

ATTACHMENT A

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 THAT 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)

WHEREAS, Section 200 of the City of Newport Beach ("City") Charter vests the City Council with the authority to make and enforce all laws, rules and regulations with respect to municipal affairs subject only to the restrictions and limitations contained in the Charter and the State Constitution, and the power to exercise, or act pursuant to any and all rights, powers, and privileges, or procedures granted or prescribed by any law of the State of California;

WHEREAS, City of Newport Beach ("City") staff has been working alongside its consultants, the Housing Element Update Advisory Committee ("HEUAC"), the Planning Commission, City Council and the community over the past two years to draft the 2021-2029 6th Cycle Housing Element ("Project") as required by California Government Code Section 65588;

WHEREAS, California Public Utilities Code Section 21676(b) requires the City to refer the Project to the Orange County Airport Land Use Commission ("ALUC") to review for consistency with the 2008 John Wayne Airport Environs Land Use Plan ("AELUP");

WHEREAS, on September 16, 2021, the ALUC voted unanimously finding the Project inconsistent with the AELUP;

WHEREAS, pursuant to California Public Utilities Code Sections 21670 and 21676, the City Council may, after a public hearing, propose to overrule the ALUC by a two-thirds vote, if it makes specific findings that the Project is consistent with California Public Utilities Code Section 21670 purpose 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; and

WHEREAS, the City Council held a public hearing on October 12, 2021, in the City Council Chambers located at 100 Civic Center Drive, Newport Beach, California. A notice of time, place, and purpose of the hearing was given in accordance with California Public Utilities Code Section 21676(b) and Government Code Section 54950 *et seq.* Evidence, both written and oral, was presented to, and considered by, the City Council at this hearing.

NOW, THEREFORE, the City Council of the City of Newport Beach resolves as follows:

Section 1: The City Council finds that the Project is consistent with the purposes of California Public Utilities Code Section 21670 and the AELUP 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.

Facts in Support

1. *The Project is consistent with the noise standards of the AELUP.*

The AELUP guides the orderly development of John Wayne Airport ("JWA") and the surrounding area through implementation of the standards in AELUP Section 2 (Planning Guidelines) and Section 3 (Land Use Policies). Implementation of these standards are intended to protect the public from the adverse effects of aircraft noise, ensure that people and facilities are not concentrated in areas susceptible to aircraft accidents, and ensure that no structures or activities adversely affect navigable airspace.

AELUP Section 2.1.1 sets forth the Community Noise Equivalent Level ("CNEL") standards. The Project includes 23 new housing opportunity sites within the 60-65 dBA CNEL contour and 28 new housing opportunity sites within the 65-70 dBA CNEL contour.

Sections 3.2.3 and 3.2.4, respectively, of the AELUP define 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.” Section 3, Table 1 (Limitations on Land Use Due to Noise) of the AELUP identifies residential use as “conditionally consistent” with the 60-65 dBA CNEL noise contour and “normally inconsistent” with the 65-70 dBA CNEL noise contour. However, residential uses are not outright prohibited. Instead, AELUP Section 3.2.3 requires residential uses 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” to preclude noise impingement on outdoor living areas.

The City’s General Plan Land Use Element Policy LU 6.15.3 and Noise Element Policy N 3.2 currently require that residential development in the Airport Area are to be located outside of the 65 dBA CNEL noise contour. 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.

The Newport Beach General Plan Noise Element additionally requires residential developers to notify purchasers or tenants of aircraft overflight and noise. The Project, which is an update to the Housing Element, does not remove this requirement and future developments will remain subject to review, which will include consideration of compliance with the applicable Noise Element policies.

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

2. *The proposed Project is consistent with the safety standards of the AELUP.*

AELUP Section 2.1.2 (Safety Compatibility Zones) sets forth zones depicting which land uses are acceptable in various portions of the JWA environs. Most of the housing opportunity sites, with 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.

The Newport Beach Golf Course and the Young Men's Christian Association ("YMCA") properties are partially located within Safety Zone 4. Safety Zone 4 limits residential uses to very low density (if not deemed unacceptable because of noise) and advises against nonresidential uses having moderate or higher usage intensities. The proposed housing opportunity sites for these properties will comply with the density limitations.

The City's General Plan Safety Element Policy S 8.6 demonstrates the importance of the JWA Safety Zones to the City:

"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."

In accordance with Policy S 8.6, the Project does not include any housing opportunity sites in the JWA Clear Zone/Runway Protection Zone. 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.

3. *The proposed Project is consistent with the purpose and intent of the AELUP and will not result in incompatible land uses adjacent to JWA.*

The standards and policies set forth in Sections 2 (Planning Guidelines) and 3 (Land Use Policies) of the AELUP 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. Further, compliance with the AELUP standards will be evaluated and demonstrated at the time development projects are proposed in the future.

Section 2: Based upon the foregoing finds, the City Council provides this notice of intention to overrule the ALUC's determination that the Project is inconsistent with the AELUP.

Section 3: The City Council hereby directs City staff to provide the ALUC and Caltrans Department of Transportation, Division of Aeronautics, with notice of the City's intent to overrule the ALUC's determination of inconsistency for the Project.

Section 4: The recitals provided in this resolution are true and correct and are incorporated into the operative part of this resolution.

Section 5: If any section, subsection, sentence, clause or phrase of this resolution is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this resolution. The City Council hereby declares that it would have passed this resolution, and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Section 6: The City Council finds 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 overrule the ALUC's determination and does not commit the City to approve the Project. The Project will be independently reviewed and evaluated pursuant to CEQA.

Section 7: This resolution shall take effect immediately upon its adoption by the City Council, and the City Clerk shall certify the vote adopting the resolution.


ADOPTED this 12th day of October, 2021.

Brad Avery
Mayor

ATTEST:

Leilani I. Brown
City Clerk

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE



Aaron C. Harp
City Attorney