

Regular Council Meeting

June 18, 2026

FRESNO CITY COUNCIL



Public Comment Packet

ITEM(S)

RECEIVED
2026 JUN 17 PM 3:23
CITY OF FRESNO
CITY CLERK'S OFFICE

4:00 PM (ID 26-830)

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.

Americans with Disabilities Act (ADA):

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]
Subject: FW: letter for the City Council
Date: Monday, June 15, 2026 8:50:09 AM
Attachments: [Letter re Elm Avenue rezone application.docx](#)
[image001.png](#)

This appears to be public comment for the 18th.

Amy K. Aller

City Clerk



2600 Fresno Street
Fresno, CA 93721



From: Kay Bertken [REDACTED]
Sent: Friday, June 12, 2026 5:38 PM
To: Nelson Esparza [REDACTED]; Amy Aller [REDACTED]
Subject: letter for the City Council

External Email: Use caution with links and attachments

I have attached a letter to the City Council from the League of Women Voters of Fresno regarding the Elm Avenue rezone application, Agenda item ID 26-830.



Hon. Nelson Esparza, Council President
Members of the Fresno City Council
2600 Fresno Street
Fresno, California 93721

June 12, 2026

With respect to agenda item ID 26-830, the rezone application NO P23-03006 proposing to rezone an area on Elm Avenue from mixed use to light industrial, the League of Women Voters of Fresno urges the City Council to deny the application. Our National, State and Local Leagues have consistently pressed for community engagement in land use planning; and the Council and the City did a terrific job engaging the residents of Southwest Fresno in the drafting of their area specific plan. You should be commended and celebrated for that.

For far too long Fresno has had a reputation for upending good planning to accommodate special-interest pressure. We sincerely hope that this application does not represent a return to that tradition. The Council should reject this effort to change the SW Specific Plan—especially without going back to the Southwest residents who gave their time and effort to its creation. Public trust takes time to establish and is easily damaged.

Yours Truly,

Kay Bertken,

A black rectangular redaction box covering the signature of Kay Bertken. A handwritten mark, possibly a flourish or the letter "J", is visible to the right of the box.

Robin Chiero

A black rectangular redaction box covering the signature of Robin Chiero.

Co-Presidents, LWV Fresno

From:



Subject:

SUPPORT: ID 26-830 – Elm Avenue Rezone

Date:

Tuesday, June 16, 2026 4:10:13 PM

Attachments:

[6.16.26 - INVEST Fresno - Elm Ave Rezone Support Letter.pdf](#)

External Email: Use caution with links and attachments

Good afternoon,

On behalf of INVEST Fresno, we write to express our strong support of the application to restore the zoning of the Elm Avenue Business Park to light industrial (LI), to be heard by the Council on Thursday, June 18.

If you would like to discuss this matter further, please do not hesitate to contact Ethan or myself. We look forward to working with the Council and staff to help keep Fresno's economy moving.

Best,

--

Ben Granholm

Executive Director

INVEST Fresno



June 16, 2026

Nelson Esparza, President
City Council
City of Fresno
2600 Fresno Street, Room 3065
Fresno, CA 93721
clerk@fresno.gov

Submitted Electronically

RE: SUPPORT: ID 26-830 – Plan Amendment & Rezone Application No. P23-03006 and related Environmental Assessment – Elm Avenue Rezone

Dear Council President Esparza and Members of the Council:

We write today on behalf of INVEST Fresno, a coalition of Fresno residents, businesses, and community organizations committed to building a diverse and sustainable economy in Fresno, to express our strong support of the application to restore the zoning of the Elm Avenue Business Park to light industrial (LI) designation.

Since the City of Fresno executed the initial rezone of the 92-acre campus to Neighborhood Mixed Use via the Southwest Fresno Specific Plan in 2017, “Elm Avenue” has become a cautionary tale for business and property owners as the city updates its long-range development documents.

The Elm Avenue Business Park is the product of one of Fresno’s most successful economic development recruitments in its history, with the Fresno Redevelopment Agency seeking out Buzz Oates to invest in southwest Fresno. Ultimately, the entire 92-acre development would draw investment from Buzz Oates, SPAN Development, Stravinsky Development Group, and Sunset Waste (today Mid Valley Disposal).

Since its initial development in 2000, the south-of-Annadale portion of the Elm Avenue site has generated multi-million-dollar property tax receipts for the City of Fresno, serving as a clear-cut success story of Fresno’s redevelopment strategy.

Rejecting this application – and endangering the tax base it generates – is dangerous at a time when the City of Fresno faces its second straight year of eight-figure funding shortfalls.

The development has also delivered hundreds of high-paying jobs that support Fresno families in southwest Fresno, generating a direct and ancillary workforce of more than 1,000 serving the campus.

Fresno is at a crossroads when it comes to developing a next-generation economy.

The city has an extraordinarily tight industrial real estate market, with tenants occupying more than 95% of all industrial space.

Today, prospective industrial tenants are eyeing available space in Madera, Tulare, and Kern counties, with readily available – and ever-expanding – capacity.

The operators on Elm Avenue have expressed a sincere desire to keep their workforce and operations within the City of Fresno. Proper zoning ensures stability and security that these jobs, and the companies and operators who have sought to call Fresno their home, remain in our city.

Failing to meet the moment and solidify the underlying zoning of the Business Park would accelerate an exodus of workers and tax base to other Valley jurisdictions.

Since initially applying to restore their zoning, the applicants have worked tirelessly to generate mitigation options acceptable to city leadership and neighbors that balance community concerns with the practical realities of preserving critical economic activity and jobs for our city.

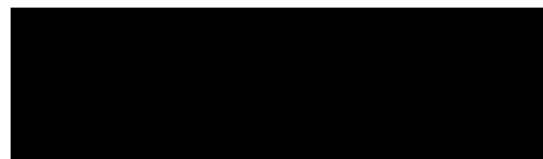
In short, they have sought to be good neighbors, good stewards of jobs and economic activity, and good investors in the future of Fresno.

We appreciate your time and consideration and respectfully urge the Council to restore the zoning of the Elm Avenue Business Park and continue moving Fresno's 21st Century economy forward.

Sincerely,



Ben Granholm
Executive Director



Ethan Smith
Chairman

cc: Jerry Dyer, Mayor
Georgeanne White, City Manager
Councilmembers, City of Fresno

From:

Subject:

Date:

Attachments:

[REDACTED]
[REDACTED]
Opposition to File ID 26-830 / Application No. P23-03006

Wednesday, June 17, 2026 2:51:24 PM

[image001.png](#)

[26.06.17 Fresno City Council w Exh 1.pdf](#)

External Email: Use caution with links and attachments

Hello,

Please see the attached letter regarding *Opposition to File ID 26-830: Plan Amendment Application No. P23-03006, Rezone Application No. P23-03006, and related Environmental Assessment (June 18, 2026 City Council Hearing)*

Thank you.



WESTERN CENTER
ON LAW & POVERTY

Daniel L. Sternberg (He/Him)

Attorney
[REDACTED]
[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

www.wclp.org

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[REDACTED] Blvd, Suite 208
90010

SACRAMENTO

[REDACTED] t, Suite 680
95814

OAKLAND

[REDACTED] t, Suite 204
94612

June 17, 2026

Via Electronic Mail

City Council
City of Fresno
2600 Fresno Street
Fresno, CA 93721
clerk@fresno.gov

Re: Opposition to File ID 26-830: Plan Amendment Application No. P23-03006, Rezone Application No. P23-03006, and related Environmental Assessment (June 18, 2026 City Council Hearing)

Hon. Mayor Dyer and City Councilmembers:

The Central Valley Urban Institute writes again in strong opposition to the above-referenced Plan Amendment and Rezone applications and related Environmental Assessment (the “Project” or “Elm Avenue Rezone”), which propose to rezone approximately 55.31 acres within the Southwest Fresno Specific Plan area from Neighborhood Mixed-Use (NMX) to Light Industrial (IL). This letter renews and incorporates in full all comments, exhibits, and prior testimony submitted with our March 18, 2026 letter.¹

The Project itself has not changed since the Planning Commission recommended on April 15, 2025 that the Council deny the Project. What has changed is the City’s own accounting of the lost residential capacity if the Project is approved. Between the March 18, 2026 and June 19, 2026 Council hearings, the City reduced its calculation of lost residential capacity from 3,540 housing units to 850, without acknowledgment, explanation, or support in the record. As set out below and in the Central Valley Urban Institute’s March 18 letter, the Project still violates multiple state and federal fair housing laws, the Housing Crisis Act of 2019 (SB 330), CEQA, and the Brown Act. Accordingly, we

¹ Specifically, this letter supplements and renews, and incorporates in full by reference, the Central Valley Urban Institute’s March 18, 2026 letter to the City Council and all prior testimony incorporated therein, including the Western Center on Law & Poverty letters of April 6, 2021, October 11, 2022, and January 10, 2023, and the Western Center on Law & Poverty and Central California Legal Services letter of April 15, 2025. The matter was tabled on March 19, 2026 (then Project ID 26-297) and now returns to the Council as File ID 26-830. As in March 2026, these comments also apply to, and are incorporated into the record for, the Central Southeast Area Specific Plan (File ID 26-389; Project ID 26-277).

respectfully urge the Council to adopt the Planning Commission's recommendation and deny the Project.

I. The Project still violates fair housing laws and the City's duty to affirmatively further fair housing.

Approving the Elm Avenue Rezone would violate the City's mandatory duty to affirmatively further fair housing and conflict with state and federal fair housing law.² The City's own Housing Element identifies Southwest Fresno as a Racially/Ethnically Concentrated Area of Poverty facing high cost burden, overcrowding, and heightened displacement risk—conditions rooted in a history of racially discriminatory land-use policies in Fresno.³ The Southwest Fresno Specific Plan was the community-driven response to that history. It was adopted to promote housing, mixed-use development, and neighborhood-serving amenities—like grocery stores and other community resources—while reducing industrial uses and improving environmental conditions in the community.

Rezoning these parcels back to Light Industrial reverses that commitment. It eliminates housing capacity, forecloses the opportunity for community-serving development, and perpetuates the very environmental burdens the Southwest Fresno Specific Plan was designed to relieve—deepening, rather than remedying, the concentration of poverty and pollution in an already overburdened neighborhood. The City's reliance on adding housing capacity in a separate planning area miles away (namely, the Central Southeast Area Specific Plan) does nothing to mitigate these localized harms to Southwest Fresno residents, nor does it satisfy the affirmative duty to overcome patterns of segregation and to remedy disparities in access to housing opportunity and environmental health. These points are developed at length in the incorporated March 18, 2026 letter and prior testimony, and are reiterated here in summary.

II. The Project violates SB 330, and the administrative record cannot support the findings required to approve it.

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.” SB 330 therefore prohibits Fresno 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.⁴ The capacity SB 330 protects is the maximum intensity the designation currently allows.

² 42 U.S.C. § 3608(e)(5); Gov't Code § 8899.50; 42 U.S.C. § 3601 *et seq.*; Gov't Code § 12900 *et seq.*

³ Fresno Multi-Jurisdictional 2023-2031 Housing Element, App. 1E, pg. 1E-0-3, <https://www.fresno.gov/wpcontent/uploads/2025/01/Fresno-Multi-Jurisdictional-2023-2031-Housing-Element.pdf>.

⁴ Gov't Code § 66300(b)(1)(A), (h).

A. The City inexplicably reduced its capacity-loss figure between the March 19, 2026 and June 18, 2026 Council meetings.

The City's own presentations dated March 19, 2026 and April 15, 2025 calculated the Project's loss as 55.31 acres multiplied by the NMX maximum of 64 dwelling units per acre (du/ac), yielding a net residential capacity loss of 3,540 units. Yet for the June 19, 2026 Council meeting, the City recalculated the same loss at 16 dwelling units per acre—purportedly the density “as of January 1, 2018”—arriving at roughly 850 units, a swing of nearly 2,700 units.⁵ Nothing in the record acknowledges, explains, or documents the basis for this change.

Moreover, the June 18, 2026 presentation is internally inconsistent on its face. It continues to state that the NMX maximum residential density is 64 du/ac, yet it computes the loss at 16; and its stated figure of 850 units does not even match its own arithmetic, because 16 du/ac across 55.31 acres yields approximately 885 units.⁶ A capacity-loss number the City cannot internally reconcile, and for which it offers no supporting analysis, cannot carry the City's burden of demonstrating SB 330 compliance.

B. The 16 dwelling units per acre figure is unsupportable, as it is neither the maximum density in the City's Housing Element nor consistent with the capacity the Southwest Fresno Specific Plan created.

The City's 6th-cycle Housing Element site inventory lists NMX parcels at a maximum density of 64 du/ac (and an assumed density of 32 du/ac for purposes of counting toward the regional housing need).⁷ The 16 du/ac figure the City now uses appears nowhere in the Housing Element. Subdivision (h) of Section 66300 requires the City to ensure no net loss of residential capacity, and it does not tie that capacity to the intensity allowed on January 1, 2018; what must be replaced is the capacity the NMX designation allows now. The City's own Housing Element fixes that capacity at 64 du/ac—the figure the City itself used in March 2026 and April 2025.

There is likewise no basis for ignoring the residential capacity the Southwest Fresno Specific Plan created on these very parcels. Adopted on October 26, 2017, the Specific Plan deliberately converted these parcels from industrial to NMX precisely in order to add housing and mixed-use capacity. The proposed rezone is a parcel-for-parcel reversal of the Specific Plan, returning these parcels to the very industrial designation the community-driven plan removed—the paradigmatic “change to a less intensive use” that SB 330 forbids.

⁵ Compare City of Fresno Planning & Dev. Dep't, City Council Presentation (Mar. 19, 2026) ($\pm 55.31 \text{ ac} \times 64 \text{ du/ac} = \text{net residential capacity loss of 3,540 units}$), with City of Fresno Planning & Dev. Dep't, City Council Hearing Presentation, Exhibit P (June 18, 2026) ($\pm 55.31 \text{ ac} \times 16 \text{ du/ac}$ “as of January 1, 2018” = net residential capacity loss of 850 units).

⁶ The June 18 staff report states the loss as 885 units.

⁷ See *supra* note 3, Site Inventory (listing NMX parcels at a maximum density of 64 du/ac and an assumed density of 32 du/ac).

C. The City's offsetting-capacity claim rests on an internally inconsistent and unexplained record.

To satisfy SB 330's no-net-loss requirement, the City relies on the Central Southeast Area Specific Plan to supply concurrent, offsetting housing capacity. But the City's own documents cannot agree on how much capacity that plan provides. The staff report for the Central Southeast Area Specific

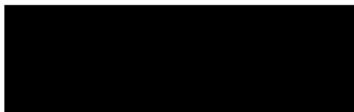
Plan states that the plan's land use changes "would result in a net gain in capacity for 3,285 housing units," while Exhibit R (the City's presentation on the same plan) states that adoption would result in a "net capacity gain of 2,938 housing units."⁸ These are two City documents describing the identical plan, each purporting to state the same plan-wide net figure, yet they differ by 347 units, and nothing in the record reconciles them. A third City document, the Housing Element Findings, yields a far smaller figure still for the affected Housing Element sites.⁹

An offset the City cannot consistently quantify cannot establish the finding SB 330 requires. With the loss figure unexplained and internally contradictory, and the claimed replacement capacity stated in three irreconcilable numbers, the record does not allow the Council to find that equivalent residential development capacity will in fact be maintained.

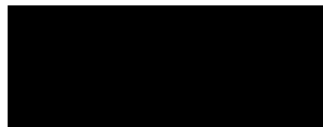
* * * *

For the foregoing reasons, the administrative record does not permit the Council to make the findings necessary to approve the Project consistent with fair housing laws and SB 330. The Central Valley Urban Institute respectfully urges the Council to adopt the Planning Commission's recommendation and to deny the Elm Avenue Rezone. Should you have questions regarding these comments, we can be contacted at dsternberg@wclp.org and hchan@wclp.org.

Sincerely,



Daniel L. Sternberg
Western Center on Law & Poverty



Hilda Chan
Western Center on Law & Poverty

⁸ Staff Report, File ID 26-389 (Central Southeast Area Specific Plan) (the plan's land use changes "would result in a net gain in capacity for 3,285 housing units"); Exhibit R, Central Southeast Area Specific Plan Presentation ("net capacity gain of 2,938 housing units").

⁹ City of Fresno Planning & Dev. Dep't, Housing Element Findings (Gov't Code § 65863) (Exhibit J).

EXHIBIT 1

Via Electronic Mail

March 18, 2026

City Council
City of Fresno
2600 Fresno Street
Fresno, CA 93721
clerk@fresno.gov

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

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.

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 § 66300(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 dsternberg@wclp.org and mhoward@wclp.org.

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**

www.wclp.org

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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 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 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’s² 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 [REDACTED] with any questions about the issues raised in this letter.

Sincerely,

[REDACTED]
Madeline Howard
Senior Attorney
Western Center on Law & Poverty

cc: [REDACTED]

EXHIBIT B



October 11, 2022

City Council
City of Fresno
2600 Fresno Street
Fresno, CA 93721
Via Electronic Mail
<mailto:clerk@fresno.gov>

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 been 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 nvyas@wclp.org 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,

A solid black rectangular box redacting the signature of Nisha N. Vyas.

Nisha N. Vyas
Western Center on Law & Poverty

cc:

A large black rectangular box redacting the list of recipients for the letter.

EXHIBIT C



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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 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 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's² 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,

[REDACTED]

Madeline Howard
Senior Attorney
Western Center on Law & Poverty

cc: [REDACTED]

EXHIBIT D



**WESTERN CENTER
ON LAW & POVERTY**

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LEGAL SERVICES**
JUSTICE. EQUITY. POWER.

April 15, 2025

Via Electronic Mail

Fresno Planning Commission
2600 Fresno Street
Fresno, CA 93721

**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’s² 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 mhoward@wclp.org or sborchers@centralcallegal.org with any questions about the issues raised in this letter.

Sincerely,

[REDACTED]
Madeline Howard
Senior Attorney
Western Center on Law & Poverty

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

From: [REDACTED]
Cc: [REDACTED]
Subject: Comment re ID 26-830
Date: Wednesday, June 17, 2026 3:30:36 PM
Attachments: [Elm Rezone 6.17.26 \(2\).pdf](#)

External Email: Use caution with links and attachments

Hello,

Please accept the comment letter attached as public comment for ID 26-830 regarding the Elm Rezone project. May I have your help with distributing the comment with Councilmembers?
Thank you for your time.

--

Respectfully,

Emma De La Rosa, MPP

Pronouns: She/Ella

Land Use and Transportation Policy Manager

Leadership Counsel for Justice & Accountability

[REDACTED]

Bakersfield, CA 93301

[REDACTED]



June 17th, 2026

Fresno City Council
City of Fresno
2600 Fresno Street
Fresno CA 93721

Sent via email

Re: Agenda item ID 26-830 HEARING to consider Plan Amendment Application No. P23-03006, Rezone Application No. P23-03006 and related Environmental Assessment

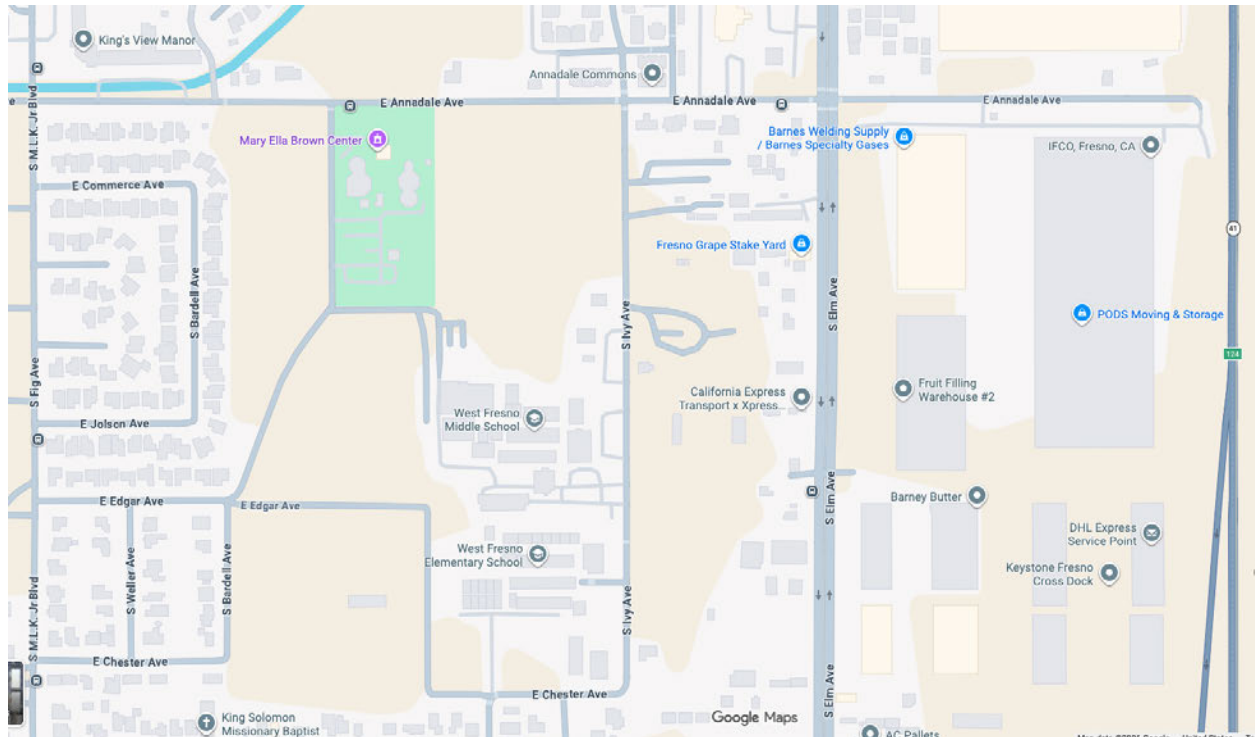
Dear Mayor Dyer and City of Fresno Councilmembers,

We submit this letter in solidarity with the community of Southwest Fresno to oppose project Environmental Assessment, Plan Amendment Application, and Rezone Application No. P23-03006 “Project” 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 in District 3. Along with Southwest Fresno residents, we have advocated for community centered development and climate resiliency through the Transformative Climate Communities Program, and emission reduction strategies provided by the AB 617 Community Air Protection Program. In efforts to improve the community’s quality of life through healthy community development, the City and residents from the community worked together to develop and adopt the Southwest Fresno Specific Plan rezoning the parcels in question from heavy industrial to neighborhood mixed use to provide the opportunity for future community centered development. Approval of the Project will undermine the Southwest Specific Plan by exacerbating fair housing issues and undercutting emission reduction strategies per the AB 617 Program. As such, we urge the City Council to accept staff’s recommendation to deny the Project to protect the health and wellbeing of Southwest Fresno.

The Project is located in Southwest Fresno, one of the most overburdened communities in Fresno. According to CalEnviroScreen, the Southwest Fresno census tract where the project is located scores in the 96th percentile for pollution burden. The community suffers from high exposure to ozone and particulate matter 2.5 ranking in the 80th and 94th percentile, respectively. Consequently, the community is ranked above the 90th percentile for asthma. The proposed Project is located across the street from a community health clinic and less than half a



mile away from at least two senior housing apartments, Annadale Commons and King's View Manor Senior Living. It is also less than a mile away from the West Fresno Middle School, West Fresno Elementary Middle School, the Mary Ella Brown Community Center, and multiple places of worship. In summary the proposed Project would be in very close proximity to multiple sensitive receptors, raising pollution exposure and fair housing impacts (please see the map below).



I. Approval of the Project will exacerbate fair housing issues in Southwest Fresno.

The City of Fresno's housing element identifies Southwest Fresno as a racially/ethnically concentrated area of poverty (R/ECAP), meaning the community faces significant racial segregation, poor access to opportunity, and disparate housing and environmental issues. According to the City's Housing Element, about half of the households in Southwest Fresno are renter households, facing some of the highest cost burden and overcrowding rates. The community also faces housing displacement risk due to its proximity to industry and highways. As a R/ECAP, Southwest Fresno lacks community centered amenities such as grocery stores, in



fact, the USDA Economic Research Service found 12 census tracts with low income and low access to food and most of which were in Southwest Fresno¹.

We are concerned that the approval of the Project will exacerbate fair housing conditions in Southwest Fresno by allowing the expansion of industrial operations incompatible with the surrounding land uses, thus risking the lives of the hundreds of residents living in close proximity.² In approving the Project, the City will remove housing capacity in a community facing overcrowding and cost burden resulting from the lack of housing opportunities for all income levels. Limiting housing access can increase housing costs making housing even less affordable due to low vacancy rates. Moreover, as housing becomes more scarce, families may be forced to live in overcrowded conditions, and increases the risk of residents living in uninhabitable conditions. Simply replacing housing capacity pursuant to SB 330 does not fully address fair housing issues in Southwest Fresno, which is where housing opportunities and development to improve access to opportunity is needed.

Attachment B, “Environmental Checklist” of Exhibit H, Population and Housing fails to analyze how the Project will contribute to overcrowding, cost burden, the segregation of people of color, and disproportionate environmental impacts. The analysis is no more than half a page and fails to consider documented fair housing issues in Southwest Fresno. The analysis does not take into account current health conditions for residents living nearby, nor does it analyze or report how potential emissions may exacerbate health conditions. Rezoning these parcels to light industrial from neighborhood mixed use would also permanently remove housing unit capacity, which otherwise remains a possibility with the current zoning of neighborhood mixed use. Moreover, aside from the housing unit capacity, neighborhood mixed use would also allow for the development of grocery stores and other community service developments, yet this impact is not analyzed in detail.

II. Approval of the Project will impact air quality and undermine the AB 617 Community Emission Reduction Program

¹ Fresno Multi-Jurisdictional 2023 -2031 Housing Element. Pg. 180.

² Carpenter-Gold, D., Greif, G., and Werner, A. (2023). *Concentrated Overburden: Reviewing the Enduring Legacy of Racial Discrimination in California Land Use policy and Charting a Path to Equity*. UCLA School of Law Emmett Institute Frank G. Wells Environmental Law Clinic.

https://law.ucla.edu/sites/default/files/PDFs/Publications/Emmett%20Institute/Emmett_Land-Use-1h_digitalFINAL_2.pdf



South Fresno was selected as a year one community for the AB 617 Community Air Protection Program for the development and implementation of a community air monitoring program (“CAMP”) and a community emissions reduction program (“CERP”). One of these measures was a truck reroute study to

“[conduct] a detailed study of vehicular trips within the AB617 geographic footprint, to include but not limited to number and type of each vehicle, destination/origin of each vehicular trip, time of day/week analysis, vehicle miles traveled and emissions. This would then be used to assess current truck routes, evaluate alternatives and calculate the increase/decrease in VMT, GHG, and Air Quality per CEQA.³”

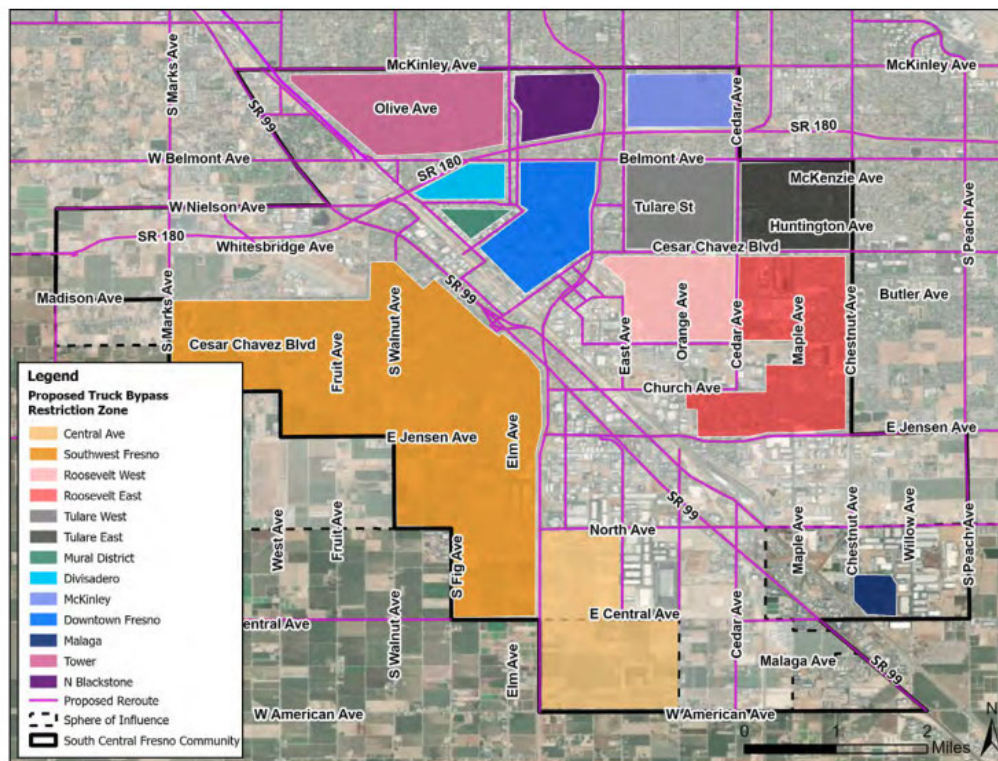
Moreover, the City of Fresno commissioned a Health Risk Assessment to assess health related impacts to residents living in close proximity to truck routes and highways. The Health Risk Assessment found concerning health data for residents living within 1,000 feet from a freeway, truck route, or major road, including: significantly higher risk of adverse pregnancy outcomes, such as preterm birth and infant mortality, and respiratory issues including high asthma rates. The analysis also showed at least half of survey respondents reported having at least one chronic health condition. The health impacts are known, present, and cause health burden to residents who bear them.

Notably, the truck reroute study identified truck restricted zones, one of which is Southwest Fresno⁴. These truck restriction zones will not meet the goal of restricting heavy duty truck movement near sensitive receptors of homes and schools if the land use designation returns to light industrial allowing for an increase in trucks to designated businesses. In addition, despite the commitment from the City to use the truck reroute study in environmental analysis to reduce truck related exposure to communities, the Project environmental analysis did not consider or assess truck related impacts to the health of the community, nor did it consider the truck restricted zones.

³ Community Emissions Reduction Program SouthCentral Fresno (2019), pg. 59
<https://community.valleyair.org/media/kx2gz0h4/01finalscfresnocerp-9-19-19.pdf>

⁴ Southcentral Fresno AB 617 Community Truck Reroute Study (2024). Figure 5.1 Pg 40.
<https://www.fresno.gov/wp-content/uploads/2024/10/South-Central-Fresno-AB617-Community-Truck-Reroute-Study-10w166-1.pdf>

Figure 5.1: Proposed Truck Bypass Restriction Zones



Moreover, there is serious concern about the potential air quality impacts that can result from the expansion of the Project. While the existing uses are in fact consistent with light industrial uses, according to Project documents, the Project can result in the expansion of any existing structure by more than 5% compared to the gross floor area existing as of the date upon which the underlying property was rezoned to the Base District with the approval of a conditional use permit⁵. The environmental analysis should analyze the project specific impacts and cumulative impacts from potential expansion that would be allowed through the approval of the rezone.

The City of Fresno must take very close consideration to the Project's housing and environmental impacts to the community of Southwest Fresno. As presented, the environmental analysis does not fully analyze fair housing issues and emission exposure to the community. The City should not approve the Project, and should stay committed to the Southwest Fresno Specific Plan. Please accept the staff's recommendation to deny the Project.

⁵ Elm Avenue Rezone Project, Attachment A, Pg. A-9

<https://fresno.legistar.com/View.ashx?M=F&ID=15579667&GUID=0C2D1189-52A3-44B3-BDF7-2B1EB76658D6>



Respectfully,

Emma De La Rosa

Leadership Counsel for Justice and Accountability