

## RESOLUTION NO. 74257

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE MAKING CERTAIN FINDINGS REQUIRED BY CALIFORNIA PUBLIC UTILITIES CODE SECTION 21676 THAT PROPOSED PLANNED DEVELOPMENT REZONING APPLICATION FILE NO. PDC06-130 IS CONSISTENT WITH THE PURPOSES SET FORTH IN CALIFORNIA PUBLIC UTILITIES CODE SECTION 21670 AND OVERRULING THE AIRPORT LAND USE COMMISSION'S DETERMINATION THAT THE PROPOSED PROJECT IS NOT CONSISTENT WITH THE ALUC HEIGHT POLICIES AS DEFINED BY THE "LAND USE PLAN FOR AREAS SURROUNDING SANTA CLARA COUNTY AIRPORTS"**

**WHEREAS**, pursuant to the provisions of Section 21676 of the California Public Utilities Code ("Section 21676"), the City made a referral of the Planned Development Rezoning application number PDC06-130 to the Airport Land Use Commission of Santa Clara County ("ALUC") for a determination of consistency with the ALUC's plans insofar as the area covered by PDC06-130 falls within the ALUC's referral area surrounding Mineta San Jose International Airport; and

**WHEREAS**, a copy of the project description for Planned Development Rezoning application number PDC06-130 was also provided to the California Department of Transportation Division of Aeronautics; and

**WHEREAS**, on March 28, 2007 the ALUC, acting pursuant to its authority under Section 21676, determined that PDC06-130 is inconsistent with ALUC height policies, as defined in the "Land Use Plan for Areas Surrounding Santa Clara County Airports" (the "Land Use Plan"), in that the rezoning proposes allowing a maximum building height of 220 feet, which exceeds the ALUC height restriction of 163 feet for the subject site. It is the position of the ALUC that the Federal Aviation Administration ("FAA") [14 CFR] Part 77 Imaginary Surface height restrictions, adopted by the ALUC in its Land Use Plan, represent a reasonable consideration for public safety for which compliance should be required; and

**WHEREAS**, the ALUC's determination described in the previous paragraph did not cite any specific ALUC policy that was the basis for the determination, nor how the proposal would be inconsistent with any such specific policy; and

**WHEREAS**, the FAA issued a determination of "No Hazard" for the subject site on January 2, 2008 for the subject project; and

**WHEREAS**, on January 10, 2008 staff notified the ALUC of the City's proposed override of the ALUC's determination and provided a copy to the ALUC of the City's proposed override findings in a manner consistent with applicable State law; and

**WHEREAS**, the ALUC considered and commented on the draft resolution of the City for the proposed override of its determination, and the ALUC again concluded that, regardless of the FAA "no hazard" determination, the Planned Development Rezoning is inconsistent with the Land Use Plan because the proposed height penetrates the Part 77 imaginary surface; and

**WHEREAS**, ALUC Policy G-3 provides that required development height restrictions shall be "according to the provisions of FAR Part-77, or an alternate elevation approved by the FAA[;]" and

**WHEREAS**, the City believes that the project is in compliance with ALUC Policy G-3 through application made to the FAA by the applicant of Planned Development Rezoning PDC06-130 and the FAA's subsequent issuance of a "No Hazard" determination for the subject project; and

**WHEREAS**, further pursuant to the provisions of Section 21676 the City may after a public hearing on the matter propose to overrule a determination by the ALUC by a two-thirds vote of the City Council so long as the City Council makes specific findings that a proposed action is consistent with the purposes set forth in Section 21670 of the California Public Utilities Code ("Section 21670"); and

**WHEREAS**, Section 21670 provides that the purpose of these sections of the California Public Utilities Code 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 safety hazards within areas around public airports to the extent that these areas are not already devoted to incompatible uses; and

**WHEREAS**, the City has notified the ALUC and the California Department of Transportation Division of Aeronautics of its proposed decision to override the ALUC's determination of nonconformance with the height policies in the Land Use Plan and has conducted a duly noticed public hearing thereon; and

**WHEREAS**, the City Council heard and considered all testimony and other evidence presented, including a memorandum from the Department of Planning, Building, and Code Enforcement, related to this item; and

**WHEREAS**, the City Council believes it is appropriate under its authority provided in Section 21676 to override the ALUC's determination that the Planned Development Rezoning File No. PDC06-130 is not consistent with the Land Use Plan for the reasons set forth herein.

**NOW, THEREFORE,** BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

**SECTION 1.** The City Council hereby makes the following findings with regard to the ALUC's determination of inconsistency with height policies in the Land Use Plan:

- A. The recitals above are incorporated herein as findings.
- B. In order to comply with Section 21670, the City's development review process and methodology ensures future development on the subject site would minimize the public's exposure to excessive safety hazards by requiring future development to:
  - 1. Comply with General Plan Aviation Policies 47 and 49 regarding protection of the operation of the Norman Y. Mineta International Airport by complying with the conditions of the FAA Determination of No Hazard; and
  - 2. Consistent with ALUC Policy G-3 and General Plan Aviation Policy 49, dedicate easements for (a) aviation and, (2) obstruction or other clearance easement to the City as conditions of construction approval. The clearance easement shall restrict development height to the maximum height authorized by the FAA in its No Hazard determination or no more than 220 feet above ground level, whichever is less.
- C. Pursuant to the notification requirements of FAR Part 77, the project applicant had submitted project plans to the FAA for a proposed building reaching a height of 220 feet above ground level or 263 feet above mean sea level at its highest point, and the FAA subsequently issued a Determination of No Hazard for the proposed building subject to conditions. The Determination of No Hazard states that the FAA had publicly circulated a notice of its aeronautical evaluation of the proposed project and no comments or objections had been submitted in response. Furthermore, there were no findings of excessive safety hazard caused by the proposed maximum building height limit.
- D. The site that is the subject of Planned Development Rezoning PDC06-130 is located outside of the Airport Safety Zones and outside of the 65 CNEL Contour for the San Jose International Airport and the subject site is not located under the direct flight path of the San Jose International Airport.
- E. The San Jose 2020 General Plan currently allows taller buildings on other sites in the vicinity of the subject project site; for example, the San Jose 2020 General Plan states that "in the portion of the North San Jose/Rincon de Los Esteros Redevelopment Area bounded by Brokaw Road to the south, Zanker

Road to the east, Montague Expressway to the north, and along its western edge by Orchard Parkway north of Atmel Way and by Highway 101 south of Atmel Way, the maximum building height shall be defined by the airspace requirements of the San Jose International Airport as determined by the Federal Aviation Administration, but not to exceed 250 feet in any event.” The ALUC did not find that the 250-foot height limit in this area to be inconsistent with its Land Use Plan. The project site is located just within 500 feet of this Industrial Core boundary and the proposed height is under the maximum allowable height of 250 feet for the Industrial Core.

**SECTION 2.** Therefore, based upon the findings set forth above, the City Council hereby finds that the development proposed under Planned Development Rezoning File No. PDC06-130 is not in conflict with and would be consistent with the purposes set forth in California Public Utilities Code Section 21670 regarding protection of public health, safety, and welfare around Mineta San Jose International Airport and that the subject project appears to be in compliance with the ALUC Land Use Plan with the issuance of a No Hazard determination by the FAA.

**SECTION 3.** Based upon all of the foregoing findings and conclusions, the City Council hereby overrules the ALUC determination of nonconformance of Planned Development Rezoning File No. PDC06-130 with the height polices within the Land Use Plan.

**ADOPTED** this 26<sup>th</sup> day of February, 2008, by the following vote:

AYES:	CAMPOS, CHU, CONSTANT, LICCARDO, NGUYEN, OLIVERIO, PYLE, WILLIAMS, CORTESE
NOES:	NONE
ABSENT:	CHIRCO; REED
DISQUALIFIED:	NONE

---

DAVID CORTESE  
Vice Mayor

ATTEST:

---

LEE PRICE, MMC  
City Clerk