



# NEWPORT BEACH

## City Council Staff Report

May 28, 2024  
Agenda Item No. 17

**TO:** HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

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**TITLE:** Resolution No. 2024-32: Notice of Intent to Override Orange County Airport Land Use Commission's Determination of Inconsistency for the City's Housing Element Implementation Program Amendments (PA2022-0245)

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### **ABSTRACT:**

Pursuant to Section 4.3 of the 2008 John Wayne Airport Environs Land Use Plan (AELUP) and Section 21676(b) of the California Public Utilities Code (CPUC), the City of Newport Beach is required to submit the Housing Element Implementation Program Amendments to the Orange County Airport Land Use Commission (ALUC) for a consistency determination with the AELUP. ALUC conducted a public hearing on the matter at its May 16, 2024, meeting and found these amendments to be inconsistent with the AELUP.

For the City Council's consideration is a request to consider overriding ALUC's finding of inconsistency. This action would authorize City staff to formally provide notice, pursuant to CPUC Section 21676(b), to ALUC and the State Department of Transportation, Aeronautics Program of the City's intention to override ALUC's inconsistency finding.

### **RECOMMENDATIONS:**

- a) Conduct a public hearing;
- b) Find that the proposed overriding action is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
- c) Adopt Resolution No. 2024-32, *A Resolution of the City Council of the City of Newport Beach, California, Notifying the Orange County Airport Land Use Commission (ALUC) and State Division of Aeronautics Program of the City's Intention to Find that Amendments to the General Plan, Coastal Land Use Plan, and Title 20 (Planning and Zoning) and Title 21 (Local Coastal Program Implementation Plan) of the Newport Beach Municipal Code Necessary to Implement the General Plan 6<sup>th</sup> Cycle Housing Element are Consistent with the Purpose of the State Aeronautics Act and Overrule ALUC's Determination that the Amendments are Inconsistent with the 2008 John Wayne Airport Land Use Plan (PA2022-0245).*

## **DISCUSSION:**

In September 2022, the City Council adopted the General Plan 6<sup>th</sup> Cycle Housing Element (Housing Element) covering the 2021-2029 period. It was certified by the State Department of Housing and Community Development (HCD) in October 2022. Importantly, Section 4 (Housing Plan) and Appendix B (Housing Opportunity Sites Inventory) of the Housing Element set forth a plan for the City to accommodate its 6<sup>th</sup> Cycle Regional Housing Needs Assessment (RHNA) allocation of 4,845 new units of varying affordability levels.

The Housing Element identifies several "focus areas" that are best suited to accommodate increased housing development, including the Airport Area Environs, West Newport Mesa, Newport Center, Dover/Westcliff, and Coyote Canyon.

The sites in these focus areas are to be rezoned per Housing Element Policy Actions 1A through 1F to accommodate the City's RHNA obligation, including a buffer necessary to address No Net Loss Housing Law (GC. Sec. 65863). As development occurs, the law requires the City to maintain adequate sites at all times to accommodate its remaining unmet RHNA by each income category throughout the planning period. If additional replacement sites are identified as needed, then the City must take action within 180 days to rezone additional sites or risk losing Housing Element compliance status.

### **Housing Element Implementation Program Amendments**

To comply with State law, the City has been working diligently to implement the planning strategy outlined in Section 4 of the Housing Element no later than February 2025. The implementing programs and strategies (6<sup>th</sup> Cycle Housing Element Implementation) include the following amendments and actions:

- **General Plan Amendment.** To revise the necessary goals and/or policies within the City's Land Use Element to support housing production in the focus areas identified by the Housing Element;
- **Amendment to Title 20 (Planning and Zoning) of the Newport Beach Municipal Code (NBMC).** To implement the Land Use Element's policy changes by allowing housing development as an opportunity and establishing appropriate objective design and development standards for multi-unit residential and mixed-use development projects;
- **Local Coastal Program Amendment.** To revise and create new policies within the City's Coastal Land Use Plan and to update Title 21 (Local Coastal Program Implementation Plan) of the NBMC to support housing production in the focus areas identified by the 6<sup>th</sup> Cycle Housing Element and within the Coastal Zone; and
- **Program Environmental Impact Report (SCH No. 2023060699).** To analyze potential environmental impacts under the California Environmental Quality Act (CEQA) related to the implementation of the 6<sup>th</sup> Cycle Housing Element through providing additional housing development capacity.

### Planning Commission Review and Recommendation

On April 18, 2024, the Planning Commission conducted a duly noticed public hearing to consider the proposed project. One member of the public addressed the Planning Commission regarding the 6<sup>th</sup> Cycle Housing Element Implementation. At the conclusion of the hearing, the Planning Commission voted to recommend City Council approval. The April 18, 2024, Planning Commission staff report, minutes excerpt, and Resolution No. PC2024-006 are all attached as Attachments B, C, and D, respectively.

### Airport Land Use Commission Review

All the sites within the Airport Area Environs Focus Area and portions of the sites within the Newport Center and Dover/Westcliff Focus Area are within the John Wayne Airport Notification Zone.

As a result, Section 4.3 of the AELUP and Section 21676(b) of the CPUC require the City to submit General Plan and Zoning Code amendments to the ALUC for a consistency determination with the AELUP. ALUC conducted a hearing on this matter at its May 16, 2024, and found that the 6<sup>th</sup> Cycle Housing Element Implementation is inconsistent with the AELUP. The May 16, 2024, ALUC staff report is attached as Attachment E, and the ALUC inconsistency determination is attached as Attachment F.

### ALUC Override Process

As a final review authority on legislative acts, the City Council may choose to override ALUC's determination by following a two-step process established by Section 21676 of the CPUC. The first step in the process is to conduct a public hearing to consider adoption of a resolution stating the City's intent to override and authorizing a formal notice be sent to ALUC and the State Department of Transportation, Aeronautics Program.

The second step in the process is, no sooner than 45 days after notification has been sent, the City Council may conduct a second public hearing to consider adoption of a resolution to override ALUC's determination. At this time, the City Council may also consider the entire 6<sup>th</sup> Cycle Housing Element Implementation and take a final action on the matter.

The following points are important to consider:

- The Council's adoption of the attached resolution authorizing the transmittal of the City's Notice of Intent to Override does not constitute approval of the 6<sup>th</sup> Cycle Housing Element Implementation, nor does it predispose the City Council's future action on it or the consistency determination; and
- The attached resolution to be shared with ALUC and the State Department of Transportation, Aeronautics Program, as well as any forthcoming resolution to overrule ALUC at a future City Council meeting, must be adopted by a two-thirds majority vote. Since there are seven City Council members, this means five affirmative votes are needed to pass and adopt the resolution.

Section 21678 of the CPUC states that if the City overrides ALUC's action or recommendation, the operator of the airport shall be immune from liability from damages to property or personal injury caused by or resulting directly or indirectly from the City's decision.

**FISCAL IMPACT:**

There is no fiscal impact related to this item.

**ENVIRONMENTAL REVIEW:**

Final action on the 6<sup>th</sup> Cycle Housing Element Implementation is not being considered at this time. A complete environmental analysis of the Project is contained in the attached April 18, 2024, Planning Commission staff report for which a draft programmatic environmental impact report has been prepared.

As it relates to the issuance of the City's Notice of Intent to Override, City staff recommends the City Council finds that the adoption of this resolution is not subject to 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 notification of the City's intent to overrule ALUC's determination. It does not authorize any development, nor does it commit the City Council to approve the project. Potential impacts will be analyzed when the City Council considers the project.

**NOTICING:**

Given the citywide nature of this activity, notice of this hearing was published in the Daily Pilot in a one-eighth-page format at least 10 days before the scheduled meeting, consistent with Section 20.62.020(B)(2)(c) of the NBMC. Additionally, the item appeared on the agenda for this meeting, which was posted at City Hall and on the City's website according to the Brown Act.

**ATTACHMENTS:**

- Attachment A – Resolution No. 2024-32
- Attachment B – April 18, 2024 Planning Commission Staff Report (no attachments)
- Attachment C – Draft April 18, 2024 Planning Commission Minutes Excerpt
- Attachment D – Planning Commission Resolution No. PC2024-006
- Attachment E – May 16, 2024 ALUC Staff Report
- Attachment F – ALUC Determination Letter