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**Title:** Action pertaining to Fresno County Airport Land Use Compatibility Plan:  
 1. \*\*\*BILL NO. B-30 - (Intro. 9/19/2019) (For adoption) - Approving Text Amendment Application No. P19-01036 amending sections 15-104-B-4; 15-5206; 15-5306; 15-5506-D; 15-5811-A; 15-5905-A; 15-6006-A; and 15-6104-B of the Fresno Municipal Code (FMC), which gives the December 2018 Fresno County Airport Land Use Compatibility Plan priority over all other local land use plans and regulations in the event of a conflict (Subject to Mayor's veto)

**Sponsors:** Planning and Development Department

**Indexes:**

**Code sections:**

**Attachments:** 1. A - Environmental Assessment, 2. B - Resolution - Finding of Consistency, 3. C - Ordinance Bill - TA P19-01036, 4. D - Comment Letters, 5. E - PC Resolution for TA P19-01036

Date	Ver.	Action By	Action	Result
9/26/2019	1	City Council	adopted	

**REPORT TO THE CITY COUNCIL**

**September 26, 2019**

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Planning and Development Department

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Planning and Development Department

**SUBJECT**

Action pertaining to Fresno County Airport Land Use Compatibility Plan:  
 1. \*\*\*BILL NO. B-30 - (Intro. 9/19/2019) (For adoption) - Approving Text Amendment Application No. P19-01036 amending sections 15-104-B-4; 15-5206; 15-5306; 15-5506-D; 15-5811-A; 15-5905-A; 15-6006-A; and 15-6104-B of the Fresno Municipal Code (FMC), which gives the December 2018 Fresno County Airport Land Use Compatibility Plan priority over all other local land use plans and regulations in the event of a conflict (Subject to Mayor's veto)

**RECOMMENDATIONS**

1. APPROVE BILL - (For introduction) - Approving Text Amendment Application No. P19-01036 amending sections 15-104-B-4; 15-5206; 15-5306; 15-5506-D; 15-5811-A; 15-5905-A; 15-

6006-A; and 15-6104-B of the Fresno Municipal Code (FMC), which gives the December 2018 Fresno County Airport Land Use Compatibility Plan priority over all other local land use plans and regulations in the event of a conflict

## EXECUTIVE SUMMARY

In December 2018 the Fresno County Airport Land Use Commission (ALUC) adopted a new Fresno County Airport Land Use Compatibility Plan (ALUCP) which is available at the following link: <https://www.fresnocog.org/project/airport-land-use-commission-fresno-county/>. The new plan, which aggressively expands the scope and scale of airport land use planning, requires local agencies to demonstrate consistency between that plan and their local land use plans and regulations, or to overrule the ALUC. Staff is proposing to achieve consistency by amending the Development Code. Specifically, staff proposes a Text Amendment which more clearly establishes that the ALUCP is the primary plan of record, and which adds a new requirement for a finding of consistency with the ALUCP for all discretionary entitlements (such as Development Permits and Conditional Use Permits).

This matter was considered by the ALUC at a special meeting on Monday, May 13, 2019. The item was continued to the regular meeting of June 3, 2019, at which time the Airport Land Use Commission voted to support the Text Amendment but rejected the City's proposed Consistency Finding on the grounds that the Text Amendment was beneficial but insufficient to attain consistency. Staff disagrees with this decision and recommends that the City Council overrule it and find the City of Fresno's land use plans and regulations consistent with the ALUCP upon adoption of the Text Amendment.

## BACKGROUND

The City's Development Code underwent a major revision in 2015. In that revision, a new section called "Priority of Plans" was established. That section identifies which land use plans and codes take precedence in the event of a conflict between two or more of them. Airport plans are given precedence in this section, but the wording is more complex than necessary. City staff has been properly applying the airport plans, however the complexity of the current text could cause confusion in the future.

### Proposed Development Code Revision

In the proposed text amendment, the ALUCP is now specifically referenced, and the wording is clarified so that it is ***the primary plan*** in the event of a conflict, superseding all of the City's other plans: the General Plan, adopted Design Guidelines, the Development Code, Specific Plans, Concept Plans, Community Plans, Neighborhood Plans, and Redevelopment Agency Guidelines. This amendment leaves no room for interpretation as to which plan takes precedence. Note that the Development Code, which this proposal amends, takes precedence over the City's general plan and other local land use plans, so any potential land use consistency issues would be resolved with the proposed amendment.

As an additional measure, the amendment would add a required finding of consistency with the ALUCP for all discretionary land use approvals (not just plan amendments and rezones), thereby legally incorporating all of the applicable requirements of the ALUCP into the planning approval

process. Discretionary land use approvals proposed to incorporate this finding include the following:

1. Development Permits (previously known as site plan reviews)
2. Conditional Use Permits
3. Variances
4. Text Amendments
5. Planned Developments
6. Development Agreements
7. Annexations

The City applies its land use regulations using maps and computer software to assist in the planning process. The City has already created a special mapping tool for the new ALUCP noise and safety zones identified for its three airports. This tool is used early in the planning process to alert planners and applicants to any airport-related requirements. The planning process also includes early analysis of land use requirements through its pre-application process. Prior to formal submittal, all proposed projects must be reviewed by the Development Review Committee, where they are analyzed by planners and engineers. If a project lies within an Airport Influence Area, the project is routed to City of Fresno Airports staff, who then works with the planner to apply the appropriate regulations from the ALUCP and inform the applicant. Furthermore, when a project is formally submitted, it gets routed to Airports staff for final review and comment. If the project is approved, the ALUCP requirements become conditions of approval.

In addition, planning staff were trained on the new ALUCP on January 16, 2019 and will continue to be trained as new information about ALUCP implementation evolves.

### **Airport Land Use Commission Hearings**

This matter was considered by the ALUC at a special meeting on Monday, May 13, 2019. Staff presented the City's proposed solution and fielded several questions. Despite a lengthy discussion, the members of the ALUC were not able to arrive at a decision and the item was continued to the regular meeting of June 3, 2019. Ultimately, the ALUC voted to support the Text Amendment but rejected the City's proposed Consistency Finding on the grounds that the Text Amendment was beneficial but insufficient to attain consistency.

During the hearings, members of the ALUC stated that their preferred approach for achieving consistency is for the City of Fresno to adopt zoning overlay districts which implement the ALUCP, and to apply these new overlay districts to all affected parcels through rezoning. They expressed that in their opinions this is important because then it will appear on the Official Zoning Map.

Certain members of the ALUC said that they were concerned that if something related to the ALUCP isn't on the Official Zoning Map, it will be missed. This fear is not based on any actual problems-the current system has worked flawlessly since it was instituted in 2015, and the Text Amendment makes it more robust by clarifying the priority of plans and adding a requirement for findings of consistency with the ALUCP to all discretionary permits. Furthermore, the City's Geographic Information System features the ALUCP's Airport Influence Areas (AIAs) prominently, which allows staff to identify them quickly and accurately for customers at the public counter, and it allows realtors, buyers, and owners to identify this easily when conducting their own internet research.

There was also an assumption among ALUC members that Caltrans guidelines mandate the overlay

zoning approach for achieving consistency. This assumption is mistaken. As their legal counsel pointed out, the overlay approach is not mandated, it is merely mentioned as a possible approach.

Achieving consistency with the ALUCP with overlay zoning is not feasible for several reasons:

- 1. Cost.** The new ALUCP, adopted by the ALUC in December of 2018, expanded safety zones and AIAs dramatically. In particular, the AIA for Chandler airport expanded by 67%, and the AIA for Fresno-Yosemite International expanded by 84%. Because of this, accomplishing consistency with overlays would require rezoning of 60,624 parcels. Printing and mailing a notice to each of the affected property owners and holding educational workshops could cost more than \$100,000.
- 2. Delay.** The overlay zoning approach would take 9 to 12 months to implement. The overlay districts would need to be very complex to match the complexity of the ALUCP's regulations. Fresno has three airports within its boundaries, with a total of 29 different safety zones and noise contours, each of which could require its own unique overlay in order to implement the various restrictions on use, height, density and other aspects of development. During this time, all development projects within the purview of the ALUCP will need to be individually approved by the ALUC, which will slow down approval times and conflict with the Business Friendly Fresno/Money Back Guarantee (BFF/MBG) initiative. The overlay could be made simpler and somewhat faster to implement if a single overlay district was developed for all 60,624 parcels. However, in this scenario the single overlay district would need to somehow incorporate the ALUCP by reference in order to capture the intricate array of restrictions and assign them to the appropriate properties-this would work the same way as the approach proposed by staff, with no added benefits, but with the cost and delay of rezoning 60,624 parcels.
- 3. Inefficiency.** Finally, the ALUC's preferred approach is inefficient. When the ALUCP is periodically updated, which can happen up to once per year, the changes couldn't take effect until the overlay districts could be created or modified, requiring further text amendments and rezonings. During the rezoning process, which could take several months to a year, development projects will again be subject to delay by being forced to appear before the ALUC for approval, in conflict with BFF/MBG.

It is worth noting, as evidence of the difficulty of achieving consistency with the new and expanded ALUCP that no jurisdiction in the County has been found to be consistent at this time.

Ultimately, staff concludes that the ALUC misunderstands (despite the City's best efforts) the City's proposed method of achieving consistency. Evidence of this confusion comes from the fact that this is *already* how we achieve consistency. The proposed system has actually been in place since November of 2015 when the new Development Code was adopted, and it has worked flawlessly. Leading up to the adoption of the Development Code, *the ALUC approved the current system* on October 19, 2015. The proposed Text Amendment simply adds additional measures to avoid confusion and ensure compliance with the current successful system, making it more robust.

Staff's recommended solution is the most appropriate and effective way of achieving consistency with the dramatically expanded Fresno County Airport Land Use Compatibility Plan. It takes effect immediately, it is efficient, it is inexpensive to implement, and it is adaptable-every time the ALUCP is amended the changes will take effect immediately. Most importantly, it has been in effect since 2015 and has proven to be effective.

In conclusion, staff strongly disagrees with the ALUC's decision and recommends that the City Council overrule it and find the City of Fresno's land use plans and regulations consistent with the ALUCP upon adoption of the Text Amendment.

## **ENVIRONMENTAL FINDINGS**

This project is covered by the common sense exemption that CEQA only applies to projects that have the potential for causing a significant effect on the environment. Because this approval restates required compliance with the Airport Land Use Compatibility Plan, which is already required by state law and which is already given deference under the FMC, it can be seen with certainty that there is no possibility that amending the zoning ordinance to formalize this compliance will have a significant effect on the environment. Therefore, pursuant to CEQA Guidelines Section 15061(b)(3), no further review pursuant to CEQA is required at this time.

## **NOTICING AND PUBLIC COMMENT**

Text Amendment P19-01036 and the Resolution for the Finding of Consistency were noticed pursuant to FMC Section 15-5007 which allows that a notice be published in the Fresno Bee if the number of property owners to which the notice would otherwise be mailed would exceed 1000. Such notice was published in the Fresno Bee on July 26, 2019 and posted by the City Clerk on all required posting locations. In addition, the overrule was noticed pursuant to the Public Utilities Code Section 21676, which requires that the ALUC and the Caltrans Division of Aeronautics be provided with 45 days' notice prior to City Council consideration of overruling its decision.

### **Planning Commission**

The Planning Commission considered this item at its regularly scheduled meeting on August 7, 2019 and voted 5-1-0 in support of the staff recommendation. No members of the public spoke in favor or in opposition to the item at the hearing.

### **Airport Land Use Commission**

As previously noted, the ALUC considered the Text Amendment at its meetings of May 13 and June 3, 2019 and voted in support of the Text Amendment, but could not make the finding of consistency. A comment letter from the ALUC is attached explaining its position.

### **City of Fresno Director of Aviation**

A letter is also attached from Kevin Meikle, Director of Aviation, supporting the staff recommendation of adoption of the Text Amendment and the Resolution for the Finding of Consistency.

## **LOCAL PREFERENCE**

Local preference does not apply because this ordinance does not include a bid or award a construction or services contract.

## **FISCAL IMPACT**

No fiscal impact will occur as a result of the proposed Text Amendment and Resolution of Consistency.

**Attachments:**

- A. Environmental Assessment
- B. Resolution - Finding of Consistency
- C. Ordinance Bill - Text Amendment No. P19-01036
- D. Comment Letters
- E. Planning Commission Resolution