturing and fabrication facilities will cause increased criteria air pollutant emissions (e.g., ozone, nitrogen dioxide, particulates) that affect local air quality and human health—in an area already suffering from unhealthy air quality. By increasing truck traffic and the use of industrial equipment, the Project will also cause increased emissions of toxic air contaminants, including diesel particulate matter.

- The Addendum does not analyze the Project's impact on greenhouse gas emissions. The Project will increase greenhouse gas emissions from allowing the continuance and expansion of light industrial uses. The Addendum does not discuss the amount of greenhouse gas emissions the Project will cause.

- The Addendum does not examine the Project's impacts on noise pollution. The continuance and expansion of light industrial uses, including loading docks, forklift operations, machinery, and HVAC systems, will cause noise pollution. Such noise impacts will likely exceed noise standards for adjacent residential or commercial areas.

- The Addendum does not address the Project's energy impacts. Continuing and expanding light industrial uses requires energy, and the Addendum does not specify the amount of energy needed, how it will be supplied, or how the Project will reduce wasteful energy use. This failure to address and mitigate energy impacts renders the Addendum "fatally defective." *California Clean Energy Comm. v. City of Woodland*, 225 Cal. App. 4th 173, 209 (2014).

- The Addendum does not discuss the Project's impact on heat pollution. Continuing and expanding light industrial uses—by covering a larger area of Southwest Fresno with heat-inducing surfaces like asphalt—will cause the increased risk of urban heat islands that pose significant threats to the community's (particularly children and the elderly's) health and wellbeing.

- The Addendum does not analyze the Project's impact on the storage, use, or disposal of hazardous materials from continuing and expanding light industrial uses. The use of hazardous materials creates risks of upset, accidental releases, and groundwater/stormwater contamination.

- The Addendum does not analyze the Project's impact on light pollution. This is important because light industrial uses, such as warehouses, operate late night shifts, requiring high-intensity exterior lighting that causes light pollution for neighboring residential areas.

Courts have found that similar post-EIR land use changes warrant subsequent or supplemental EIRs and that project approvals by addenda were invalid. For example, the California Supreme Court invalidated a project approval by addendum where the post-EIR project proposed to remove 20 percent of a public garden. *Friends of Coll. of San Mateo Gardens*, 11 Cal. App. 5th at 610. Similarly, in *Save Our Access v. City of San Diego*, the court held that a post-EIR zoning change in building height requirements required subsequent environmental review. *Save Our Access v. City of San Diego*, 92 Cal. App. 5th 819, 861 (2023). This was because the EIR did not examine the impacts caused by removing height limitation including impacts to traffic, public health, air quality, water quality, and greenhouse gas emissions. *Id.* Likewise, in *Martis Camp Cmty. Assn. v. Cnty. of Placer*, the court held that an addendum was inadequate where the lead agency decided to close a road after the EIR was certified, thereby potentially increasing traffic. *Martis Camp Cmty. Assn. v. Cnty. of Placer*, 53 Cal. App. 5th 569, 607 (2020). In addition, courts have held that an addendum's failure to examine a project's water needs and water supply renders the Addendum invalid. *See Pres. Wild Santee v. City of Santee*, 210 Cal. App. 4th 260, 285, 148 Cal. Rptr. 3d 310, 328 (2012) (decision-makers must be presented with "sufficient facts to evaluate the pros and cons of fulfilling the project's water needs").

For these reasons, the Addendum does not comply with CEQA. The City must prepare a subsequent or supplemental EIR and circulate it for public review.

## II. The Project's proposed mitigation measures do not comply with CEQA.

The project proponents propose several "conditions of zoning" that they believe will mitigate the Project's impacts. *See* Addendum, pp. A-8 to A-11. These proposed mitigation measures are insufficient to reduce the Project's impacts and do not comply with CEQA.

Under CEQA, mitigation measures must be enforceable and must contain a reporting or monitoring program. Pub. Res. Code § 2108.6. The purpose of these monitoring requirements is to ensure that feasible mitigation measures will actually be implemented as a condition of development and not merely adopted and then disregarded. *Fed'n of Hillside & Canyon Associations v. City of Los Angeles*, 83 Cal. App. 4th 1252, 1261 (2000). Mitigation measures that merely shift responsibility to project proponents without adequate guarantees or that lack specific performance standards are inadequate. *California Clean Energy Comm.*, 225 Cal. App. 4th at 195.

Far from mitigating the Project's impacts, the conditions of zoning allow landowners to increase the size of their facilities by ten percent. *See* Addendum, p. 2. In addition, the proposed mitigation measures do not contain any monitoring program. *See id.*, pp. 2-4. This failure violates CEQA's requirement that the City "shall adopt a reporting or monitoring program for the changes made to the project or conditions of project approval, adopted in order to mitigate or avoid significant effects on the environment. The reporting or monitoring program shall be designed to ensure compliance during project implementation." Pub. Res. Code § 21081.6(a)(1). Indeed, the conditions of zoning do not provide any monitoring program that will oversee property owners' compliance with the conditions. Thus, the Project violates CEQA by failing to include enforceable mitigation measures and a monitoring program.

## III. The Project violates the City's duty to affirmatively further fair housing.

The Project contravenes the City's duty to affirmatively further fair housing under Government Code Section 8899.60 because it continues the City's pattern of

racially discriminatory land use planning and eliminates thousands of housing units in Southwest Fresno.

"After decades of failing to achieve the objective of adequate affordable housing, the Legislature significantly expanded the responsibilities of cities and counties by imposing a mandatory duty to affirmatively further fair housing." *Martinez v. City of Clovis*, 90 Cal. App. 5th 193, 220 (2023). Accordingly, the statute requires "public agencies to do more than simply refrain from housing discrimination." *Id.* Specifically, the City has a duty to take "meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics [and to] address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws." Gov. Code § 8899.60. The duty to affirmatively further fair housing applies to "***all*** of a public agency's activities and programs relating to housing and community development. Cal. Gov't Code § 8899.50 (emphasis added).

The Fifth District Court of Appeal in *Martinez v. City of Clovis* recently established several foundational interpretations of the statute. The court held that Government Code section 8899.50 "unambiguously demonstrates it does more than prohibit acts of discrimination" by both prohibiting certain acts and requiring affirmative action to remedy racial discrimination. *Martinez*, 90 Cal.App.5th at 287. The court emphasized that the statute requires meaningful action including "combating discrimination," addressing "significant disparities in housing needs," and "replacing segregated living patterns" with balanced living patterns. *Id.*

Here, the Project is subject to the City's duty to affirmatively further fair housing because it is an activity "relating to housing and community development." *See* Gov. Code § 8899.50. The Project does not meet the City's duty because it would exacerbate the City's long and sordid history of discriminatory land use practices in Southwest Fresno that favor industrial uses over residential mixed-use zones in a community of color. The Specific Plan was intended to remedy these discriminatory practices. As the Specific Plan observed: a history of "racially discriminatory policies segregated ethnic communities to this part of Fresno . . . As a result, west Fresno had difficulties attracting quality development, and instead, became a magnet for siting heavy industrial facilities and low-cost housing." Specific Plan, p. 1-6. Thus, the Project would undermine

the Specific Plan's overarching purpose of combatting racial discrimination in Southwest Fresno and establishing an inclusive, neighborhood-friendly, and healthy living environment for Southwest Fresno residents.

Moreover, the Project will indisputably eliminate over three thousand housing units without one-to-one replacement, as further discussed in Section IV below. A project that eliminates housing in a community of color does not affirmatively further fair housing. Thus, the Project violates the City's duty to affirmatively further fair housing under Government Code § 8899.60.

## IV. The Project violates SB 330 because it eliminates available housing units without one-for-one replacement units.

The Project violates SB 330 because it eliminates housing availability without one-for-one replacement units. Government Code 66300 ("SB 330") is part of the Housing Crisis Act of 2019. The statue prohibits cities from enacting zoning changes that would reduce housing capacity or lead to the loss of housing units. Cal. Gov. Code § 66300. The statute specifically prohibits changing general plan land use designations, specific plan designations, or zoning to less intensive uses below what was allowed under ordinances in effect on January 1, 2018. Gov. Code § 66300. When housing units are eliminated by zoning changes, the statute requires replacement housing—to be submitted concurrently with the application—on at least a one-for-one basis, with enhanced protections for affordable and rent-controlled "protected units." Gov. Code § 66300.6.

Courts have interpreted SB 330 broadly. In *Yes in My Back Yard v. City of Culver City*, the court held that a city ordinance reducing floor area ratios for single-family housing violated Section 66300's prohibition on reducing development intensity, even though the change affected design rather than density. *Yes in My Back Yard v. City of Culver City,* 96 Cal. App. 5th 1103, 1116 (2023). The court emphasized that Government Code section 66300 should be "broadly construed so as to maximize the development of housing" and that any exceptions should be "construed narrowly." *Id.* at 1116 & 1119.

Here, as the City readily acknowledges, the Project reduces housing availability and thus violates SB 330 unless the project proponents submit "a separate application . . . to offset the net loss of housing capacity of the subject area." Agenda Item No. 26-297, Ex. F (Fresno Municipal Code Findings). The Project causes the loss of 3,540 housing units. No separate application for one-for-one replacement units has been circulated for public review.

It is far too late for the project proponents to submit this separate application with sufficient time to allow for meaningful public review and comment. An application for replacement housing must be submitted "concurrently" with the land use decision that is reducing housing. Gov. Code § 66300(h)(1). Here, the project applicants have not submitted an application concurrently with the Project. Nevertheless, in a desperate attempt, the project proponents request that the City delay its decisions on the Central Southeast Area Specific Plan and the Project so that the project proponents can attempt to come up with paper housing to meet SB 330. The City should reject this request for delay. The project proponents have had several years to comply with SB 330 but failed. If they had concerns about housing availability was calculated under the Central Southeast Area Specific Plan, they should have raised those concerns long ago. In addition, the project proponents request for delay is based in part on applications for land use changes that have not been approved; those applications were submitted after the Planning Commission hearing on the Central Southeast Area Specific Plan, and would require review under CEQA before they could ever be approved.[4] The project proponents have thus failed to establish one-for-one replacement housing concurrently with the rezone application. Thus, the Project cannot be approved under SB 330.

## V. The Project violates California's antidiscrimination in land use planning laws.

The Project constitutes racially discriminatory land use planning in violation of Government Code section 12955 because it allows the continuance and expansion of polluting land use in an overburdened community of color and eliminates thousands of housing units in Southwest Fresno.

The statute prohibits discrimination in zoning decisions and land use practices based on protected characteristics including race, color, religion, sex, gender, familial status, disability, source of income, and other enumerated categories. Gov. Code § 12955(l). The law applies to both public and private land use practices, decisions, and authorizations, with actionable discrimination specifically including "zoning laws, denials of use permits, and other actions authorized under the Planning and Zoning Law" that make housing opportunities

[4] Agenda Item No. 26-266, Exh. T, Land Use Change Request dated February 6, 2026, available at https://fresno.legistar.com/LegislationDetail.aspx?ID=7950005&GUID=54B6B960-B5F1-4C0F-A040-5C0823294727&Options=&Search=.

unavailable. *Id*. The statue does not merely apply to intentional discrimination: a violation occurs when there is "an act or failure to act that is otherwise covered by [the statute], and that has the effect, regardless of intent, of unlawfully discriminating" based on race. Gov. Code § 12955.8.

The Fifth Appellate District has interpreted the statute broadly, establishing that cities can face liability under both intentional discrimination and disparate impact theories for zoning decisions that have discriminatory effects on protected classes. *Martinez*, 90 Cal.App.5th at 269-272. Similarly, in *Hall v. Butte Home Health, Inc.*, the court addressed Government Code section 12955(l)'s application to restrictive covenants, holding that even facially neutral actions can violate the statute if they have discriminatory effects. *Hall v. Butte Home Health, Inc*., 60 Cal. App. 4th 308, 320. The court held that the statute was intended to be "broadly applied to reach all practices, including facially neutral restrictive covenants, which have the effect of interfering with the exercise of rights under the federal fair housing laws." *Id.* at 321.

Here, the Project is subject to the Government Code's antidiscrimination in zoning law. The Project is a "land use practice" under Government Code section 12955(l), "an act or failure to act" under Government Code 12955.8(b), and a "practice" for purposes of California Code of Regulations, title 2, section 12060(b). *See Martinez*, 90 Cal. App. 5th at 269. Moreover, the Project violates Government Code section 12955 because it has a "discriminatory impact" (both disparate and segregative) on a community of color by allow the continuance and expansion of polluting land uses and eliminating thousands of housing units in Southwest Fresno. Indeed, the Project would eviscerate the Specific Plan's fundamental purpose, which was specifically intended to reduce discriminatory impacts on Southwest Fresno residents. Thus, approval of the Project would violate Government Code section 12955.

## VI. Conclusion.

The Project should be rejected because it is contrary to the Specific Plan and violates: (1) the California Environmental Quality Act's ("CEQA") environmental review requirements: (2) the City's duty to affirmatively further fair housing under Government Code section 8899.50; (3) the prohibition of eliminating housing units under Government Code section 66300; and (4) California's antidiscrimination mandates under Government Code section 12955. Thus, the Project should be rejected.

Respectfully submitted,

/s/ Lucas Williams
Lucas Williams
Community Environmental Lawyers, PC

**From:** [redacted]
**To:**
**Subject:** Request for Recusal and Investigation – Elm Avenue Rezone
**Date:** Tuesday, March 17, 2026 8:41:35 PM

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**External Email:** Use caution with links and attachments

Since this has fallen on deaf ears I want to submit this as a public comment for all to read.

I am writing to formally request the recusal of Councilmember Annalisa Perea and Councilmember Mike Karbassi from any discussion, deliberation, or vote related to the proposed Elm Avenue rezone project.

Following the last Council meeting, I conducted my own independent review of publicly available information and campaign finance records. Through that research, I discovered the following:

- Councilmember Annalisa Perea received a total of $11,800 in campaign contributions from the Associated General Contractors PAC Committee in support of her Assembly efforts.
- That same PAC Committee received a $2,000 contribution from Buzz Oates in June of last year.
- Buzz Oates and individuals associated with its leadership have a direct interest in development and land use matters, raising concerns about overlapping financial influence.
- The representative of the landowners connected to this project is also serving as the campaign manager for Mike Karbassi's Supervisor race, further compounding concerns regarding political entanglements tied to this item.

While campaign contributions are a legal component of the political process, these overlapping financial and political relationships, particularly in a matter involving land use decisions and significant economic interests, create, at minimum, the appearance of a conflict of interest.

The integrity of this decision is too important to be compromised by even the perception of undue influence.

For that reason, I respectfully request:

1. The immediate recusal of Councilmember Perea and Councilmember Mike Karbassi from this item.
2. A thorough review and investigation into these potential conflicts to ensure full transparency and accountability.

I strongly urge the Council to take these concerns seriously. I implore you to investigate this matter further and ensure that appropriate action is taken so that public trust in this process is upheld.

This request is made in the interest of protecting the integrity of the Council's decision making process and maintaining confidence among Fresno residents that land use decisions are made fairly, transparently, and without undue influence.

Thank you for your time and attention to this matter. Please don't let the Central South East Specific Plan fail over politics in south west Fresno!!!!

Sincerely,

Mark Allen a very concerned resident

--
[redacted]
Secure and private email

**From:** [redacted]
**To:** [redacted]
**Cc:** [redacted]
**Subject:** Opposition to Project ID 26-297
**Date:** Wednesday, March 18, 2026 8:15:42 AM
**Attachments:** [redacted]

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**External Email:** Use caution with links and attachments

Good morning,

Please see the attached letter regarding *Opposition to Project ID 26-297: Plan Amendment Application No. P23-03006, Rezone Application No. P23-03006 and related Environmental Assessment*.

Thank you.

WESTERN CENTER
ON LAW & POVERTY

**Amanda Smith**
Litigation Support Supervisor
[redacted]

This message is from Western Center on Law & Poverty and may contain information that is confidential or legally privileged. If you are not the intended recipient, please immediately advise the sender by reply e-mail that this message has been inadvertently transmitted to you and delete this e-mail, any attachments and any copies from your system. Thank you for your cooperation.

WESTERN CENTER
ON LAW & POVERTY

[redacted]

***Via Electronic Mail***

March 18, 2026

City Council
City of Fresno
2600 Fresno Street
Fresno, CA 93721
[redacted]

**Re: Opposition to Project ID 26-297: Plan Amendment Application No. P23-03006, Rezone Application No. P23-03006 and related Environmental Assessment**

Hon. Mayor Dyer and City Councilmembers:

We write on behalf of the Central Valley Urban Institute in strong opposition to Plan Amendment Application No. P23-03006, Rezone Application No. P23-03006 and related Environmental Assessment pertaining to approximately 55.31 acres of property bounded by East Annadale Avenue to the north, State Route 41 to the east, South Elm Avenue to the west, and East Chester/East Samson Avenue to the south (the "Project" or "Elm Avenue Rezone").[1]

Over the past several years, the City of Fresno has repeatedly considered a series of proposals that would erode the community-driven protections embodied in the Southwest Fresno Specific Plan by expanding or facilitating industrial uses in areas designated for housing and community development. These efforts have taken multiple forms—including applications to rezone areas totaling over 100 acres and two citywide zoning overlay proposals. Central Valley Urban Institute has opposed each of these efforts and incorporates by reference herein its written testimony submitted against those proposals.[2] Each of these proposals was also met with strong and sustained opposition from residents and community organizations in Southwest Fresno.

[1] Central Valley Urban Institute submits this comment in connection with both Project ID 26-297 (Elm Avenue Rezone) and Project ID 26-277 (Central Southeast Area Specific Plan). The comments herein are intended to apply to each item and are incorporated by reference for purposes of the administrative record.

[2] *See* Western Center on Law & Poverty, Letter to Fresno Planning Comm'n (Apr. 6, 2021), attached as Exhibit A (Plan Amendment/Rezone Application No. P20-01665); Western Center on Law & Poverty, Letter to Fresno City Council (Oct. 11, 2022), attached as Exhibit B (Plan Amendment/Rezone Applications P22-02413, P20-04209/P20-04211, P20-01665); Western Center on Law & Poverty, Letter to Council District 1 Project Review Comm. (Jan. 10, 2023), attached as Exhibit C (Text Amendment Application No. P21-06039).

Although these proposals differed in form, they shared a common effect: weakening the Southwest Fresno Specific Plan's commitment to reduce industrial land uses, improve environmental conditions, and promote community-supported development in an area long burdened by pollution, historic disinvestment, and the legacy of racially discriminatory land-use policies.

Central Valley Urban Institute urges the City Council to accept the Fresno City Planning Commission's recommendation to DENY: (1) Addendum to Final Program EIR (SCH No. 2017031012) for the Southwest Fresno Specific Plan; (2) Plan Amendment Application No. P23-03006; and (3) Rezone Application No. P23-03006 proposing to rezone the subject properties. As detailed below, approving and adopting the Elm Avenue Rezone proposal will violate federal and state fair housing laws that prohibit discrimination and that impose a mandatory duty on the City to affirmatively further fair housing. Such actions would also violate the Housing Crisis Act, Gov't Code § 663300 *et seq*. ("SB 330"), and the California Environmental Quality Act, Public Resource Code § 21000 *et seq.* ("CEQA").

## I. The Project has not been modified since its Planning Commission hearing and continues to violate fair housing laws, Senate Bill 330, and CEQA.

The Elm Avenue Rezone was considered by the Planning Commission on April 16, 2025, which ultimately adopted resolutions recommending denial of the Project. Like the City's previous efforts, the Elm Avenue Rezone proposal was the subject of vehement public opposition because it directly conflicts with the Southwest Fresno Specific Plan goal of reducing industrial uses in this neighborhood. Central Valley Urban Institute opposed the Project before the Planning Commission and submitted detailed written comments explaining the legal and policy deficiencies of the Project.[3] Among other concerns, that letter explained that the proposed rezone conflicts with the Southwest Fresno Specific Plan's commitments to reduce industrial land uses, improve environmental conditions, and prioritize housing and community revitalization in Southwest Fresno. It also raised concerns that the proposal violates fair housing laws and SB 330 by, among other things, perpetuating environmental harms in a historically overburdened neighborhood and eliminating zoning capacity for 3,540 housing units.

The materials now being presented to the City Council appear identical to those presented to the Planning Commission on April 16, 2025. The City has not identified any changes to the proposal, nor has it provided any new analysis or documentation addressing the issues previously raised. For this reason alone, the City should follow the Planning Commission's recommendation and deny the Project.

[3] *See* Western Center on Law and Poverty & Central California Legal Services, Inc., Letter to Fresno Planning Comm'n (Apr. 15, 2025), attached as Exhibit D. Central Valley Urban Institute incorporates this written testimony by reference and reiterates each of those objections here.

Based on the March 19 agenda for the City Council meeting, however, it appears that the City intends to rely on the Central Southeast Specific Plan (Project ID 26-277) to contend that the Elm Avenue Rezone can be approved without violating SB 330. Putting aside the City's failure to directly inform the public of its planned reliance on the Central Southeast Specific Plan to meet SB 330 requirements, this reliance is misplaced; the Central Southeast Specific Plan is not sufficient to make up for the lost housing development potential that the Elm Avenue Rezone will cause. The Elm Avenue Rezone still violates SB 330 and must be denied.[4]

Furthermore, the Central Southeast Specific Plan does nothing to address the fair housing concerns previously raised about the Project. The Southwest Fresno Specific Plan was adopted to promote housing, mixed-use development, and neighborhood-serving amenities—like grocery stores and other community resources—*within* Southwest Fresno, while reducing industrial uses and improving environmental conditions in the community. Increasing housing capacity in a separate planning area several miles away does not mitigate the Project's impacts on Southwest Fresno residents. Nor does it advance the City's duty to affirmatively further fair housing, which requires the City to take proactive steps to overcome patterns of segregation and concentrations of poverty and to remedy disparities in access to housing opportunity and environmental health conditions.[5] In fact, reducing housing capacity in Southwest Fresno will exacerbate poor housing conditions in the community. The City of Fresno's Housing Element identifies Southwest Fresno as a Racially/Ethnically Concentrated Area of Poverty facing high-cost burden, overcrowding, and displacement risk.[6] Moreover, rezoning to light industrial will remove the opportunity for grocery stores in a community with low access to food. Undermining the Southwest Fresno Specific Plan by approving the Project will in fact impact the community's access to healthy foods and affordable housing.

## II. Approving the Project violates Senate Bill 330 because it eliminates capacity for 3,540 housing units without maintaining equivalent residential capacity.

The Project would eliminate a substantial amount of residential development capacity in the City, rezoning approximately 55.31 acres from Neighborhood Mixed-Use (NMX) to Light Industrial (IL) within the Southwest Fresno Specific Plan area. Under the City's own analysis, the NMX designation allows residential development at densities of up to 64 dwelling units per acre, meaning the proposed rezone would eliminate approximately 3,540 units of residential capacity.[7]

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[4] *See infra* Part II.
[5] *See* 42 U.S.C. § 3608(e)(5); Gov't Code § 8899.50.
[6] Fresno Multi-jurisdictional 2023-2031 Housing Element: Appendix 1E, pg. 1E-0-3, https://www.fresno.gov/wp-content/uploads/2025/01/Fresno-Multi-Jurisdictional-2023-2031-Housing-Element.pdf.
[7] City of Fresno Planning and Dev. Dep't, *City Council Presentation: Consideration of Plan Amendment & Rezone Application No. P23-03006 and Addendum to Final Program EIR for the Southwest Fresno Specific Plan (SCH No.*

This reduction directly implicates SB 330, which provides that the City is prohibited from taking any zoning action that would reduce the ability to develop housing on a given parcel, unless the proposal is submitted concurrently with another proposal to address the loss of land available for housing.[8] Specifically, Government Code § 66300(b)(1) provides that "with respect to land where housing is an allowable use, . . . an affected city shall not enact a development policy, standard, or condition that would have any of the following effects: . . . lessen the intensity of housing." By rezoning a parcel designated for mixed use for industrial and other business purposes instead of housing, this proposal blatantly violates the City's duty under § 66300(b)(1)(A) and the stated intent of the law to "maximize the development of housing within this state."[9]

City staff expressly acknowledge that the Elm Avenue Rezone would result in a "Net Residential Capacity Loss of 3,540 dwelling units" and therefore requires another Council action increasing residential density to replace that lost capacity.[10] The City's own presentation similarly confirms that replacement capacity must occur concurrently at the same City Council hearing in order for the rezone to comply with SB 330. The City attempts to satisfy this statutory requirement by relying on the Central Southeast Specific Plan to offset the loss of residential capacity created by the Elm Avenue Rezone. However, the Central Southeast Specific Plan does not add *equivalent* capacity.

The City's Housing Element Findings for the Central Southeast Specific Plan calculate that the relevant rezonings increase housing capacity by 499 units.[11] Yet a separate City presentation asserts—without explanation—that the Central Southeast Specific Plan would increase housing capacity by 2,938 units.[12] The administrative record contains no analysis reconciling these figures or explaining how the City derived the larger number. Regardless of which figure the City ultimately relies upon, neither approaches the 3,540 units of residential capacity eliminated by the Elm Avenue Rezone. Because the record does not demonstrate that equivalent residential development capacity will be maintained, the City Council cannot make the findings necessary to conclude that approving the Project complies with SB 330.

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*2017031012)*, https://fresno.legistar.com/View.ashx?M=F&ID=15314560&GUID=35F27B56-003B-4B18-9A34-266E4A153BA1.

[8] Gov't Code § 66300(b)(1)(A).

[9] *Id*. at § 63300(f)(2).

[10] *See supra* note 6.

[11] City of Fresno Planning & Dev. Dep't, *Housing Element Findings (Gov't Code § 65863)* (Oct. 2, 2025), https://fresno.legistar.com/View.ashx?M=F&ID=15190292&GUID=551F8DFA-5B1C-48EA-B7C5-05C710DB10E0.

[12] City of Fresno Planning & Dev. Dep't, *City Council Hearing Presentation – Central Southeast Specific Plan* (Feb. 2026), https://fresno.legistar.com/View.ashx?M=F&ID=15314505&GUID=E8721D49-29E1-4D1C-96CF-4205337DE59A.

In addition, while the exhibits to the City Council agenda for the Elm Avenue Rezone contain a paragraph referring to the housing requirements of SB 330 (page 3 of Exhibit J ("Operational Statement")), that item refers to an "Attached Memo" that is not actually attached. This purportedly "Attached Memo" was also missing from the Operational Statement that was submitted with prior versions of this proposal in August 2023 and April 2025. Upon review of all the Exhibits for this Agenda item, there is no memo addressing housing. The project proponents cannot belatedly correct this failure at a later time; the community has the right to review all aspects of the proposal before the City Council.

## III. The City's agenda violates the Brown Act, Government Code § 54950 *et seq.*

The Brown Act requires agendas to provide a description of each item sufficient to inform the public of the nature of the action being considered and to allow meaningful public participation.[13] The agenda here violates those requirements in at least two ways. First, the agenda fails to disclose that the City is relying on the Central Southeast Specific Plan to justify the Elm Avenue Rezone's loss of housing capacity under SB 330. The agenda item for the Elm Avenue Rezone mentions SB 330 generally but does not identify the Central Southeast Specific Plan as the measure the City intends to rely on to address the housing capacity reduction caused by the Project. Likewise, the agenda item for the Central Southeast Specific Plan does not disclose that it is being used to justify SB 330 compliance for the Elm Avenue Rezone. Because the City's asserted SB 330 compliance theory depends on the relationship between these two actions, the agenda obscures the true nature of the decision before the Council and leaves the public to speculate about the basis for the City's justification.[14]

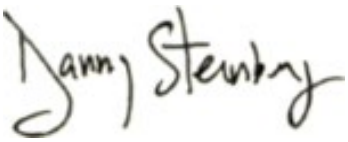
Second, the agenda provides confusing and potentially misleading notice of when the Central Southeast Specific Plan hearing will occur. The agenda states: "9:20 A.M. (TO BE HEARD AT 3:55 P.M. OR THEREAFTER)." This conflicting notice creates a substantial risk that members of the public may attend the morning meeting expecting the item to be heard at 9:20 a.m., only to learn that the matter will instead be considered later in the afternoon. Such ambiguity undermines the Brown Act's requirement that agendas provide clear notice sufficient to allow the public to meaningfully participate in legislative proceedings.[15]

* * * *

For the reasons stated above, the Central Valley Urban Institute urges the City to reject the Elm Avenue Rezone. Should you have questions regarding these comments, we can be contacted at [redacted]

[13] Gov't Code § 54954.2(a)(1); *see also San Joaquin Raptor Rescue Ctr. v. Cty. of Merced* (2013) 216 Cal.App.4th 1167, 1177; *Moreno v. City of King* (2005) 127 Cal.App.4th 17, 26-27.
[14] *See San Joaquin Raptor Rescue Center*, 216 Cal.App.4th at 1177.
[15] *See Moreno*, 127 Cal.App.4th at 26-27.

Sincerely,



Daniel L. Sternberg
Western Center on Law & Poverty

Madeline Howard
Western Center on Law & Poverty

# EXHIBIT A

WESTERN CENTER
ON LAW & POVERTY
[redacted]
[redacted]

April 6, 2021

***Via Electronic. Mail***

Fresno Planning Commission
2600 Fresno Street
Fresno, CA 93721
[redacted]

**Re: Agenda Item VII(A) ID 21-466: Plan Amendment Application No. P20-01665; Rezone Application No. P20-01655 and related Environment Assessment No. P20-01665 pertaining to 92.53 acres of property bounded by East Vine Avenue, Route 41, and South Elm Avenue.**

To the Members of the Planning Commission:

I am writing on behalf of the Central Valley Urban Institute in strong opposition to Agenda ID 21-466, the proposal to rezone a 92-acre parcel in Southwest Fresno from Neighborhood Mixed Use to Light Industrial and related proposals to approve an addendum to the Final Program EIR and amend the Southwest Specific Plan (collectively "the rezone proposal").

The Central Valley Urban Institute is a policy, research, resident empowerment and advocacy organization representing the voices of hundreds of thousands of low-income residents and the voice of disadvantaged communities throughout the Central Valley. The Central Valley Urban Institute serves as the conscience of California's San Joaquin Valley, speaking up and out to protect its most vulnerable residents.

The Central Valley Urban Institute strongly opposes this rezone proposal because of the harmful impact it will have on the Southwest Fresno community. The community has been deeply engaged in promoting sustainable development and protecting the health of its diverse residents for decades. Most recently, this engagement resulted in the Southwest Fresno Specific Plan, which the City Council approved by a 7-0 vote in 2017. The Specific Plan is the product of a true community process in which residents participated meaningfully. Addressing the high levels of environmental pollution that impact the health and well-being of everyone in Southwest Fresno is one of the key goals of the Specific Plan. The Specific Plan describes the pattern of racially discriminatory government actions that have harmed the community, including redlining and siting of hazardous businesses, and the importance of promoting residential and retail development so that the community can thrive.

The rezone proposal currently before the Planning Commission would directly contradict the community's shared goals of reducing environmental hazards and supporting the health of Southwest Fresno's residents, and further the harms of past discriminatory actions. This letter outlines the legal obligations that are implicated by the rezone proposal, and explains why the Planning Commission is required to recommend that the rezone proposal be denied in order to avoid violating multiple federal and state laws.

## I. The rezone proposal must be denied because it is inconsistent with the City's General Plan

California's Planning and Zoning law (Section 65000 *et seq*.) requires all cities and counties to adopt a comprehensive long term "general plan" for the physical development of land. The general plan is the constitution with which all local land-use decisions must be consistent. The general plan has seven elements. A jurisdiction's land use decisions, zoning code, and other policies must be consistent with the general plan. Gov't Code § 65300.5; 65860. Land use decisions must also be consistent with the general plan. Gov't Code§ 65454. Fresno's Municipal Code section 15-5812 incorporates these requirements in a directive to the Planning Commission. It provides that "the Planning Commission shall not recommend and the City Council shall not approve an application unless the proposed Rezone…is consistent with the General Plan" and 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…"
Here, the City's general plan incorporates the Southwest Fresno Specific Plan, which reflects the community's serious concerns with toxic pollution and adverse health impacts caused by the industrial development adjacent to the residential area. As described below, the Specific Plan details the adverse health impacts that the existing industrial development and highway have had on the community. Allowing more industrial development in this sensitive area would harm rather than protect the public health; it is inconsistent with both the general plan and the Development Code. The rezone proposal must be denied.

### A. The rezone proposal violates the City's duty to promote housing development

The City of Fresno is also prohibited from taking any zoning action that would reduce the ability to develop housing on a given parcel. Gov't Code § 66300(b)(1)(A). Specifically, Government Code § 66300(b)(1) provides that "with respect to land where housing is an allowable use, an affected county or an affected city shall not enact a development policy, standard, or condition that would have any of the following effects:… lessen the intensity of housing." The City is bound by this provision pursuant to its designation as an "affected city" by the state Department of Housing and Urban Development.[1]

[1] List of Affected Cities as Designated by HCD, available at: https://www.hcd.ca.gov/community-development/docs/affected-cities.pdf

As discussed further below, the Specific Plan describes a goal of developing high quality housing close to amenities such as parks, schools, and transit. *Id*. at 2-2. Re-designating this parcel's zoning to Light Industrial would be inconsistent with the general plan because it forecloses the possibility of high quality housing development on the site. This action would also violate Government Code section 66300(b)(1), because the rezone proposal changes the zoning from a designation which allows development of housing to one that does not.

**B. The rezone proposal is inconsistent with the Southwest Fresno Specific Plan's overall vision and goals as well as its specific provisions**

The City of Fresno's general plan incorporates the Southwest Fresno Specific Plan, which "implements the goals and policies set forth in the General Plan by building upon its concepts for the Southwest Development Area." The Plan also includes ideas and measures that have been "extensively tailored and reviewed by the Southwest Fresno Community and stakeholders." Southwest Specific Plan (October 26, 2017) at p. 1-1. This careful planning process should be honored, instead of undermined by this rezoning proposal that opens the door for more industrial development and associated pollution. The Specific Plan resulted from a multiyear community-involved process, and was designed to right the institutional wrongs that the community has been burdened with. The proposal before the Planning Commission would undo the important progress that has been made and break the City's promises to the community.

The Specific Plan notes that Southwest Fresno is an area of strong community identity and character, but is "disproportionately burdened by multiple sources of pollution" and that this burden stems from historical racially discriminatory policies that segregated people of color to this part of Fresno. *Id.* at 1-6. The Plan area ranks in the $90^{th}$-$99^{th}$ percentile statewide for communities disproportionately burdened by multiple sources of pollution and populations more sensitive to pollution. *Id*. at 1-12. Encouraging further development of industry in this already burdened community would not only directly contradict the Specific Plan, it would also exacerbate the harms of past racially discriminatory policies and constitute a new discriminatory act by the City.

The Plan further notes that locating industrial uses next to residentially designated land makes it harder to develop that land for housing in addition to harming current neighboring residents. Instead of reducing the impact of industrial development, the rezone proposal before the Planning Commission would worsen the situation by allowing still more industrial development immediately adjacent to a residential neighborhood and school. It is therefore inconsistent with the Specific Plan and the City's general plan.

Arguments that the rezone proposal is necessary to accommodate existing businesses strain credulity; these businesses already have permission to continue operating at the site, and the rezone proposal would open the door to further industrial development without further notice to the community. The rezone proposal would aggravate all of the concerns laid out in painstaking detail in the Specific Plan; like the myriad harms arising from the current pollution levels, including poor

health. *Id*. at 1-10. The rezone would allow more industry when the community needs grocery stores and residential friendly businesses. *Id*. at 1-14.

The Specific Plan directly addresses using zoning to promote its goals, and says that it will "prohibit new industrial development in the Specific Plan Area through the adoption of proposed Specific Plan land use and zoning provisions" and "locate new industrial development away from Southwest Fresno residential neighborhoods." This rezone proposal flatly violates all of these goals and reverses the zoning decisions made to further the programs in the Specific Plan. *Id*. at 2-4. Approving the rezone proposal would therefore violate the City's obligations under the Planning and Zoning Law. Gov't Code, § 65300.5.

**II. The rezone would violate Fresno's federal and state fair housing obligations**

In addition to being inconsistent with the City's own planning goals as set out in the Southwest Fresno Specific Plan, the rezone proposal would also discriminate against the people of color that reside in Southwest Fresno, undermining the goals of the plan and the City's fair housing obligations. In making zoning decisions, Fresno is bound by multiple layers of anti-discrimination laws, including the federal and state requirements to "affirmatively further fair housing." 42 U.S.C. § 3608(e)(5); Gov't Code §§ 65583, 8899.50. Discriminatory placement of industrial zoning also constitutes both intentional discrimination and disparate impact discrimination under the Fair Employment and Housing Act (Gov't Code § 12900 *et seq*) and the federal Fair Housing Act. 42 U.S.C. § 3601 *et seq.*

The rezoning proposal, if approved, would represent a violation of the City's duty to affirmatively further fair housing under state and federal law, because the toxic impacts of further industrial development will harm the majority non-white neighbors. Specifically, the Fair Housing Act requires local governments that receive federal funds to certify that they will take affirmative actions to address discrimination and segregation. 42 U.S.C. § 3608(e)(5). The failure to affirmatively further fair housing may result in HUD suspending or withdrawing federal funding. *US ex rel Anti-Discrimination Center of Metro New York, Inc., v. Westchester County*, 668 F.Supp.3d 548, 569 (2009).

"Affirmatively furthering fair housing means taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws. The duty to affirmatively further fair housing extends to all of a public agency's[2] activities and programs relating to housing and community development." Gov't Code § 8899.50(a)(1)). Rezoning land to allow more industrial development immediately adjacent to

[2] "Public Agencies" include "a city, including a charter city." Government Code § 8899.5(a)(2).

a community of color which is already subjected to extremely high levels of pollution would harm the existing community, further segregate the area, and reduce opportunities for development of high quality housing and retail.

California law specifically acknowledges the discriminatory aspects of land use decisions such as the rezone proposal currently before the Planning Commission. Zoning decisions have fundamental impacts on surrounding communities, and allowing increased industrial activity in an area adjacent to a neighborhood populated by low income people of color could be determined to constitute both intentional and disparate impact discrimination. Specifically, state law prohibits the City from making any kind of land use decision, including a rezoning decision, in a manner that intentionally discriminates against a protected class or has a discriminatory effect on members of a protected class. Gov't. Code, § 12955.8; 2 C.C.R. §12161(a). Because Southwest Fresno is occupied primarily by people of color, approving the requested rezone and allowing additional industrial development and pollution on this parcel would subject this community of color to environmental hazards, thereby having a disparate impact on protected class based on race, regardless of the City's intent. Where the City's Specific Plan acknowledges the history of redlining and discrimination, and public comment from community members has highlighted the discriminatory nature of the industrial siting, approval of this proposal could also constitute intentional discrimination on the basis of race. *Avenue 6E Investments, LLC v. City of Yuma, Ariz.*, 818 F.3d 493, 504-5-5 (9th Cir. 2016).

Approving the rezone proposal would clearly violate the Fair Employment and Housing Act, which defines land use discrimination to include conduct which "[r]esults in the location of toxic, polluting, and/or hazardous land uses in a manner that denies, restricts, conditions, adversely impacts, or renders infeasible the enjoyment of residence, land ownership, tenancy, or any other land use benefit related to residential use, or in connection with housing opportunities or existing or proposed dwellings." Gov't. Code, § 12955.8; 2 C.C.R. § 12161(b)(10). In this case, Southwest Fresno is already subjected to extremely high levels of pollution, and the Southwest Specific Plan is a carefully thought out plan that represents years of community effort to move towards lower levels of industry and bring in more opportunity for housing and small businesses. The Neighborhood Mixed Use designation for this land was intentional and the result of a carefully planned strategy to move the community in that direction. While the zoning proposal before the planning commission right now might not include a plan for additional industrial businesses on this land, it opens the door for industrial development that would directly contradict the clear stated goals of the Specific Plan. By inviting more industrial development in this community of color, the City of Fresno would be engaging in land use discrimination under the Fair Housing Act and FEHA.

## III. To comply with CEQA, the City must prepare a new EIR for the proposed project

### A. Approving the proposed project would violate CEQA because the City has not considered all reasonably foreseeable impacts of the project

CEQA requires that a local agency prepare an EIR whenever it intends to approve a proposed project

that may have significant impacts on the environment. Pub. Res. Code § 21151. The purpose of the EIR is to "inform the public and its responsible officials of the environmental consequences of their decisions *before* they are made, thereby protecting not only the environment but also informed self-government." *Friends of the College of San Mateo Gardens v. San Mateo Cty. Cmty. Coll. Dist.*, 1 Cal. 5th 937, 944 (2016) (citation and internal quotation marks omitted).

CEQA requires a lead agency to consider *all* of a project's potentially significant impacts on the environment. This includes "[i]ndirect or secondary effects which are caused by the project and are later in time..., but are still reasonably foreseeable." CEQA Guidelines, 14 Cal. Code Regs. § 15358. The City has not complied with CEQA because it has not considered the environmental impacts of further industrial development in the project area, a reasonably foreseeable effect of rezoning the project area from Neighborhood Mixed Use to Light Industrial.

The findings in support of the proposed project state that "[t]he change in the planned land use from Neighborhood Mixed Use to Light Industrial would allow for the continuous operations of existing residential businesses *and operations for new industrial businesses.*" (Emphasis added). The findings also state that a purpose of the proposed project is "allow ... prospective industrial businesses to locate in this area." Future development of industrial businesses is both an intended effect of the proposed project and a reasonably foreseeable one. CEQA therefore requires that the City analyze this likely impact. *See Laurel Heights Improvement Assn. v. Regents of Univ. of California*, 47 Cal. 3d 376, 396 (1988) ("[A]n EIR must include an analysis of the environmental effects of future expansion or other action if: (1) it is a reasonably foreseeable consequence of the initial project; and (2) the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects.").

The Addendum to the Southwest Fresno Specific Plan EIR is inadequate because it completely ignores the environmental effects of the future industrial development anticipated in the City's findings. Throughout its analysis, the Addendum repeatedly justifies its conclusions about the impacts of the proposed project by asserting that "the proposed zoning would be consistent with the existing uses within the project site" and "the proposed project does not include any physical changes to the project site." But because CEQA requires consideration of reasonably foreseeable indirect impacts, the City must analyze the future development that will foreseeably follow from the zoning change. *See Laurel Heights*, 47 Cal. 3d at 396; *City of Carmel-By-The-Sea v. Bd. of Supervisors*, 183 Cal. App. 3d 229, 235, 243-44 (1986) (rejecting argument that "no EIR was required at the rezoning phase since no expanded use of the property was proposed").

**B. The City's decision to proceed under CEQA's subsequent review provisions is improper because the analysis in the Southwest Fresno Specific Plan EIR is not relevant to the impacts of the proposed project**

Public Resources Code section 21166 sets forth the conditions under which a subsequent or supplemental EIR must be prepared after an EIR has been certified for a project. These subsequent review provisions are "designed to ensure that an agency that proposes changes to a previously

approved project explore[s] environmental impacts not considered in the original environmental document." *Friends of the College*, 1 Cal. 5th at 951 (citation and internal quotation marks omitted). As the Supreme Court has explained, "[t]his assumes that at least some of the environmental impacts of the modified project were considered in the original environmental document, such that the original document retains some relevance to the ongoing decisionmaking process." *Id.*

Here, *none* of the environmental impacts of the proposed project were considered in the Southwest Fresno Specific Plan EIR. As the EIR noted, the Southwest Fresno Specific Plan "prohibits new industrial uses from being developed or located within the Plan Area." Consistent with this, the analysis of environmental impacts in Specific Plan EIR was premised on the expectation that there would be no new industrial uses in the Plan Area. The EIR repeatedly refers to the prohibition on industrial development in its analysis of hazardous materials, odors, and other environmental impacts. The Specific Plan EIR therefore has no relevance to a decision to rezone the project area to *allow* new industrial uses. The City cannot proceed under CEQA's subsequent review provisions and must start from the beginning under Public Resources Code section 21155. Because the proposed project may have a significant impact on the environment due to new industrial uses, a new EIR is required. Pub. Res. Code § 21155(a); *Laurel Heights*, 6 Cal. 4th at 1123 ("[A] public agency must prepare an EIR whenever substantial evidence supports a fair argument that a proposed project 'may have a significant effect on the environment.'").

**C. If the subsequent review provisions apply, the City must still prepare a subsequent EIR because allowing new industrial uses is a substantial change from the Southwest Fresno Specific Plan**

Even if section 21166 is applicable, the City's decision not to prepare a subsequent EIR is not supported by substantial evidence. Section 21166 requires a supplemental EIR whenever "[s]ubstantial changes are proposed in the project which will require major revisions of the environmental impact report." The purpose of requiring a subsequent EIR "is to explore environmental impacts not considered in the original environmental document." *Friends of the College*, 1 Cal. 5th at 949.

Allowing new industrial uses in the project area is a substantial change from the Southwest Fresno Specific Plan—it is a complete reversal of the Specific Plan's vision that there would be no future industrial development in the Plan Area. This requires major revisions to the Specific Plan EIR because that EIR never explored the likely environmental impacts of allowing industrial development in the Plan Area.

**D. Under a tiering analysis, the City must prepare a new EIR for the proposed project**

The Addendum states that it "tiers off" the Southwest Fresno Specific Plan EIR. This reflects an underlying confusion in the City's analysis. That confusion makes it difficult to understand the basis

for the City's actions and fully comment on them. As the Supreme Court explained in *Friends of the College*, a subsequent project under a tiered EIR is conceptually distinct from a modification to an approved project analyzed under section 21166. 1 Cal. 5th at 960 ("when a tiered EIR has been prepared, review of a subsequent project proposal is more searching" than it is under section 21166).

The Court explained that "[i]f the subsequent project is consistent with the program or plan for which the EIR was certified, then CEQA requires a lead agency to prepare an initial study to determine if the later project may cause significant environmental effects not examined in the first tier EIR." *Id.* But "[i]f the subsequent project is not consistent with the program or plan, it is treated as a new project and must be fully analyzed in a project—or another tiered EIR if it may have a significant effect on the environment." *Id.* Because the project is not consistent with the Southwest Fresno Specific Plan, a new EIR is required.

**IV. The community impacted by the rezone proposal has not been adequately informed about the proposal and its impacts**

Municipal Code section 15-5006 *et seq*. requires that community members be informed about rezoning proposals and given opportunity to comment at a community meeting. In this case, community members and businesses in the immediate vicinity of the parcel that is the subject of this proposal did not receive notice of the proposal. The notice of the public meeting did not encourage community members to attend and confused residents who received it. Some community members who tried to attend the community meeting, over zoom, were not able to gain access or provide comment.

**IV. Conclusion**

For all of the reasons explained above, the Planning Commission should not adopt the Addendum to the Final Program EIR and should deny the Plan Amendment Application and the Rezone Application. Any other course of action would violate numerous legal obligations and result in harm to this already impacted community. If the rezoning proposal is approved, Central Valley Urban Institute will be forced to consider all legal actions available. Thank you for your consideration of these critical issues. Please feel free to contact me at [redacted] with any questions about the issues raised in this letter.

Sincerely,

Madeline Howard
Senior Attorney
Western Center on Law & Poverty

[redacted]

# EXHIBIT B

WESTERN CENTER
ON LAW & POVERTY
[redacted]
[redacted]

October 11, 2022

City Council
City of Fresno
2600 Fresno Street
Fresno, CA 93721
***Via Electronic Mail***
[redacted]

**Re: Public Comment for City Council Meeting October 13, 2022**
**Central Valley Urban Institute Opposition to:**

- **Agenda item 2.1, ID 22-1595, P22-02413, "Mixed Use Text Amendment"**
- **Agenda item 2.2, ID 22-1598, P20-04209/P20-04211, "18.9-acre rezone"**
- **Agenda item 2.3, ID 22-1210, P20-01665, "92-acre rezone"**

To Councilmembers:

I write on behalf of the Central Valley Urban Institute in strong opposition to Fresno City Council Agenda items 2.1, 2.2, and 2.3 (Final Meeting Agenda for Thursday, October 13, 2022, Regular Meeting of Fresno City Council).

The Central Valley Urban Institute is a policy, research, resident empowerment, and advocacy organization that serves as the conscience of California's San Joaquin Valley, speaking up and out to protect the Valley's most vulnerable residents, including those who reside in Southwest Fresno. Taken together, the proposals associated with the above-referenced agenda items, if adopted, will subject the Southwest Fresno Specific Plan to a death by a thousand cuts and further entrench industrial and polluting uses in low-income communities of color that have consistently opposed such uses in favor of environmentally just housing and community development.

The Southwest Fresno Specific Plan is the culmination of a community-led environmental justice planning effort and was adopted by the Fresno City Council on October 26, 2017. The Specific Plan would be severely undermined by planning applications to revert from residential to industrial uses, specifically a proposal for a 92-acre industrial rezone (Agenda item 2.3, ID 22-1210) and another proposal for an 18.9-acre rezone in the Southwest Fresno Specific Plan area (Agenda item 2.2, ID 22-1598) as they undermine the vision for a healthier Southwest Fresno.[1] Central Valley Urban Institute strongly opposes these applications, and

[1] The matters detailed in our previous correspondence on behalf of Central Valley Urban Institute are incorporated by reference: April 6, 2021 letter from Madeline Howard to Fresno Planning Commission re 92-acre rezone; September 1, 2021 letter from Madeline Howard to Fresno Planning Commission re 92-acre rezone; May 31, 2022 letter from Madeline Howard to Fresno Planning Commission re 92-acre rezone; August 6, 2022 letter from Nisha

expresses its deep concerns about the related proposal to adopt a Mixed Use Text Amendment (Agenda item 2.1, ID 22-1595) insofar as it is an attempt to justify the entrenching and expansion of industrial uses in the Southwest Fresno Specific Plan area.

## I. The Central Valley Urban Institute strongly urges the City Council to reject Plan Amendment Application No. P20-01665, Rezone Application No. P20-01665 and the related Environmental Assessment No. P20-01665 pertaining to ±92.53 acres of property bounded by East Vine Avenue to the north, State Route 41 to the east, South Elm Avenue to the west and East Chester/East Samson Avenue to the south. (Agenda item 2.3, ID 22-1210, P20-01665, "92-acre rezone")

### A. The 92-acre rezone proposal must be denied because it is inconsistent with the City's General Plan.

California's Planning and Zoning law (Section 65000 *et seq*.) requires all cities and counties to adopt a comprehensive long term "general plan" for the physical development of land. The general plan is the constitution with which all local land-use decisions must be consistent. The general plan has seven elements. A jurisdiction's land use decisions, zoning code, and other policies must be consistent with the general plan. Gov. Code § 65300.5; 65860. Land use decisions must also be consistent with the general plan. Gov. Code§ 65454. Fresno's Municipal Code section 15-5812 incorporates these requirements in a directive to the City Council. It provides that "the City Council shall not approve an application unless the proposed Rezone…is consistent with the General Plan" and 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…"

The City of Fresno's general plan incorporates the Southwest Fresno Specific Plan, which reflects the community's serious concerns with toxic pollution and adverse health impacts caused by the industrial development adjacent to the residential area. As described below, the Specific Plan details the adverse health impacts that the existing industrial development and highway have had on the community. Allowing more industrial development in this sensitive area would harm rather than protect the public health; it is inconsistent with both the general plan and the Development Code.

#### 1. The 92-acre rezone proposal violates the City's duty to promote housing development.

The City of Fresno is also prohibited from taking any zoning action that would reduce the ability to develop housing on a given parcel. Gov. Code § 66300(b)(1)(A). Specifically, Government Code section 66300(b)(1) provides that "with respect to land where housing is an allowable use, an affected county or an affected city shall not enact a development policy, standard, or condition that would have any of the following effects:… lessen the intensity of housing." The City is bound by this provision pursuant to its designation as an "affected city" by

N. Vyas to Fresno City Council re 18.9-acre rezone; and September 27, 2022 letter from Nisha N. Vyas to Fresno City Council re Mixed Use Text Amendment.

the state Department of Housing and Urban Development.

As discussed further below, the Specific Plan describes a goal of developing high quality housing close to amenities such as parks, schools, and transit. *Id*. at 2-2. Re-designating this parcel's zoning to Light Industrial would be inconsistent with the general plan because it forecloses the possibility of high-quality housing development on the site. This action would also violate Government Code section 66300(b)(1) because the rezone proposal changes the zoning from a designation which allows development of housing to one that does not.

The Report to the City Council on this agenda item acknowledges that "the applicant is required to provide housing elsewhere in the City consistent with the maximum dwelling units per acre allowed in the NMX zone district (16 dwelling units per acre)," and that the "applicant has not submitted an application for a separate Plan Amendment and Rezone that would offset the loss of potential dwelling units for the subject area[.]"

**2. The 92-acre rezone proposal is inconsistent with the Southwest Fresno Specific Plan's overall vision and goals as well as its specific provisions.**

The City of Fresno's general plan incorporates the Southwest Fresno Specific Plan, which "implements the goals and policies set forth in the General Plan by building upon its concepts for the Southwest Development Area." The Plan also includes ideas and measures that have been "extensively tailored and reviewed by the Southwest Fresno Community and stakeholders." Southwest Specific Plan (October 26, 2017) at p. 1-1. This careful planning process should be honored, instead of undermined by this rezoning proposal that opens the door for more industrial development and associated pollution. The Specific Plan resulted from a multiyear community involved process and was designed to right the institutional wrongs that the community has been burdened with. The proposal before the Planning Commission would undo the important progress that has been made and break the City's promises to the community.

The Specific Plan notes that Southwest Fresno is an area of strong community identity and character but is "disproportionately burdened by multiple sources of pollution" and that this burden stems from historical racially discriminatory policies that segregated people of color to this part of Fresno. *Id.* at 1-6. The Plan area ranks in the 90th-99th percentile statewide for communities disproportionately burdened by multiple sources of pollution and populations more sensitive to pollution. *Id*. at 1-12. Encouraging further development of industry in this already burdened community would not only directly contradict the Specific Plan, it would also exacerbate the harms of past racially discriminatory policies and constitute a new discriminatory act by the City.

The Specific Plan further notes that locating industrial uses next to residentially designated land makes it harder to develop that land for housing in addition to harming current neighboring residents. Instead of reducing the impact of industrial development, the rezone proposal before the Planning Commission would worsen the situation by allowing still more industrial development immediately adjacent to a residential neighborhood and school. It is therefore inconsistent with the Specific Plan and the City's general plan.

Arguments that the rezone proposal is necessary to accommodate existing businesses strain credulity; these businesses already have permission to continue operating at the site, and the rezone proposal would open the door to further industrial development without further notice to the community. The rezone proposal would aggravate all of the concerns laid out in painstaking detail in the Specific Plan; like the myriad harms arising from the current pollution levels, including poor health. *Id*. at 1-10. The rezone would allow more industry when the community needs grocery stores and residential friendly businesses. *Id*. at 1-14.

The Specific Plan directly addresses using zoning to promote its goals and says that it will "prohibit new industrial development in the Specific Plan Area through the adoption of proposed Specific Plan land use and zoning provisions" and "locate new industrial development away from Southwest Fresno residential neighborhoods." This 92-acre rezone proposal flatly violates all of these goals and reverses the zoning decisions made to further the programs in the Specific Plan. *Id*. at 2-4.

Approving the rezone proposal would therefore violate the City's obligations under the Planning and Zoning Law. Gov. Code § 65300.5.

B. **The 92-acre rezone would violate Fresno's federal and state fair housing obligations.**

In addition to being inconsistent with the City's own planning goals as set out in the Southwest Fresno Specific Plan, the rezone proposal would also discriminate against the people of color that reside in Southwest Fresno, undermining the goals of the plan and the City's fair housing obligations.

In making zoning decisions, Fresno is bound by multiple layers of anti-discrimination laws, including the federal and state requirements to "affirmatively further fair housing." 42 U.S.C. § 3608(e)(5); Gov. Code §§ 65583, 8899.50. Discriminatory placement of industrial zoning also constitutes both intentional discrimination and disparate impact discrimination under the Fair Employment and Housing Act (Gov't Code § 12900 *et seq*) and the federal Fair Housing Act. 42 U.S.C. § 3601 *et seq.* The rezoning proposal, if approved, violates the City's duty to affirmatively further fair housing under state and federal law, because the toxic impacts of further industrial development will harm the majority non-white neighbors. Specifically, the Fair Housing Act requires local governments that receive federal funds to certify that they will take affirmative actions to address discrimination and segregation. 42 U.S.C. § 3608(e)(5). The failure to affirmatively further fair housing may result in HUD suspending or withdrawing federal funding. *US ex rel Anti-Discrimination Center of Metro New York, Inc. v. Westchester County*, 668 F.Supp.3d 548, 569 (2009).

"Affirmatively furthering fair housing means taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws. The duty to affirmatively further fair housing extends to all of a public agency's activities and programs relating to housing and community development." Gov. Code § 8899.50(a)(1)). Rezoning land to allow more industrial

development immediately adjacent to a community of color which is already subjected to extremely high levels of pollution would harm the existing community, further segregate the area, and reduce opportunities for development of high-quality housing and retail.

California law specifically acknowledges the discriminatory aspects of land use decisions such as the rezone proposal currently before the Planning Commission. Zoning decisions have fundamental impacts on surrounding communities and allowing increased industrial activity in an area adjacent to a neighborhood populated by low-income people of color could be determined to constitute both intentional and disparate impact discrimination. Specifically, state law prohibits the City from making any kind of land use decision, including a rezoning decision, in a manner that intentionally discriminates against a protected class or has a discriminatory effect on members of a protected class. Gov't. Code, § 12955.8; 2 C.C.R. §12161(a). Because Southwest Fresno is occupied primarily by people of color, approving the requested rezone and allowing additional industrial development and pollution on this parcel would subject this community of color to environmental hazards, thereby having a disparate impact on protected class based on race, regardless of the City's intent.

Where the City's Specific Plan acknowledges the history of redlining and discrimination, and public comment from community members has highlighted the discriminatory nature of the industrial siting, approval of this proposal could also constitute intentional discrimination based on race. *Avenue 6E Investments, LLC v. City of Yuma, Ariz.,* 818 F.3d 493, 504-5-5 (9th Cir. 2016). Approving the rezone proposal will violate the Fair Employment and Housing Act, which defines land use discrimination to include conduct which "[r]esults in the location of toxic, polluting, and/or hazardous land uses in a manner that denies, restricts, conditions, adversely impacts, or renders infeasible the enjoyment of residence, land ownership, tenancy, or any other land use benefit related to residential use, or in connection with housing opportunities or existing or proposed dwellings." Gov. Code, § 12955.8; 2 C.C.R. § 12161(b)(10).

Southwest Fresno is already subject to extremely high levels of pollution. The Southwest Fresno Specific Plan represents years of community effort to phase out industrial uses and create housing and small business opportunities. In designating the parcels at issue in this re-zone application as Neighborhood Mixed Use, the community planning effort was specific and intentional in moving land uses in that direction and away from industrial. The rezone proposal opens the door for industrial development that would directly contradict the clear stated goals of the Specific Plan. By inviting more industrial development in this community of color, the City of Fresno would be engaging in land use discrimination under the Fair Housing Act and FEHA.

In its proffered response to the discussion about the City's duty to affirmatively further fair housing in our previous correspondence, the Report to the City Council evinces a lack of understanding about the mandate by engaging in a discussion about the Housing Crisis Act of 2019 (SB 330/SB 8) and its sites inventory in the City's 5th Cycle Housing Element. There is no engagement with the assertions that adopting the proposed rezone will deepen the significant disparities in housing needs and in access to opportunity, or more deeply entrench racially and ethnically concentrated areas of poverty. The City is required to take this mandate seriously and engage with it in good faith.

C. **The City has not complied with CEQA in considering the 92-acre rezone.**

The only environmental document offered with the proposed 92-acre rezone is an Addendum to the Southwest Specific Plan Environmental Impact Report; for the reasons stated below, this is insufficient and violates CEQA.

**1. Approving the proposed project would violate CEQA because the City has not considered all reasonably foreseeable impacts of the project.**

The California Environmental Quality Act (CEQA) requires that a local agency prepare an Environmental Impact Report (EIR) whenever it intends to approve a proposed project that may have significant impacts on the environment. Pub. Res. Code § 21151. The purpose of the EIR is to "inform the public and its responsible officials of the environmental consequences of their decisions *before* they are made, thereby protecting not only the environment but also informed self government." *Friends of the College of San Mateo Gardens v. San Mateo Cty. Cmty. Coll. Dist.*, 1 Cal. 5th 937, 944 (2016) (citation and internal quotation marks omitted). CEQA requires a lead agency to consider *all* of a project's potentially significant impacts on the environment. This includes "[i]ndirect or secondary effects which are caused by the project and are later in time..., but are still reasonably foreseeable." CEQA Guidelines, 14 Cal. Code Regs. § 15358.

The City has not complied with CEQA because it has not considered the environmental impacts of further industrial development in the project area, a reasonably foreseeable effect of rezoning the project area from Neighborhood Mixed Use to Light Industrial. The findings in support of the proposed project state that "[t]he change in the planned land use from Neighborhood Mixed Use to Light Industrial would allow for the continuous operations of existing residential businesses *and operations for new industrial businesses.*" (Emphasis added). The findings also state that a purpose of the proposed project is "allow ... prospective industrial businesses to locate in this area." Future development of industrial businesses is both an intended effect of the proposed project and a reasonably foreseeable one. CEQA therefore requires that the City analyze this likely impact. *See Laurel Heights Improvement Assn. v. Regents of Univ. of California*, 47 Cal. 3d 376, 396 (1988) ("[A]n EIR must include an analysis of the environmental effects of future expansion or other action if: (1) it is a reasonably foreseeable consequence of the initial project; and (2) the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects.").

The Addendum to the Southwest Fresno Specific Plan EIR is inadequate because it completely ignores the environmental effects of the future industrial development anticipated in the City's findings. Throughout its analysis, the Addendum repeatedly justifies its conclusions about the impacts of the proposed project by asserting that "the proposed zoning would be consistent with the existing uses within the project site" and "the proposed project does not include any physical changes to the project site." But because CEQA requires consideration of reasonably foreseeable indirect impacts, the City must analyze the future development that will foreseeably follow from the zoning change. *See Laurel Heights*, 47 Cal. 3d at 396; *City of Carmel-By-The-Sea v. Bd. of Supervisors*, 183 Cal. App. 3d 229, 235, 243-44 (1986) (rejecting argument that "no EIR was required at the rezoning phase since no expanded use of the property was proposed").

**2. The City's decision to proceed under CEQA's subsequent review provisions is improper because the analysis in the Southwest Fresno Specific Plan EIR is not relevant to the impacts of the proposed project.**

Public Resources Code section 21166 sets forth the conditions under which a subsequent or supplemental EIR must be prepared after an EIR has been certified for a project. These subsequent review provisions are "designed to ensure that an agency that proposes changes to a previously approved project explore[s] environmental impacts not considered in the original environmental document." *Friends of the College*, 1 Cal. 5th at 951 (citation and internal quotation marks omitted). As the Supreme Court has explained, "[t]his assumes that at least some of the environmental impacts of the modified project were considered in the original environmental document, such that the original document retains some relevance to the ongoing decisionmaking process." *Id*.

Here, none of the environmental impacts of the proposed project were considered in the Southwest Fresno Specific Plan EIR. As the EIR noted, the Southwest Fresno Specific Plan "prohibits new industrial uses from being developed or located within the Plan Area." Consistent with this, the analysis of environmental impacts in Specific Plan EIR was premised on the expectation that there would be no new industrial uses in the Plan Area. The EIR repeatedly refers to the prohibition on industrial development in its analysis of hazardous materials, odors, and other environmental impacts. The Specific Plan EIR therefore has no relevance to a decision to rezone the project area to allow new industrial uses. The City cannot proceed under CEQA's subsequent review provisions and must start from the beginning under Public Resources Code section 21155. Because the proposed project may have a significant impact on the environment due to new industrial uses, a new EIR is required. Pub. Res. Code § 21155(a); *Laurel Heights*, 6 Cal. 4th at 1123 ("[A] public agency must prepare an EIR whenever substantial evidence supports a fair argument that a proposed project 'may have a significant effect on the environment.'").

**3. If the subsequent review provisions apply, the City must still prepare a subsequent EIR because allowing new industrial uses is a substantial change from the Southwest Fresno Specific Plan.**

Even if section 21166 is applicable, the City's decision not to prepare a subsequent EIR is not supported by substantial evidence. Section 21166 requires a supplemental EIR whenever "[s]ubstantial changes are proposed in the project which will require major revisions of the environmental impact report." The purpose of requiring a subsequent EIR "is to explore environmental impacts not considered in the original environmental document." *Friends of the College*, 1 Cal. 5th at 949.

Allowing new industrial uses in the project area is a substantial change from the Southwest Fresno Specific Plan—it is a complete reversal of the Specific Plan's vision that there would be no future industrial development in the Plan Area. This requires major revisions to the Specific Plan EIR because that EIR never explored the likely environmental impacts of expanding industrial zoning in the Plan Area.

**4. Under a tiering analysis, the City must prepare a new EIR for the proposed project.**

The Addendum states that it "tiers off" the Southwest Fresno Specific Plan EIR. This reflects an underlying confusion in the City's analysis. That confusion makes it difficult to understand the basis for the City's actions and fully comment on them. As the Supreme Court explained in *Friends of the College*, a subsequent project under a tiered EIR is conceptually distinct from a modification to an approved project analyzed under section 21166. 1 Cal. 5th at 960 ("when a tiered EIR has been prepared, review of a subsequent project proposal is more searching" than it is under section 21166).

The Court explained that "[i]f the subsequent project is consistent with the program or plan for which the EIR was certified, then CEQA requires a lead agency to prepare an initial study to determine if the later project may cause significant environmental effects not examined in the first tier EIR." *Id*. But "[i]f the subsequent project is not consistent with the program or plan, it is treated as a new project and must be fully analyzed in a project—or another tiered EIR if it may have a significant effect on the environment." *Id*. Because the project is not consistent with the Southwest Fresno Specific Plan, a new EIR is required.

## II. The Central Valley Urban Institute strongly urges the City Council to reject the application for Plan Amendment and Rezone Application No. P20-04209, Development Permit Application No. P20-04211, and related Environmental Assessment No. P20-04209/P20-04211 pertaining to ±18.9 acres of property located on the southeast corner of South West and West Church Avenues (Agenda item 2.2, ID 22-1598, P20-04209/P20-04211, "18.9-acre rezone").

This Agenda item consists of an application to amend the Fresno General Plan to change the land use designation for this property from Residential – Medium Density to Employment – Light Industrial to allow applicant to develop a 2-story food production, warehousing, and distribution facility at the subject property. Downzoning to allow such operations directly conflicts with the community-created Southwest Fresno Specific Plan. These applications undermine community goals, harm public health, and allow industry to continue polluting an already impacted community.

### A. The 18.9-acre rezone would make Southwest Fresno more toxic and polluted.

The Plan Amendment and Rezone would expand industrial development where the City must be focused on facilitating development of housing and community-friendly businesses. The applicant and the Planning Commission do not address the broad range of harms that result from industrial development. Approval of the applications would lower the standard than is required by the Southwest Specific plan, which mandates that industry be phased out altogether.

### B. The 18.9-acre rezone must be rejected because it is inconsistent with the City's General Plan.

Following the analysis above in Section I.A. as to the 92-acre rezone application, this 18.9-acre rezone application is inconsistent with the City's general plan. Allowing more

industrial development in this sensitive area through the Plan Amendment and Rezone would harm rather than protect the public health; it is inconsistent with the general plan.

**1. The 18.9-acre rezone violates the City's duty to facilitate housing development.**

The parcels at issue are designated for Residential-Medium Density and is estimated to accommodate 94 – 227 dwelling units.

Applying the analysis in Section I.A.1 above, if the City were to approve and adopt this application and thereby promote the use of parcels zoned for mixed use for industrial use instead of housing, it would blatantly violate the City's duty under section 66300(b)(1)(A) and the stated intent of the law to "maximize the development of housing within this state." *Id.* at §63300(f)(2). For the same reasons, the rezone proposal also violates Gov't Code § 66300(b)(1)(A), and may violate the City's duty under SB 2 (2007-2008), codified at Government Code § 65582 *et seq*. This Plan Amendment and Rezone proposal's allowance for additional industrial development on the 18.9-acre subject property would be inconsistent with the general plan because it forecloses the possibility of high-quality housing development.

**2. The 18.9-acre rezone conflicts with the Southwest Specific Plan.**

The Specific Plan discusses using zoning to promote its goals and says that it will "prohibit new industrial development in the Specific Plan Area through the adoption of proposed Specific Plan land use and zoning provisions" and "locate new industrial development away from Southwest Fresno residential neighborhoods." These proposals violate these goals and reverse the zoning decisions made to further the programs in the Specific Plan. Applying the analysis in Section I.A.2. above, the application for plan amendment and rezone, if approved and adopted would violate the City's obligations under the Planning and Zoning Law. Gov. Code § 65300.5.

**C. The 18.9-acre rezone would violate Fresno's fair housing obligations.**

In addition to being inconsistent with the City's own planning goals as set out in the Southwest Fresno Specific Plan, the Plan Amendment and Rezone would also discriminate against the people of color that reside in Southwest Fresno, undermining the goals of the plan and the City's fair housing obligations. See analysis and discussion in Section I.B. above.

**D. The 18.9-acre rezone violates CEQA.**

The City has not complied with CEQA. The Initial Study and Negative Declaration (IS/ND) does not fully analyze or disclosure the environmental impacts of the proposed industrial uses at the subject property if the project is allowed to proceed. These applications would add additional industry, including processing, warehousing, and distribution through freight trucking, the impacts of which must be addressed in an EIR. Notably, Exhibit N to the Council file does not address the environmental concerns raised in the April 4, 2022, letter to the planning staff from Laborers International Union of North America, Local Union No. 294 ("LIUNA"), and does not satisfactorily address the April 14, 2022, letter to the Department of

Public Works from the San Joaquin Valley Air Pollution Control District.[2]

## III. Central Valley Urban Institute expresses significant concerns regarding Development Code Text Amendment Application No. P22-02413, related Environmental Finding for Environmental Assessment No. P22-02413, and corresponding General Plan Text Amendment relating to mixed-use development (Agenda item 2.1, ID 22-1595, P22-02413, "Mixed Use Text Amendment").

### A. This "upzone" proposal is connected to the proposals that would significantly "downzone" in the Southwest Fresno Specific Plan Area.

As acknowledged by the Staff Report, the proposed MUTA is an attempt to comply with the provisions of the Housing Crisis Act of 2019. It is certainly timed as an attempt to justify the reduction in residential zoning in the Southwest Fresno Specific Plan area in favor of industrial uses contemplated by the 92-acre rezone and 18.9-acre rezone applications. Downzoning to allow such operations directly conflicts with the community-led Specific Plan.

### B. Increasing density in mixed-use zones does not cure the fair housing violations that will result if the City proceeds with downzoning in the Southwest Fresno Specific Plan area.

Making housing opportunities in Southwest Fresno unavailable not only undermines the Specific Plan goals, it also violates the City's fair housing obligations. The scheme to downzone in Southwest Fresno represents a violation of the City's duty to affirmatively further fair housing under state and federal law, because the toxic impacts of further industrial development will harm its majority non-white residents.

### C. Increasing density in the mixed-use zone does not address immediate need for housing affordability and further analysis is necessary, including the proposed MUTA's interaction with Fresno's Density Bonus Ordinances, and consistency with the City's Housing Element.

As reported in the Fresno Bee last month, a recent study shows that about 29% of renters and 10% of homeowners in Fresno are severely cost burdened, meaning they are spending more than 50% of their household income on housing costs.[3] In its Sixth Cycle Housing Element, the City of Fresno is projected to plan for 9,440 units affordable to very low-income households and 5,884 units affordable to low-income households, not accounting for any carry-over from

[2] The District's letter notes, at page 3, "There are sensitive receptors (e.g. single family residence) located southeast and west of the Project. Truck routing involves the path/roads heavy-duty trucks take to and from their destination. The air emissions from heavy-duty trucks can impact residential communities and sensitive receptors." (Exhibit N to File ID 22-1598.)

[3] Cassandra Garibay, *Fresno ranked among top 20 most severely cost burdened cities. Here's where the city falls.* FRESNO BEE (Aug. 3, 2022, 5:00 AM), https://www.fresnobee.com/fresnoland/article264112556.html#storylink=cpy.

previous Housing Element cycles.[4]

A significant element of the proposed MUTA is the removal of maximum density limits for residential development on parcels zoned for mixed-use. Although the Mitigated Negative Declaration (Exhibit H to File ID 22-1595) includes some analysis of the maximum number of dwelling units that could be accommodated in each of the five types of mixed-use zones, it does not address the interaction between removal of maximum density limits with the City's existing Affordable Housing Density Bonus and TOD Height and Density Bonus ordinance, specifically to what extent removing the density limits disincentivizes developers from seeking additional density bonus that would trigger requirements to provide housing affordable to lower income households.

A third-party prepared the Buildable Lands Inventory attached as Appendix A to the Mitigated Negative Declaration (Exhibit H to File ID 22-1595) that shares the results of an analysis of the maximum possible density in each mixed-use zone given other limitations and summarizes the total acreage that it defines as "underutilized," as a proxy for suitability and availability for development. This summary analysis does not, however, substitute for the type of land inventory and analysis of zoning and public facilities that is required so show availability and suitability of sites under

Housing Element law (Gov. Code §§ 65583(a)(3) & 65583.2), or the required analysis of the capacity of the inventory to accommodate the Regional Housing Needs Assessment (RHNA) allocations for each income level (Gov. Code § 65583.2(c)-(g)). Although the proposed MUTA has not being prepared for the purposes of the Housing Element, this comprehensive analysis is necessary to show that the proposed upzoning is more than a "paper exercise," and to demonstrate what segments of the community it is intended to benefit.

## IV. Conclusion

For all the reasons explained above, Central Valley Urban Institute urges the City Council to reject these proposals to undermine the Southwest Fresno Specific Plan in favor of industrial uses. Any other course of action would violate the legal obligations outlined herein, and those other stakeholders and governmental agencies such as the California Air Resources Board have raised. If the 92-acre and/or the 18.9-acre applications are approved and adopted, Central Valley Urban Institute will be forced to consider all legal actions available.

Thank you for your consideration of these critical issues. I can be reached at [redacted] regarding any questions about the issues raised in this letter.

[4] Fresno Council of Governments, Draft 6th Cycle Regional Housing Needs Plan (Sept. 2022), https://2ave3l244ex63mgdyc1u2mfp-wpengine.netdna-ssl.com/wp-content/uploads/2022/09/FCOG_RHNP_Draft_September-2022.pdf

Sincerely,

Nisha N. Vyas
Western Center on Law & Poverty

[redacted]

# EXHIBIT C

WESTERN CENTER
ON LAW & POVERTY
[redacted]
[redacted]

January 10, 2023

***Via Electronic Mail***

Council District 1 Project Review Committee
City of Fresno
2600 Fresno Street
Fresno, CA 93721
[redacted]

**Re: Public Comment letter for District 1 Project Review Committee: Opposition to Text Amendment Application No. P21-06039 ("Cleaner and Greener Neighborhood Industry Overlay District")**

To Ms. Clark, City Planners, and Members of the Project Review Committee:

I am writing on behalf of the Central Valley Urban Institute in opposition to the proposed "Cleaner and Greener Neighborhood Industry Overlay District" being considered by the District 1 Project Review Committee on January 12, 2023. The Citywide Text Amendment proposes an Overlay District for parcels zoned for mixed use, that can also be used concurrently with a rezone. In addition to being overbroad and confusing, this proposal appears to be an attempt to allow the proponents of an earlier rezone proposal for a 92-acre parcel in Southwest Fresno to expand their industrial businesses without public scrutiny.

The prior rezone proposal, File ID # 21-206, requested a rezone for a 92-acre parcel in Southwest Fresno from Neighborhood Mixed Use to Light Industrial. Despite vehement public opposition, that proposal was partially adopted by the City Council on October 13, 2022. The text amendment before the Project Review Committees now is an attempt to do an end run around the public process and allow these same industrial businesses to expand beyond the boundaries of the rezone approved by the City Council. This letter outlines the legal obligations that are implicated by the proposed Overlay District, and explains why the Committees should reject the proposal to avoid violating multiple federal and state laws.

## I. The Proposed Overlay District is vague, confusing, and overly broad, and the stated purpose of the District belies its actual impact

The stated purpose of the text amendment is to "clarify and codify certain legal nonconforming uses, to allow existing uses, committed to the protection of public health and to promote a greater range of

uses including green business practices…" The actual text of the proposal belies this stated purpose. Creating an Overlay District that applies across the entire City, and includes a lengthy laundry list of new permitted uses, including industrial development, major utilities, and freight terminals does not clarify the zoning laws or protect public health. The proposal does not include a list of impacted parcels or a map, hampering public ability to determine how much of the City would be impacted and which parcels could be covered.

The text amendment is also incoherent. It says it only applies to parcels with existing nonconforming uses, but also appears to allow these parcels to adopt additional uses not normally permitted in mixed-use zones. (Compare Sec. 15-1615(B) to Sec. 15-1615(C)(1).) The proposal states that it only applies to parcels currently zoned for mixed use, but then says that it can be applied concurrently with a rezone. (Sec. 15-1615(B).) Members of the public and residents who want to try and assess the impact of this proposal have no reasonable way to do so.

While the stated purpose of the proposal is to promote public health and green business, the Overlay actually invites harmful industrial development that will adversely impact surrounding communities. Section C of the ordinance only requires *some* new businesses to achieve reduction of specific enumerated pollutants. For example, while the proposal requires a reduction in certain enumerated pollutants for industrial uses, there is no requirement for *any* net reduction under Transportation Classifications, which includes "Freight/Truck Terminals and Warehouses." This invites industrial development with a heavy environmental and public health cost, particularly in neighborhoods like Southwest Fresno, which appears to be the real target for this proposal.

## II. The proposal is inconsistent with the City's General Plan

California's Planning and Zoning law (§ 65000 *et seq*.) requires all cities and counties to adopt a comprehensive long term "general plan" for the physical development of land. The general plan is the constitution with which all local land-use decisions must be consistent. The City's general plan incorporates the Southwest Fresno Specific Plan, which reflects the community's serious concerns with toxic pollution and adverse health impacts caused by industrial development adjacent to a residential area. As described further below, the Specific Plan details the adverse health impacts that the existing industrial development and highway have had on the community. Allowing more industrial development in this sensitive area through the proposed Overlay District would harm rather than protect the public health and is inconsistent with the general plan.

## III. The proposal violates the City's duty to promote housing development

The City of Fresno is prohibited from taking any zoning action that would reduce the ability to develop housing on a given parcel. Gov't Code § 66300(b)(1)(A). Specifically, Government Code section 66300(b)(1) provides that "with respect to land where housing is an allowable use, an affected county or an affected city shall not enact a development policy, standard, or condition that would have any of the following effects:… lessen the intensity of housing." The City is bound by this provision pursuant to its designation as an "affected city" by the state Department of Housing

and Urban Development.[1] By creating an Overlay District that promotes the use of parcels zoned for mixed use for industrial and other business purposes instead of housing, this proposal violates the City's duty under section 66300(b)(1)(A) and the stated intent of the law to "maximize the development of housing within this state." *Id.* at §63300(f)(2).

In addition, the Southwest Fresno Specific Plan describes a goal of developing high quality housing close to amenities such as parks, schools, and transit. *Id*. at 2-2. This Overlay District's allowance for additional industrial development on the 92 acre site would be inconsistent with the general plan because it forecloses the possibility of high quality housing development.

**IV. The Overlay District violates and conflicts with the Southwest Specific Plan**

The City of Fresno's general plan incorporates the Southwest Fresno Specific Plan, which "implements the goals and policies set forth in the General Plan by building upon its concepts for the Southwest Development Area." The Plan also includes ideas and measures that have been "extensively tailored and reviewed by the Southwest Fresno Community and stakeholders." Southwest Specific Plan (October 26, 2017) at p. 1-1. This careful planning process should be honored, instead of undermined by this Overlay District proposal that opens the door for more industrial development and associated pollution. The Specific Plan resulted from a multiyear community-involved process, and was designed to right the institutional wrongs that the community has been burdened with. The proposal before the Project Review Committees would undo the important progress that has been made and break the City's promises to the community.

The Specific Plan notes that Southwest Fresno is an area of strong community identity and character, but is "disproportionately burdened by multiple sources of pollution" and that this burden stems from historical racially discriminatory policies that segregated people of color to this part of Fresno. *Id.* at 1-6. The Plan area ranks in the 90$^{th}$-99$^{th}$ percentile statewide for communities disproportionately burdened by multiple sources of pollution and populations more sensitive to pollution. *Id*. at 1-12. Encouraging further development of industry in this already burdened community would not only directly contradict the Specific Plan, it would also exacerbate the harms of past racially discriminatory policies and constitute a new discriminatory act by the City.

The Specific Plan discusses using zoning to promote its goals, and says that it will "prohibit new industrial development in the Specific Plan Area through the adoption of proposed Specific Plan land use and zoning provisions" and "locate new industrial development away from Southwest Fresno residential neighborhoods." This Overlay District proposal flatly violates all of these goals and reverses the zoning decisions made to further the programs in the Specific Plan. *Id*. at 2-4. Approving the proposal would therefore violate the City's obligations under the Planning and Zoning Law. Gov't Code, § 65300.5.

[1] List of Affected Cities as Designated by HCD, available at: https://www.hcd.ca.gov/community-development/docs/affected-cities.pdf

## II. The Proposed Overlay District would violate Fresno's federal and state fair housing obligations

In addition to being inconsistent with the City's own planning goals as set out in the Southwest Fresno Specific Plan, the Overlay District proposal would also discriminate against the people of color that reside in Southwest Fresno, undermining the goals of the plan and the City's fair housing obligations. In making zoning decisions, Fresno is bound by multiple layers of anti-discrimination laws, including the federal and state requirements to "affirmatively further fair housing." 42 U.S.C. § 3608(e)(5); Gov't Code §§ 65583, 8899.50. Discriminatory placement of industrial zoning also constitutes both intentional discrimination and disparate impact discrimination under the Fair Employment and Housing Act (Gov't Code § 12900 *et seq*) and the federal Fair Housing Act. 42 U.S.C. § 3601 *et seq.*

The Overlay District proposal, if approved, would represent a violation of the City's duty to affirmatively further fair housing under state and federal law, because the toxic impacts of further industrial development will harm the majority non-white neighbors near the targeted site in Southwest Fresno. Specifically, the Fair Housing Act requires local governments that receive federal funds to certify that they will take affirmative actions to address discrimination and segregation. 42 U.S.C. § 3608(e)(5). The failure to affirmatively further fair housing may result in HUD suspending or withdrawing federal funding. *US ex rel Anti-Discrimination Center of Metro New York, Inc., v. Westchester County*, 668 F.Supp.3d 548, 569 (2009).

"Affirmatively furthering fair housing means taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws. The duty to affirmatively further fair housing extends to all of a public agency's[2] activities and programs relating to housing and community development." Gov't Code § 8899.50(a)(1)). Creating an Overlay District to allow more industrial development and freight terminals immediately adjacent to a community of color which is already subjected to extremely high levels of pollution would harm the existing community, further segregate the area, and reduce opportunities for development of high quality housing and retail.

California law specifically acknowledges the discriminatory aspects of land use decisions such as the Overlay District proposal currently before the Project Review Committees. Zoning decisions have fundamental impacts on surrounding communities, and allowing increased industrial activity in an area adjacent to a neighborhood populated by low income people of color could be determined to constitute both intentional and disparate impact discrimination. Specifically, state law prohibits the

[2] "Public Agencies" include "a city, including a charter city." Government Code § 8899.5(a)(2).

City from making any kind of land use decision, including zoning decision, in a manner that intentionally discriminates against a protected class or has a discriminatory effect on members of a protected class. Gov't. Code, § 12955.8; 2 C.C.R. §12161(a). Because Southwest Fresno is occupied primarily by people of color, approving the requested Overlay District and allowing additional industrial development and pollution on this parcel would subject this community of color to environmental hazards, thereby having a disparate impact on protected class based on race, regardless of the City's intent.

Where the City's Specific Plan acknowledges the history of redlining and discrimination, and public comment from community members has highlighted the discriminatory nature of the industrial siting, approval of this proposal could also constitute intentional discrimination on the basis of race. *Avenue 6E Investments, LLC v. City of Yuma, Ariz.*, 818 F.3d 493, 504-5-5 (9th Cir. 2016).

In addition, approving the proposed Overlay District would violate the Fair Employment and Housing Act, which defines land use discrimination to include conduct which "[r]esults in the location of toxic, polluting, and/or hazardous land uses in a manner that denies, restricts, conditions, adversely impacts, or renders infeasible the enjoyment of residence, land ownership, tenancy, or any other land use benefit related to residential use, or in connection with housing opportunities or existing or proposed dwellings." Gov't. Code, § 12955.8; 2 C.C.R. § 12161(b)(10). In this case, Southwest Fresno is already subjected to extremely high levels of pollution, and the Southwest Specific Plan is a carefully thought out plan that represents years of community effort to move towards lower levels of industry and bring in more opportunity for housing and small businesses. The Neighborhood Mixed Use designation for this land was intentional and the result of a carefully planned strategy to move the community in that direction. The proposed Overlay District opens the door for industrial development that would directly contradict the clear stated goals of the Specific Plan. By inviting more industrial development in this community of color, the City of Fresno would be engaging in land use discrimination under the Fair Housing Act and FEHA.

**III. The proposal violates CEQA**

CEQA requires that a local agency prepare an Environmental Impact Report whenever it intends to approve a proposed project that may have significant impacts on the environment. Pub. Res. Code § 21151. The purpose of the EIR is to "inform the public and its responsible officials of the environmental consequences of their decisions *before* they are made, thereby protecting not only the environment but also informed self-government." *Friends of the College of San Mateo Gardens v. San Mateo Cty. Cmty. Coll. Dist.*, 1 Cal. 5th 937, 944 (2016) (citation omitted).

CEQA requires a lead agency to consider *all* of a project's potentially significant impacts on the environment. This includes "[i]ndirect or secondary effects which are caused by the project and are later in time..., but are still reasonably foreseeable." CEQA Guidelines, 14 Cal. Code Regs. § 15358.

The City has not complied with CEQA because it has not considered the environmental impacts of

further industrial development that would occur in Overlay Districts across the entire City. In fact, the City has not provided any report or analysis purporting to consider the environmental impacts of the Citywide zoning Overlay that contains a laundry list of new allowed uses, including, "Freight/Truck terminals and warehouses" and "major utilities."

**IV. The proposed text amendment violates the City's public meeting laws**

Municipal Code section 15-5006 *et seq*. requires that community members be informed about rezoning proposals and given opportunity to comment at a community meeting. In this case, the text amendment applies to the entire City, and confusingly states that it only applies to parcels with mixed use zoning where there are Legal Non-Conforming uses. There is no accompanying map or list of parcels to inform members of the public what parcels are impacted. There is no reasonable way for anyone to figure out what parcels would be impacted and whether their neighborhood includes any such parcels. This proposal and the manner in which it is being considered both violate the City's duty to promote meaningful public participation.

**IV. Conclusion**

For all of the reasons explained above, the Project Review Committees should reject the proposed Overlay District. If the text amendment is ultimately passed, Central Valley Urban Institute will consider all legal avenues available to protect the health of the community. Thank you for your consideration of these critical issues. Please feel free to contact me at [redacted] with any questions about the issues raised in this letter.

Sincerely,

Madeline Howard
Senior Attorney
Western Center on Law & Poverty

[redacted]

# EXHIBIT D

WESTERN CENTER
ON LAW & POVERTY
[redacted]
[redacted]

CENTRAL CALIFORNIA
LEGAL SERVICES
JUSTICE. EQUITY. POWER.

April 15, 2025

***Via Electronic Mail***
Fresno Planning Commission
2600 Fresno Street
Fresno, CA 93721
[redacted]

**Re: Agenda Item VIII-A, Project ID 25-372, Consideration of Plan Amendment Application No. P23-03006, Rezone Application No. P23-03006 and related Environmental Assessment**

To the Fresno Planning Commission:

We are writing on behalf of the Central Valley Urban Institute in strong opposition to Agenda Item VIII-A, Project ID 25-372, which relates to Plan Amendment Application No. P23-03006, Rezone Application No. P23-03006 and the related Environmental Assessment. This proposal once again proposes a zoning change for a parcel that has been the subject of extended controversy for years. This is the latest attempt to undermine the community-created Southwest Fresno Specific Plan by business owners that operate on the Elm Avenue property and seek to increase industrial use despite strong community opposition and serious environmental concerns. As with previous efforts, this proposal does not address the loss of land available for housing development that is required by SB 330, did not go through the required community input process, and violates numerous fair housing laws. It should be rejected.

Previous efforts to make these changes include File ID # 21-206, wherein the business owners requested a rezone for the entire 92-acre parcel on Elm Avenue from Neighborhood Mixed Use to Light Industrial. This proposal was considered by the Planning Commission on September 1, 2021 and was the subject of vehement public opposition because it directly conflicts with the Southwest Fresno Specific Plan goal of reducing industrial uses in this neighborhood. When that effort initially failed, the City worked with the business owners on a series of thinly veiled efforts to avoid public scrutiny by allowing the zone change through city-wide ordinance, including a proposed Overlay District that would have allowed these same businesses to expand on this parcel without a parcel-

specific zoning change. When that effort failed, another version of this proposal was put forward and rejected by the District 3 Committee in October 2024. This letter outlines the legal obligations that are implicated by the newest version of the proposed zone change currently before the Planning Commission, and explains why the Commission should reject the proposal to avoid violating multiple federal and state laws.

## I. The Proposal fails to identify any need for this zone change, or any justification for undermining the clear community goals in the Southwest Fresno Specific Plan

While the proposal recites that the current Neighborhood Mixed Use designation is inconsistent with the current uses, it states no justification for needing this zoning change. The Southwest Specific Plan allows existing industrial businesses on the site to continue operating, and there is no need to change the zoning to allow these businesses to operate. In order to allow meaningful and informed consideration of this rezone request, and the impact that this change will have on the community, the business owners should be required to make their plans for further industrial development on the site public. The surrounding community is already suffering serious harm from exposure to environmental hazards, and the Southwest Specific Plan was specifically intended to phase out industrial uses, not allow more. Rezoning will undermine these community goals regardless of what specific industrial plans the business owners have.

While this proposal states it is addressing community concerns by providing a laundry list of uses that will not be permitted on the site, and specific conditions that will be imposed on any new businesses, there is no indication of where this list came from, how the conditions were developed, and what uses are planned for the parcel. Nor is there any analysis whatsoever of the environmental impacts of uses that *will* be allowed, or the impact of the lost opportunity for housing and other more community friendly businesses as contemplated in the Specific Plan. In order to allow meaningful consideration, the proponents of this proposal should explain exactly what industrial uses are planned for this parcel. The City should not allow this proposal to proceed given that there has been no analysis of the impacts of potential new uses on the community.

## II. The proposal must be denied because it is inconsistent with the City's General Plan

California's Planning and Zoning law (Gov't Code § 65000 *et seq.*) requires all cities and counties to adopt a comprehensive long term "general plan" for the physical development of land. The general plan is the constitution with which all local land-use decisions must be consistent. The City's general plan incorporates the Southwest Fresno Specific Plan, which reflects the community's serious concerns with toxic pollution and adverse health impacts caused by industrial development adjacent to a residential area. As described further below, the Specific Plan details the adverse health impacts that the existing industrial development and highway have had on the community. Allowing more industrial development in this sensitive area through the proposed zone change would harm rather than protect the public health; it is inconsistent with the general plan. Amending the general plan to allow these changes would not correct this issue, because industrial development itself is inconsistent with the general plan.

## III. The proposal violates the City's duty to promote housing development

As identified in the Municipal Code findings document in Exhibit F, this proposal must be rejected unless submitted concurrently with a proposal to address the loss of land available for housing. The City of Fresno is prohibited from taking any zoning action that would reduce the ability to develop housing on a given parcel. Gov't Code § 66300(b)(1)(A). Specifically, the provision identified as SB 330, codified at Government Code section 66300(b)(1), provides that "with respect to land where housing is an allowable use, an affected county or an affected city shall not enact a development policy, standard, or condition that would have any of the following effects:… lessen the intensity of housing." The City is bound by this provision pursuant to its designation as an "affected city" by the state Department of Housing and Urban Development.[1] By rezoning a parcel designated for mixed use for industrial and other business purposes instead of housing, this proposal blatantly violates the City's duty under section 66300(b)(1)(A) and the stated intent of the law to "maximize the development of housing within this state." *Id.* at §63300(f)(2).

While the exhibits to the Agenda item contain a paragraph referring to the housing requirements of Senate Bill 330 (page 3 of Exhibit J), that item refers to an "Attached Memo" that is not attached. Notably this is a revised version of the memo that was submitted with a prior version of this proposal in August 2023, which also did not include the referenced memo. Upon review of all of the Exhibits for this Agenda item, there is no memo addressing housing. The project proponents cannot belatedly correct this failure at a later time; the community has the right to review all aspects of the proposal before the Commission.

In addition, the Southwest Fresno Specific Plan describes a goal of developing high quality housing close to amenities such as parks, schools, and transit. *Id.* at 2-2. This rezone allowing for additional industrial development would be inconsistent with the general plan because it forecloses the possibility of high quality housing development.

## IV. The rezone violates and conflicts with the Southwest Specific Plan

The City of Fresno's general plan incorporates the Southwest Fresno Specific Plan, which "implements the goals and policies set forth in the General Plan by building upon its concepts for the Southwest Development Area." The Plan also includes ideas and measures that have been "extensively tailored and reviewed by the Southwest Fresno Community and stakeholders." Southwest Specific Plan (October 26, 2017) at p. 1-1. This careful planning process should be honored, instead of undermined by this rezone proposal that opens the door for more industrial development and associated pollution. The Specific Plan resulted from a multiyear community-involved process and was designed to right the institutional wrongs that the community has been

[1] List of Affected Cities as Designated by HCD, available at: https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/affected-cities.pdf

burdened with. The proposal before the Planning Commission would undo the important progress that has been made and break the City's promises to the community, and the proponents make no effort to explain why they did not participate in the Southwest Specific planning process if they had concerns about the zoning designation.

The Specific Plan notes that Southwest Fresno is an area of strong community identity and character but is "disproportionately burdened by multiple sources of pollution" and that this burden stems from historical racially discriminatory policies that segregated people of color to this part of Fresno. *Id.* at 1-6. The Plan area ranks in the 90th-99th percentile statewide for communities disproportionately burdened by multiple sources of pollution and populations more sensitive to pollution. *Id.* at 1-12. Allowing further development of industry in this already burdened community would not only directly contradict the Specific Plan, it would also exacerbate the harms of past racially discriminatory policies and constitute a new discriminatory act by the City. While the proposal currently being put forward does not identify what other industrial uses are contemplated by the owners, it is clear that this zoning change will expose the community to exactly the kinds of harms the Southwest Specific Plan was intended to prevent. The proposal's list of uses that would not be permitted does not address this issue because it is not comprehensive and would still allow for harmful industrial development.

The Specific Plan discusses using zoning to promote its goals and says that it will "prohibit new industrial development in the Specific Plan Area through the adoption of proposed Specific Plan land use and zoning provisions" and "locate new industrial development away from Southwest Fresno residential neighborhoods." This proposal flatly violates all of these goals and reverses the zoning decisions made to further the programs in the Specific Plan. *Id.* at 2-4. Approving the proposal would therefore violate the City's obligations under the Planning and Zoning Law. Gov't Code, § 65300.5.

## V. The rezone would violate Fresno's federal and state fair housing obligations

In addition to being inconsistent with the City's own planning goals as set out in the Southwest Fresno Specific Plan, the proposal would also discriminate against the people of color that reside in Southwest Fresno, undermining the goals of the plan and the City's fair housing obligations. In making zoning decisions, Fresno is bound by multiple layers of anti-discrimination laws, including the federal and state requirements to "affirmatively further fair housing." 42 U.S.C. § 3608(e)(5); Gov't Code §§ 65583, 8899.50. Discriminatory placement of industrial zoning also constitutes both intentional discrimination and disparate impact discrimination under the Fair Employment and Housing Act (Gov't Code § 12900 *et seq*) and the federal Fair Housing Act (42 U.S.C. § 3601 *et seq*).

The rezone proposal, if approved, would represent a violation of the City's duty to affirmatively further fair housing under state and federal law, because the toxic impacts of further industrial development will harm the majority non-white neighbors near the targeted site in Southwest Fresno.

Specifically, the Fair Housing Act requires local governments that receive federal funds to certify that they will take affirmative actions to address discrimination and segregation. 42 U.S.C. § 3608(e)(5). The failure to affirmatively further fair housing may result in HUD suspending or withdrawing federal funding. *US ex rel Anti-Discrimination Center of Metro New York, Inc., v. Westchester County*, 668 F.Supp.3d 548, 569 (2009).

"Affirmatively furthering fair housing means taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws. The duty to affirmatively further fair housing extends to all of a public agency's[2] activities and programs relating to housing and community development." Gov't Code § 8899.50(a)(1)). Rezoning this parcel to allow more industrial development and freight terminals immediately adjacent to a community of color which is already subjected to extremely high levels of pollution would harm the existing community, further segregate the area, and reduce opportunities for development of high-quality housing and retail.

California law specifically acknowledges the discriminatory aspects of land use decisions such as the proposal currently before the Planning Committee. Zoning decisions have fundamental impacts on surrounding communities, and allowing increased industrial activity in an area adjacent to a neighborhood populated by low-income people of color could be determined to constitute both intentional and disparate impact discrimination. Specifically, state law prohibits the City from making any kind of land use decision, including zoning decision, in a manner that intentionally discriminates against a protected class or has a discriminatory effect on members of a protected class. Gov't. Code, § 12955.8; 2 C.C.R. §12161(a). Because Southwest Fresno is occupied primarily by people of color, approving the requested rezone and allowing additional industrial development and pollution on this parcel would subject this community of color to environmental hazards, thereby having a disparate impact on protected class based on race, regardless of the City's intent.

Where the City's Specific Plan acknowledges the history of redlining and discrimination, and public comment from community members has highlighted the discriminatory nature of the industrial siting, approval of this proposal could also constitute intentional discrimination on the basis of race. *Avenue 6E Investments, LLC v. City of Yuma, Ariz.*, 818 F.3d 493, 504-505 (9th Cir. 2016).

In addition, approving the proposed rezone would violate the Fair Employment and Housing Act, which defines land use discrimination to include conduct which "[r]esults in the location of toxic, polluting, and/or hazardous land uses in a manner that denies, restricts, conditions, adversely impacts, or renders infeasible the enjoyment of residence, land ownership, tenancy, or any other land use benefit related to residential use, or in connection with housing opportunities or existing or

[2] "Public Agencies" include "a city, including a charter city." Government Code § 8899.5(a)(2).

proposed dwellings." Gov't. Code, § 12955.8; 2 C.C.R. § 12161(b)(10).

In this case, Southwest Fresno is already subjected to extremely high levels of pollution, and the Southwest Specific Plan is a carefully thought out plan that represents years of community effort to move towards lower levels of industry and bring in more opportunity for housing and small businesses. The Neighborhood Mixed Use designation for this land was intentional and the result of a carefully planned strategy to move the community in that direction. The proposed rezone opens the door for industrial development that would directly contradict the clear stated goals of the Specific Plan. By inviting more industrial development in this community of color, the City of Fresno would be engaging in land use discrimination under the Fair Housing Act and FEHA.

## VI. The proposal violates CEQA

CEQA requires that a local agency prepare an Environmental Impact Report whenever it intends to approve a proposed project that may have significant impacts on the environment. Pub. Res. Code § 21151. The purpose of the EIR is to "inform the public and its responsible officials of the environmental consequences of their decisions *before* they are made, thereby protecting not only the environment but also informed self-government." *Friends of the College of San Mateo Gardens v. San Mateo Cty. Cmty. Coll. Dist.*, 1 Cal. 5th 937, 944 (2016) (citation and internal quotation marks omitted).

CEQA requires a lead agency to consider *all* of a project's potentially significant impacts on the environment. This includes "[i]ndirect or secondary effects which are caused by the project and are later in time..., but are still reasonably foreseeable." CEQA Guidelines, 14 Cal. Code Regs. § 15358. The CEQA Addendum Memorandum before the Commission refers to the proposal does not make any attempt to address the possible harms that will result from the zoning change, and the entire analysis is framed as if there will be no changes to the businesses on site. It repeatedly states that "[t]he proposed project does not include any physical changes to the project site, including construction or change in the current land uses." This renders the entire analysis flawed; there is no reasonable basis to assume that the industrial uses will remain the same if the rezone is approved.

While the current owners have repeatedly asserted vague financial needs to rezone the parcel for existing uses, these assertions have not been substantiated with any documentation, nor has there been any offer of an enforceable commitment to prohibit new industrial uses on the parcel. As such, a robust analysis requires examination of the environmental impacts of likely new industrial uses on the property. This proposal should be rejected on that basis.

## VII. The proposed rezone violates the City's public meeting laws: the only community meeting referred to in the materials took place in 2023 and involved a different proposal.

The Brown Act requires that community members be informed about rezoning proposals under consideration by local government bodies and given opportunity to comment at a community

meeting. Exhibit E to the materials before the Commission reveals that the only community meeting related to this proposal was in November of 2023 and appears to have been conducted on an entirely different proposal than that before the Commission. In addition, new community members who did not previously live or work in the area in 2023 have not had an opportunity to review or comment on even this previous proposal. Nor has the community had any opportunity to review any possible housing proposal that may be considered to address the City's SB 330 obligations.

## VIII. Conclusion

For all of the reasons explained above, the Planning Commission should recommend rejecting the proposed rezone. Any other course of action would violate numerous legal obligations. If the proposal is ultimately approved by the City, Central Valley Urban Institute will be forced to consider all available legal remedies. Thank you for your consideration of these critical issues. Please feel free to contact me at [redacted] with any questions about the issues raised in this letter.

Sincerely,

Madeline Howard
Senior Attorney
Western Center on Law & Poverty

Stephanie Hamilton Borchers
Director of Litigation
Central California Legal Services, Inc.

[redacted]

**From:** [redacted]
**To:**
**Subject:** Council Agenda Item ID 26-297 - OPPOSE Southwest Rezone
**Date:** Wednesday, March 18, 2026 2:07:43 AM

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**External Email:** Use caution with links and attachments

Council Agenda Item ID 26-297 - Southwest Rezone

Please do not approve the rezone. Southwest Fresno residents do NOT want the Elm Avenue rezone, and they have been ignored and neglected for too long.

The Elm Avenue Rezone will reverse recent hard-fought progress, ramp up industrial development, bring MORE big-truck traffic, and increase air pollution in the area.

A rezone will also lead to:

* An increase in adverse, unhealthy conditions in Southwest Fresno
* Continued over-saturation of industrial presence in Southwest Fresno
* Worsening conditions that have already led to life expectancy that is lower than other parts of Fresno
* Reduced opportunity for more housing
* Reduced incentive/requirements for owners to use property in ways that are more environmentally friendly to the health and wellbeing of residents

This rezone would benefit developers and businesses while negatively impacting the quality of life for Southwest Fresno residents.

Dee Barnes
Fresno, CA 93703