



2600 Fresno Street, Third Floor
Fresno, California 93721-3604
(559) 621-8277 FAX (559) 498-1012

Development and Resource Management Department
Jennifer Clark, AICP, Director

DATE: JUNE 27, 2019

TO: AIRPORT LAND USE COMMISSIONERS
BRENDA VEENENDAAL, Administrative Services Manager
Fresno Council of Governments

FROM: DAN ZACK, Assistant Director 
City of Fresno, Development and Resource Management Department

SUBJECT: Override of the Airport Land Use Commission's Rejection of the City of Fresno
Land Use Plans and Regulations Consistency Finding pursuant to the
December 2018 Fresno County Airport Land Use Compatibility Plan

The newly adopted Fresno County Airport Land Use Plan (ALUCP) requires local agencies to demonstrate consistency between that plan and their local land use plans and regulations. City of Fresno staff is proposing to demonstrate consistency by adopting a Text Amendment to the Development Code which more clearly establishes that the ALUCP is the primary plan of record, and which adds a new finding of consistency with the ALUCP for all discretionary entitlements (Development Permits and Conditional Use Permits, for example).

This matter was considered by the Airport Land Use Commission 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 from the Development and Resource Management Department disagree with this determination and will recommend to the City Council to overrule that decision and find the City of Fresno's land use plans and regulations consistent with the ALUCP upon adoption of the Text Amendment.

In accordance with PUC 21676, we are hereby providing notice in excess of 45 days of the decision to overrule the ALUC. The public hearing is scheduled for August 15, 2019. Comments must be received no later than July 29, 2019. The proposed overrule decision and accompanying findings are attached.

August 15, 2019

FROM: DAN ZACK, AICP, Assistant Director
Development and Resource Management Department

JENNIFER K. CLARK, AICP, Director
Development and Resource Management Department

BY: DAN ZACK, AICP, Assistant Director
Development and Resource Management Department

SUBJECT

Title

Actions pertaining to Fresno County Airport Land Use Compatibility Plan:

1. Adopt a finding that in can be seen with certainty that there is no possibility that this project will have a significant effect on the environment pursuant to the common sense exemption set forth in CEQA Guidelines Section 15061(b)(3)
2. RESOLUTION – Finding of Consistency between the City of Fresno’s Land Use Plans and Regulations and the December 2018 Fresno County Airport Land Use Compatibility Plan
3. BILL - (for Introduction) - 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 Chapter 15 of the Fresno Municipal Code (FMC) regarding the Fresno County Airport Land Use Compatibility Plan

Body

RECOMMENDATIONS

1. Staff recommends Council adopt the proposed Resolution, which overrules the Airport Land Use Commission and finds the City of Fresno’s Land Use Plans and Regulations consistent with the December 2018 Fresno County Airport Land Use Compatibility Plan.
2. Staff recommends Council consider for introduction the proposed Ordinance 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 Chapter 15 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 of 2018 the Fresno County Airport Land Use Commission (ALUC) adopted a new Fresno County Airport Land Use Plan (ALUCP). 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. DARM staff is proposing to achieve consistency by amending the Development Code. Specifically, the City 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 Airport Land Use Commission 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:

- Development Permits (previously known as site plan reviews)
- Conditional Use Permits
- Variances
- Text Amendments
- Planned Developments
- Development Agreements
- 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 planner applies the appropriate regulations from the ALUCP and provides those to the applicant. If the project is formally submitted and 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 Airport Land Use Commission 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 GIS 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 would cost approximately \$60,000 to \$70,000.
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 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, the changes couldn't take effect until the overlay districts could be modified, requiring further text amendments and rezonings. During the rezoning process, development projects will again be forced to appear before the ALUC for approval, in conflict with the Business Friendly Fresno and Money Back Guarantee programs.

It is worth noting that no jurisdiction in the County has been found to be consistent at this time.

It should also be noted that City staff's proposed method of achieving consistency 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 very well. 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 ALUCP'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.

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.

RESOLUTION NO. _____

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

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

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

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

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

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

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

Date Adopted:
Date Approved:
Effective Date:
City Attorney Approval: _____

Resolution No.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

* * * * *

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

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

AYES :
NOES :
ABSENT :
ABSTAIN :

YVONNE SPENCE, MMC CRM
City Clerk

By: _____ Date
Deputy

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By: _____
Talia Kolluri-Barbick
Supervising Deputy City Attorney

Attachment: Exhibit A

BILL NO. _____

ORDINANCE NO. _____

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

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

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

4. *Priority of Plans.*

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

- ~~i. Fresno County Airport Land Use Compatibility Plan~~
- ~~ii. Adopted Design Guidelines~~
- ~~iii. Development Code~~
- ~~iv. General Plan~~
- ~~v. Specific Plan~~
- ~~vi. Concept Plan~~
- ~~vii. Community Plan~~
- ~~viii. Neighborhood Plan~~
- ~~ix. Redevelopment Agency Guidelines~~

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

~~i. Exception: If the project is located within an area with adopted design guidelines, such design guidelines shall control.~~

~~b. In the event of a conflict between the General Plan and any applicable operative plan, the General Plan shall control. However, for areas within the Downtown Neighborhoods Community Plan (DNCP), the Fulton Corridor Specific Plan (FCSP), or operative airport plan, the DNCP, FCSP, and airport plan shall govern.~~

~~e. In the event of a conflict between a Specific Plan and a Concept Plan, Community Plan, or Neighborhood Plan, the Specific Plan shall control.~~

~~d. In the event of a conflict between a Concept Plan and a Community Plan or Neighborhood Plan, the Concept Plan shall control.]~~

e[b]. To maintain and improve the consistency between plans, the adoption or amendment of a plan shall be accompanied by corresponding amendments to the General Plan and other plans which affect the same geographic area.

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

15-5206 Required Findings

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

- A. The applicable standards and requirements of this Code.
- B. The General Plan and any operative plan or policies the City has adopted.
- C. Any applicable design guidelines adopted by the City Council.
- D. Any approved Tentative Map, Conditional Use Permit, Variance, or other planning or zoning approval that the project required.

[E. Fresno County Airport Land Use Compatibility Plan.]

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

15-5306 Required Findings

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

- A. The proposed use is allowed within the applicable zoning district and complies with all other applicable provisions of this Code and all other chapters of the Municipal Code;
- B. The proposed use is consistent with the General Plan and any other applicable plan and design guideline the City has adopted;
- C. The proposed use will not be substantially adverse to the public health, safety, or general welfare of the community, nor be detrimental to surrounding properties or improvements;
- D. The design, location, size, and operating characteristics of the proposed activity are compatible with the existing and reasonably foreseeable future land uses in the vicinity; and
- E. The site is physically suitable for the type, density, and intensity of use being proposed, including access, emergency access, utilities, and services required.

[F. Fresno County Airport Land Use Compatibility Plan.]

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

- D. The granting of the Variance will be consistent with the general purposes and objectives of this Code, any applicable operative plan, [the Fresno County Airport Land Use Compatibility Plan,] and of the General Plan.

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

- A. Development Code Text Amendment findings:
1. The Code text amendment is consistent with the General Plan[, the Fresno County Airport Land Use Compatibility Plan,] and any applicable operative plans; and
 2. The amendment is consistent with the purpose of the Development Code to promote the growth of the city in an orderly and sustainable manner and to promote and protect the public health, safety, peace, comfort, and general welfare.

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

- A. The proposed development is consistent with the General Plan, [the Fresno County Airport Land Use Compatibility Plan,] any applicable operative plan, and adopted policies, including the density and intensity limitations that apply;

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

- A. **Required Findings.** The City Council shall not approve a proposed Development Agreement unless it finds the following:
1. That its provisions are consistent with the General Plan[, the Fresno County Airport Land Use Compatibility Plan,] and any applicable operative plan. This requirement may be satisfied by a finding that the provisions of a proposed Development Agreement are consistent with proposed General Plan or applicable operative plan provisions to be adopted concurrently with the approval of the proposed Development Agreement; and
 2. The proposed Development Agreement will provide substantial public benefit.

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

- B. **Plan Consistency.** The proposed annexation and parcel configuration is consistent with the General Plan, [the Fresno County Airport Land Use Compatibility Plan,] Concept Plan, and any applicable operative plan; and