

RESOLUTION NO. 2023 - 09

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN BRUNO MAKING FINDINGS AND OVERRIDING SAN MATEO CITY / COUNTY ASSOCIATION OF GOVERNMENTS (C/CAG) AIRPORT LAND USE COMMISSION'S (ALUC) DETERMINATION OF INCONSISTENCY WITH RESPECT TO NOISE POLICIES FOR THE DRAFT 2023-2031 HOUSING ELEMENT UPDATE

WHEREAS, Government Code Section 65580 *et seq.* (Housing Element Law) requires that every city prepare and periodically update the housing element of its general plan; every city is mandated to include statutory requirements in the housing element; and every city is required to submit a draft of its housing element to the California Department of Housing and Community Development ("HCD") for review and comment as to whether the City's draft 2023-2031 Housing Element substantially complies with Housing Element Law; and

WHEREAS, the City worked with its consultants, the community, Planning Commission and City Council to prepare its Draft 2023-2031 Housing Element Update ("Project") as required by Housing Element Law; and

WHEREAS, the 6th Cycle Regional Housing Needs Allocation ("RHNA") imposed on the City by the Association of Bay Area Governments ("ABAG") included 3,165 housing units, which is a substantial increase in the number of affordable housing opportunities required in comparison to the 5th Cycle RHNA allocation of 1,155 units. As a result, the City was required to identify all available sites Citywide as potential housing opportunities, including some in proximity to the San Francisco International Airport; and

WHEREAS, the Housing Element Suitable Sites Inventory includes Site 14, the Tanforan Shops ("Tanforan") and Site 19, the San Bruno Pet Hospital ("Pet Hospital") (collectively, the "Properties") as potential future housing sites, along with other sites. The Tanforan Site is identified to accommodate at least 1,000 housing units. Additionally, up to 60 housing units are identified at the Pet Hospital site; and

WHEREAS, the Tanforan site and the Pet Hospital site are located within Airport Influence Area B of the San Francisco International Airport ("SFO"), the area subject to formal C/CAG Airport Land Use Commission ("ALUC") review, and within the 70 -75 decibel (dB) Community Noise Equivalent (CNEL) contour where housing is not a compatible use, with limited exceptions. The exception applies to existing lots of record zoned for residential use as of the effective date of the SFO ALUCP (November 8, 2012). In such cases, new residences must be sound-insulated to achieve an indoor noise level of CNEL 45 dB or less from exterior sources, and the property owner must grant an avigation easement to the City and County of San Francisco prior to issuance of a building permit for the proposed building; and

WHEREAS, two housing suitable sites, Sites 15 and 21, are in SFO ALUCP Safety Zone 3 (Inner Turning Zone) and the Tanforan Site is in Safety Zone 4 (Outer Approach / Departure Zone). Per SFO ALUCP Table IV- 2, Safety Compatibility Criteria, housing is a compatible use in Safety Zone 3 and Safety Zone 4. Therefore, the Draft Housing Element is consistent with the SFO ALUCP safety policies; and

WHEREAS, the SFO ALUCP airspace policies establish maximum heights for the compatibility of new structures. The policies also stipulate the need for compliance with federal regulations requiring notification of the Federal Aviation Administration of certain proposed construction or alterations of structures. Because the Draft Housing Element is a policy document and not a specific development proposal, the airspace compatibility policies of the SFO ALUCP do not directly apply. Consistency with the airspace compatibility policies would be required for future development proposals stemming from the Housing Element; and

WHEREAS, the City proposed an amendment to its General Plan to recognize the Local Agency Override Process that is provided by State law, and referred this Amendment to the C/CAG Board, acting as the San Mateo County Airport Land Use Commission, for a determination of consistency with the SFO ALUCP; and

WHEREAS, the General Plan Amendment specifically addresses the "Local Agency Override" provision of State law [Public Utilities Code Section 21675.1(d)] which provides a process for jurisdictions to override an airport land use commission disapproval of a proposed land use policy or development action, and is consistent with the provisions of the SFO ALUCP Section 3.3.3, which directly acknowledges and describes the override process; and

WHEREAS, in accordance with Public Utilities Code Section 21676(b), the City referred the Project to the ALUC to review consistency with the Comprehensive Land Use Compatibility Plan for the Environs of San Francisco International Airport ("SFO ALUCP"); and

WHEREAS, on November 10, 2022, the ALUC, acting pursuant to Public Utilities Code Section 21670, determined that the Project is inconsistent with the noise compatibility policies of the SFO ALUCP. The associated General Plan Amendment was also reviewed, and determined to be consistent with the policies of the SFO ALUCP; and

WHEREAS, as a final review authority under Public Utilities Code Sections 21670 and 21676, the City Council may, after a public hearing, override the ALUC determination by a two-thirds vote, if the City makes specific findings that the proposed project is consistent with the purposes of the Public Utilities Code Section 21670 regarding the protection of public health, safety and welfare in the areas surrounding airports and by providing the ALUC and the Division of Aeronautics of the California Department of Transportation ("Division") with notice of the City's intent to consider overriding the ALUC determination along with supportive findings at least 45 days prior to the City's action to override the ALUC; and

WHEREAS, on November 15, 2022, the City Council adopted a resolution making draft findings and declaring an intent to override the C/CAG ALUC determination of inconsistency with respect to the noise policies for the Draft 2023-2031 Housing Element Update; and

WHEREAS, the Public Utilities Code provides that the City must provide notice of intent and draft findings to the ALUC and Division at least forty-five (45) days prior to the decision to override the Commission; and

WHEREAS, on November 15, 2022, the City Council authorized the City Manager to submit the resolution to the ALUC and the Division; and

WHEREAS, on November 16, 2022, City staff provided a notice and associated draft findings to the ALUC and Division declaring the City's intent to consider overriding the C/CAG ALUC determination; and

WHEREAS, the City considered the override and made its final decision on January 24, 2023, which is more than forty-five (45) days after November 16, 2022, the date upon which the City transmitted its notice of intent to the ALUC and the Division; and

WHEREAS, the Public Utilities Code provides that the ALUC and the Division shall respond to the notifications of the findings of the proposed override within 30 days of receiving the proposed resolution and findings; and

WHEREAS, in the event that the ALUC or Division's comments are not available within this timeframe, the City may act without them; and

WHEREAS, the comments by the ALUC and Division are advisory to the City under State law; and

WHEREAS, the City Council has received comments from the ALUC and the Division and those comments are attached to this resolution as part of the City's final decision to override the ALUC.

NOW, THEREFORE, BE IT RESOLVED, the City Council of the City of San Bruno hereby takes the following actions:

1. Makes the findings attached hereto as Exhibit A (On file in the Clerk's Office) and incorporated herein; and
2. Overrides the Airport Land Use Commission's determination that the Draft 2023-2031 Housing Element Update is inconsistent with the Comprehensive Land Use Compatibility Plan for the Environs of San Francisco International Airport with respect to noise policies. In doing so, the City Council hereby specifically finds that approval of the Project is consistent with the purposes of the Public Utilities Code as stated in Section 21670 of the Public Utilities Code; and
3. Directs staff to take all other actions necessary to effectuate the purpose and intent of this resolution; and
4. The City Council finds that the adoption of this resolution is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly. Specifically, the resolution does not have the potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment because it is limited to the City's proposal to override the ALUC's determination. The project is undergoing independent review and evaluation pursuant to CEQA.

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I hereby certify that foregoing **Resolution No. 2023 - 09** was introduced and adopted by the San Bruno City Council at a regular meeting on January 24, 2023, by the following vote:

AYES: Councilmembers: Alvarez, M. Medina, Salazar, Hamilton, Mayor R. Medina

NOES: Councilmembers: None

ABSENT: Councilmembers: None



Lupita Huerta, City Clerk



Exhibit A: Findings

1. The foregoing recitals are true and correct and made a part of this Resolution.
2. The Public Utilities Code Section 21676 and 21676.5 provides that a local governing body may override the Airport Land Use Commission if it makes specific findings that the proposed action is consistent with the purposes of Public Utilities Code Section 21670. The City Council therefore makes the following findings.
2. The first purpose of Section 21670 is to provide for the orderly development of each public use airport in this State, and the area surrounding these airports so as to promote the overall goals and objectives of California airport noise standards and to prevent the creation of new noise and safety problems. The second purpose of Section 21670 is to protect 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.
3. With respect to noise policies, SFO ALUCP Policy NP-1 Noise Compatibility Zones identifies the noise compatibility zones for the purposes of the ALUCP. As depicted in the City of San Bruno's Draft 2023-2031 Housing Element, two housing sites (Site 14, the Shops at Tanforan (the "Tanforan" site); and Site 19, the San Bruno Pet Hospital (the "Pet Hospital" site) (collectively, the "Properties") lie within the Community Noise Equivalent Level ("CNEL") 70-75 decibel ("dB") noise exposure contour range where housing development would be incompatible per SFO ALUCP Table IV, *Noise/Land Use Compatibility Criteria*.
4. Pursuant to SFO ALUCP, Table IV-1, residential land uses are conditionally compatible in the CNEL 65-70 dB noise exposure contour range and are acceptable if sound insulation is provided to reduce interior noise levels from exterior sources to CNEL 45 dB or lower and if an avigation easement is granted to the City and County of San Francisco as operator of SFO.
5. Any project at the Tanforan site or Pet Hospital site shall incorporate noise control measures and construction standards that will lessen noise impacts to residents as follows:
 - a. Prior to issuance of building permits, detailed acoustical analyses shall be completed as part of the final design for the proposed residential structures. The project shall incorporate construction methods, sound attenuation features, and sound reducing barriers that reduce noise impacts in accordance with Section 21670, State Building Code, and General Plan requirements to meet the interior noise levels of 45 dB CNEL. Sound control treatments shall include mechanical ventilation and central cooling and heating for all units so that windows can be kept closed at the resident's discretion to control noise, and special building construction techniques (such as sound-rated windows and building façade treatments) for all units.
 - b. The project shall include real estate disclosures in residential leases, disclosing the presence of an airport within two miles of the property, per Section 11010 of the Business and Professions Code.
 - c. The property owners shall grant an avigation easement to the City and County of San Francisco prior to issuance of a building permit for the proposed building or structure. The avigation easement must state that the City overrode the ALUC's inconsistency finding, describe the immunity granted to the San Francisco International Airport ("Airport") under Public Utilities Code section 21678, and make clear that the avigation easement is in addition to, and does not limit, the Airport's immunity.
 - d. The project shall include an indemnification agreement with the City of San Bruno prior to issuance of building permits, ensuring that liability related to noise is assumed by the project.

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6. Approval of the proposed Project as described above is consistent with the noise standards of the SFO ALUCP as it would provide for orderly development adjacent to the airport and promote the overall goals and objectives of the California airport noise standards and prevent the creation of new noise and safety problems because the proposed Project provides much needed housing near transit on underutilized sites, while also utilizing advanced construction techniques to minimize any noise impacts to residents, and helping the City satisfy its large RHNA allocation and respond to the housing crisis facing the region and the State.

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Exhibit B

**AGENCY COMMENTS
ON THE INTENT TO OVERRIDE**

