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# **NEWPORT BEACH**

## **City Council Staff Report**

October 12, 2021  
Agenda Item No. 16

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

**FROM:** Seimone Jurjis, Community Development Director - 949-644-3232, sjurjis@newportbeachca.gov

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**TITLE:** Resolution No. 2021-98: Notice of Intent to Override the Orange County Airport Land Use Commission's Determination of Inconsistency to the Draft Housing Element Update (PA2017-141)

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**ABSTRACT:**

Pursuant to Section 4.3 of the John Wayne Airport Environs Land Use Plan (AELUP) and Section 21676(b) of the California Public Utilities Code, the City of Newport Beach (City) is required to submit the draft 6<sup>th</sup> Cycle Housing Element update to the Airport Land Use Commission (ALUC) for a consistency determination with the AELUP. ALUC conducted a hearing on the matter on September 16, 2021, and found the draft was inconsistent with the AELUP.

For the City Council's consideration is a request to override the ALUC finding of inconsistency. This action would authorize staff to formally provide notice, pursuant to Public Utilities Code Section 21676 (b), to the ALUC and the State Division of Aeronautics of the City's intention to override the ALUC inconsistency finding.

**RECOMMENDATION:**

- a) Conduct a public hearing;
- b) Find this project 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 because it has no potential for resulting in physical change to the environment, directly or indirectly; and
- c) Adopt Resolution No. 2021-98, A Resolution of the City Council of the City of Newport Beach, California, Notifying the Orange County Airport Land Use Commission and the State Division of Aeronautics of the City's Intention to Find the General Plan Housing Element Update is Consistent with the Purposes of the State Aeronautics Act and Overrule the Orange County Airport Land Use Commission's Determination that the Housing Element Update is Inconsistent with the 2008 John Wayne Airport Environs Land Use Plan (PA2017-141).

## **DISCUSSION:**

### **Airport Land Use Commission**

Section 4.3 of the AELUP and Section 21676(b) of the Public Utilities Code require the City to submit the draft 6<sup>th</sup> Cycle Housing Element Update (i.e., a General Plan amendment) to the ALUC for a consistency determination with the AELUP. ALUC conducted a hearing on the matter on September 16, 2021 (Attachment B). City staff attended the hearing and provided a brief overview of the City's efforts to comply with the Regional Housing Needs Assessment (RHNA) allocation and the need to locate additional housing opportunities in the Airport Area and its proximity. After review and discussion, ALUC voted unanimously (7-0) to find the City's Draft Housing Element Update inconsistent with the AELUP based on noise, safety and general concerns of land use incompatibility that are inconsistent with ALUC's purpose and responsibilities.

#### *Noise*

The AELUP uses the Community Noise Equivalent Level (CNEL) system for measuring noise impacts, which is a weighted average of noise over time. The AELUP defines the noise exposure in the 60-65 dBA CNEL noise contour (Noise Impact Zone 2) as "Moderate Noise Impact" and in the 65-70 dBA CNEL noise contour (Noise Impact Zone 1) as "High Impact." (AELUP Sections 3.2.3, 3.2.4.) Residential uses are identified as "conditionally consistent" for the 60-65 dBA CNEL noise contour and "normally inconsistent" for the 65-70 dBA CNEL noise contour (AELUP Section 3, Table 1 [Limitations on Land Use Due to Noise]). However, residential uses are not outright prohibited. Instead, they are required to be developed with advanced insulation systems to bring the sound attenuation to no more than 45 dB inside. In addition, residential uses within the 65-70 dBA CNEL noise contour are required to be "indoor-oriented," which helps to ensure quality of life for residents in this area.

The City's General Plan Land Use and Noise Elements currently require that residential development in the Airport Area be located outside of the 65 dBA CNEL noise contour (Policies LU 6.15.3 and N 3.2). However, as part of the City's comprehensive update to the General Plan, these policies will be updated to reflect and allow the additional housing opportunity sites in the higher impact noise zones.

#### *Safety*

AELUP Section 2.1.2 (Safety Compatibility Zones) sets forth zones depicting which land uses are acceptable in various portions of John Wayne Airport (JWA) environs. Most of the housing opportunity sites, with the exception of portions of three properties, are all within Safety Zone 6. Allowed uses in Safety Zone 6 include residential and most nonresidential uses, excepting outdoor stadiums and similar uses with very high intensities. Uses that should be avoided include children's schools, large day-care centers, hospitals, and nursing homes. Risk factors associated with Safety Zone 6 generally include a low likelihood of accident occurrence.

General Plan Safety Element Policy S 8.6 demonstrates that the City acknowledges the importance of the JWA Safety Zones:

**S 8.6 John Wayne Airport Traffic Pattern Zone**

*Use the most currently available John Wayne Airport (JWA) Airport Environs Land Use Plan (AELUP) as a planning resource for evaluation of land use compatibility and land use intensity in areas affected by JWA operations. In particular, future land use decisions within the existing JWA Clear Zone/Runway Protection Zone (Figure S5) should be evaluated to minimize the risk to life and property associated with aircraft operations.*

Compliance with these policies and regulations will ensure that future development within the JWA Airport Planning Area will follow the safety standards of the AELUP.

*General Land Use Compatibility*

The standards and policies set forth in AELUP Sections 2 and 3 were adopted to prevent the creation of new noise and safety problems. As set forth above, any development on the proposed housing opportunity sites will comply with the noise criteria and safety standards established in Sections 2 and 3. Compliance with the AELUP standards will also be evaluated and demonstrated at the time development projects are proposed in the future.

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, which is established in Public Utilities Code Section 21676. The first step in the process is to conduct a public hearing to adopt a resolution of intention to override, a copy of which would be sent to ALUC and the State Division of Aeronautics to provide formal notification of the City's intent.

The second step in the process is that, not less than 45-days after notification has been sent to ALUC and State Division of Aeronautics, the City Council may conduct a second public hearing to consider adopting a resolution to override the ALUC. At that time, the City Council may also consider taking final action and adopting the Housing Element.

The following points are important to consider:

- The Council's adoption of the attached notification resolution does not constitute the Housing Element's approval, nor does it predispose the City Council's future action on either the Element or the consistency determination;
- The attached resolution notifying ALUC and the State Division of Aeronautics of the City's intent, and the resolution to overrule ALUC, which will be presented at a future hearing, must be adopted by a two-thirds vote. Since there are seven Council districts, five affirmative votes are needed to pass the resolution.

- Should the City Council ultimately overrule the ALUC decision, that action will not immediately affect the City's status as a consistent agency with the AELUP. ALUC would need to place an item on its future agenda to consider deeming the City an inconsistent agency.

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

**FISCAL IMPACT:**

There is no fiscal impact related to this item.

**ENVIRONMENTAL REVIEW:**

Staff recommends the City Council find this action 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, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

**NOTICING:**

Notice of this hearing was published in the *Daily Pilot* in a larger 1/8<sup>th</sup> page format. Notice was also provided by way of an email subscribers of the Planning Division's notification list. The item also appears on the agenda for this meeting, which was posted at City Hall and on the City website in accordance with the Brown Act.

**ATTACHMENTS:**

Attachment A – Resolution No. 2021-98  
Attachment B – ALUC Letter of Determination