

HAYWARD CITY COUNCIL

RESOLUTION NO. 17-\_\_

Introduced by Council Member \_\_\_\_\_

RESOLUTION ASSOCIATED WITH ADOPTION OF A NEW AIRPORT  
OVERLAY ZONE ORDINANCE BY AUTHORIZING AMENDMENTS TO  
THE HAYWARD MUNICIPAL CODE

WHEREAS, City is the sponsor and operator of Hayward Executive Airport (“Airport”) and, as such, is charged with ensuring the safe and efficient operation of the Airport; the public health, safety and welfare of the City’s citizens, and of all those who live and work in proximity to the Airport; the compatibility of surrounding land uses with Airport operations and their impacts; and compliance with the purposes of the State Aeronautics Act, Cal. Pub. Util. Code § 21670; and

WHEREAS, in July, 2014, the City of Hayward (“City”) adopted the Hayward 2040 General Plan (“General Plan”); and

WHEREAS, the proposed AOZ Ordinance is consistent with and implements the policies set forth in the General Plan as supported by the City’s citizens and adopted by the City Council, with the intent to balance the goals of creating and supporting a vibrant economy and housing and business opportunities with protection of the public health, safety and welfare; and

WHEREAS, the proposed AOZ Ordinance is consistent with the land use compatibility provisions, including, but not limited to, density and intensity of uses, noise requirements, overflight and height and obstruction provisions, and disclosure requirements regarding airport operations set forth in relevant Federal Aviation Administration (“FAA”) statutes (including 49 U.S.C. § 47107, *et seq.*), and regulations, FAA’s Airport Compliance Manual, FAA Advisory Circulars and other forms of written guidance, state law and the Handbook by:

- a. Providing educational materials and assistance to the community regarding noise mitigation, and promote the full disclosure of potential noise impacts within new development;
- b. Continuing to review new development to assure compatibility with surrounding land uses and compliance with accepted noise standards;
- c. Requiring mitigation of noise through appropriate site planning, building orientation and building materials;

- d. Cooperating with adjacent jurisdictions and other agencies involved in noise mitigation, and working with transportation companies and/or agencies to mitigate noise impacts;
- e. Continuing to implement and monitor the effectiveness of noise control programs at the Airport; and

WHEREAS, the proposed AOZ Ordinance is consistent with, and supportive of, the public health, safety and welfare, as required by Cal. Pub. Util. Code § 21670(e)(1), where its purpose is to ensure the orderly development of the Airport by the adoption of land use restrictions in the AOZ which minimize the public's exposure to excessive noise and safety hazards to the extent the areas within the AOZ are not already devoted to incompatible uses; and

WHEREAS., the proposed AOZ Ordinance ensures that development in Safety Compatibility Zones 1, 2, 3, 4, and 6, Handbook, Fig. 3A, p. 3-17; Hayward ALUCP, § 3-4, and Master Plan, Fig. 5-B will not expose persons or property to excessive noise levels and will meet noise standards of the Handbook (October 2011), Airport Master Plan (2002) and the General Plan (July 2014), by:

- a. Maintaining a baseline noise level of 60-65 dB CNEL as the level of significance for exterior noise exposure in accordance with the Hayward Executive Airport Layout Plan Update (April 2010 – Chapter 9, Environmental Overview, Figure 9-6, 2020 CNEL Contours) and the Hayward Executive Airport Master Plan (April 2002);
- b. Establishing that the maximum acceptable interior noise level for all new residential units (single-family, duplex, mobile home, multi-family and mixed use units) shall be a CNEL of 45 dB with windows closed, consistent with General Plan Policy HAZ-8.5, page 3-149;
- c. Establishing in General Plan, Table HAZ-1, page 3-146, a maximum of 75 dB CNEL for golf courses;
- d. Showing the Skywest Golf Course to be located within the 60-65 dB CNEL contour, thus establishing that it is within the normally acceptable limit of 75 dB CNEL for golf courses, as established in General Plan, Table HAZ-1, page 3-146;
- e. Adopting an Airport Noise Management Program and policies that are monitored by a Staff Noise Abatement Analyst to ensure that noise emanating from the Airport is adequately addressed and that aircraft noise conforms to the Hayward Executive Airport noise restrictions, Hayward Municipal Code, Chapter 2, Article 6; and

WHEREAS, the proposed AOZ Ordinance addresses the compatibility of surrounding land uses with aircraft operations so as to maintain the safety and efficiency of aircraft

operations while at the same time protecting occupants of surrounding land uses from unacceptable levels of noise and/or safety hazards by, among other things:

- a. Ensuring that residential uses are developed in accordance with the development standards of each residential zoning district, and, to the extent practicable, with the guidance provided by the Handbook, including, but not limited to, infill residential development in Safety Compatibility Zones 2-5, Handbook, Figure 4C, page 4-21;
- b. Enhancing the clustering of uses within the Safety Compatibility Zones delineated in the Handbook so as to increase open space, and, thereby, provide areas for use by at risk aircraft;
- c. Providing additional open space uses, such as Skywest Golf Course, currently located within Safety Compatibility Zones 1 through 3, by maintaining open space areas free of trees and buildings to the extent practicable, thus allowing pilots some degree of latitude in the event of an aircraft malfunction;
- d. Requiring all development projects within the Safety Compatibility Zones as delineated by the Handbook to comply with all applicable federal statutes, regulations and Advisory Circulars governing safety of aircraft in flight, including, but not limited to, 14 C.F.R. Part 77, by, among other things, enforcing height limitations on structures as set forth in 14 C.F.R. Part 77, and Article 6, Chapter 10, Airport Approach Zoning Regulations of the Hayward Municipal Code;
- e. Creating wildlife management plans for all open space areas surrounding the Airport within the City's jurisdiction, pursuant to FAA Advisory Circular 150/5200-33B, that may have the potential for the aggregation of large flocks of birds and other activities that may constitute a danger to aircraft in flight;
- f. Prohibiting, within Safety Compatibility Zones 1, 2, 3, 4 and 6, land uses that create bright lights, smoke, particulate emissions, or allow for the storage of hazardous, flammable or explosive materials above ground;
- g. Requiring that all street lighting, within Safety Compatibility Zones 1, 2, 3, 4 and 6 "be designed, erected, and maintained so that light or glare is not directly cast upon adjacent properties or public rights of way" as required by Article 2, Chapter 10, § 10-2.640 of the Hayward Municipal Code;
- h. Prohibiting uses within any Airport approach zone, or Safety Compatibility Zones 1 through 6, to be developed in a manner that creates harmful electrical interference with radio communications, makes it difficult for aircraft operators to distinguish between airport lights and other lights, resulting in harmful glare, impairing visibility in the vicinity of the Airport or otherwise endangering the landing, takeoff or maneuvering of aircraft; and

WHEREAS, the Handbook states that "overflight" is "the acceptability of a given noise level with respect to a particular type of land use [and] should solely be a function of

the noise level and the land use,” the proposed AOZ Ordinance requires that real estate and leasing agents disclose to future property owners and tenants within zones 5 and 6 that permit the development of residential uses that there is a presence of overflights by aircraft from the Airport; and

WHEREAS, a meeting of the City Council Airport Committee was held on January 28, 2016, during which the purpose and overview of the draft regulations was presented; and

WHEREAS, a work session was held by the City Council on April 19, 2016, during which the draft airport safety zones map and draft land use compatibility table were presented, draft regulations were discussed, and feedback was provided from the Council and public; and

WHEREAS, a work session was held by the Planning Commission on May 12, 2016, during which information from the April 19 City Council work session was presented and feedback was provided by the Planning Commission and public; and

WHEREAS, a duly noticed public hearing was held before the Planning Commission on June 8, 2017, during which the Planning Commission discussed the proposed new Airport Overlay Zone Ordinance and recommended that City Council adopt it and determine such adoption was exempt from environmental impact analysis in accordance with the California Environmental Quality Act; and

WHEREAS, the City Council is implementing General Plan policies through an amendment to the Municipal Code to specifically and comprehensively address land uses within the Airport Overlay Zone by adopting an Airport Overlay Zone Ordinance via Ordinance No. 17-\_\_\_\_.

NOW, THEREFORE, BE IT RESOLVED that the City Council hereby finds and determines as follows:

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

1. The project is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3), which states a project is exempt from CEQA if, “The activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.”

2. The proposed AOZ Ordinance implements policies of the General Plan related to mobility and hazards by establishing land use and development standards on properties within the Airport Influence Area of the Hayward Executive Airport. Those standards relate to land use and density/intensity, noise, airspace protection (including heights of buildings), and overflight notices, which are established to preclude uses and activities that increase exposure to airport noise and hazards, in compliance with state and federal laws and regulations. Because the proposed AOZ Ordinance merely implements General Plan policies which are already in place, the proposed ordinance will not result in any significant effects beyond those previously analyzed in the environmental review of the General Plan.

#### TEXT AMENDMENT

- 1. Substantial proof exists that the proposed change will promote the public health, safety, convenience, and general welfare of the residents of Hayward.**

The proposed AOZ Ordinance will establish land use and development standards in compliance with state and federal laws to minimize exposure of the public to unreasonable noise and operations hazards associated with the Hayward Executive Airport.

- 2. The proposed change is in conformance with the purposes of this Ordinance and all applicable, officially adopted policies and plans.**

The proposed AOZ Ordinance implements the following policies of the General Plan:

#### Mobility Chapter, Policy M-10.2: Airport Land Use Compatibility

The City shall ensure uses surrounding the Hayward Executive Airport are compatible with existing and planned airport operations and comply with all applicable federal statutes (including 49 U.S.C. 47107), federal regulations (including 14 Code of Federal Regulations 77 et seq.), the FAA's Airport Compliance Manual, FAA Advisory Circulars and other forms of written guidance, and State law, with respect to criteria related to land use safety and airspace protection.

#### Hazards Chapter, Policy HAZ-7.1 Land Use Safety Compatibility and Airspace Protection Criteria

The City shall consider all applicable federal statutes (including 49 U.S.C. 47107), federal regulations (including 14 Code of Federal Regulations 77 et seq.), the FAA's Airport Compliance Manual, FAA Advisory Circulars and other forms of written guidance, and State law, with respect to criteria related to land use safety and

airspace protection when evaluating development applications within the Airport Influence Area of the Hayward Executive Airport.

Hazards Chapter, Policy HAZ-7.2 Airport Land Use Compatibility Plan

The City shall require all development projects within the Airport Influence Area designated in the Airport Land Use Compatibility Plan of the Hayward Executive Airport to comply with all applicable federal statutes (including 49 U.S.C. 47107), federal regulations (including 14 Code of Federal Regulations 77 et seq.), the FAA's Airport Compliance Manual, FAA Advisory Circulars and other forms of written guidance, and State law, with respect to criteria related to land use safety and airspace protection.

Hazards Chapter, Policy HAZ-7.3 Commission Review

The City shall ensure that all applicable plans, ordinances, and development applications are reviewed by the Alameda County Airport Land Use Commission if required by State law.

Hazards Chapter, Policy HAZ-8.15 Airport Noise Evaluation and Mitigation

The City shall require project applicants to evaluate potential airport noise impacts if the project is located within the 60 dB CNEL contour line of the Hayward Executive Airport or Oakland International Airport (as mapped in the Airport Land Use Compatibility Plan). All projects shall be required to mitigate impacts to comply with the interior and exterior noise standards established by the Airport Land Use Compatibility Plan.

Hazards Chapter, Policy HAZ-8.16 Airport Disclosure Notices

The City shall require that all new development within an airport-defined over-flight zone provide deed notices disclosing airport over-flights and noise upon transfer of title to future residents and property owners.

**3. Streets and public facilities existing or proposed are adequate to serve all uses permitted when property is reclassified.**

The proposed provisions would limit development in certain areas that would otherwise be allowed; thus, the proposed regulations would not create potential for new development beyond that already allowed.

**4. All uses permitted when property is reclassified will be compatible with present and potential future uses, and, further, a beneficial effect will be achieved which is not obtainable under existing regulations.**

The proposed regulations would further ensure that development within the Airport Influence Area would be compatible with the Hayward Executive Airport operations and state and federal laws related to land use intensity, airspace protection, noise, and aircraft overflight notices.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Hayward, based on the foregoing findings, hereby adopts the findings contained herein and approves the Text Amendment (Application No. 201602095), subject to the adoption of the companion ordinance (Ordinance No. 17-\_\_\_) to establish a new Airport Overlay Zone Ordinance as Chapter 10, Article 6 of the Hayward Municipal Code.

IN COUNCIL, HAYWARD, CALIFORNIA \_\_\_\_\_, 2017

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:

MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: \_\_\_\_\_

City Clerk of the City of Hayward

APPROVED AS TO FORM:

\_\_\_\_\_

City Attorney of the City of Hayward