



DATE: June 27, 2017

TO: Mayor and City Council

FROM: Development Services Director

SUBJECT: Adoption of a Resolution and Introduction of an Ordinance Related to a Proposed Airport Overlay Zone Ordinance and Determination that Adoption of Such Ordinance is Exempt from the California Environmental Quality Act

RECOMMENDATION

That the City Council adopts the attached resolution (Attachment II) and introduces the attached ordinance (Attachment III), establishing a new Airport Overlay Zone Ordinance.

SUMMARY

Consistent with the [Hayward 2040 General Plan](#) policies, the Planning Commission and City staff recommend adoption of a new Airport Overlay Zone (AOZ) Ordinance to help ensure that future development within the AOZ is consistent with state and federal FAA regulations and guidelines. The new regulations would not apply to airport property, nor to properties outside the City limits. [Hayward's Airport Approach Zoning Regulations](#) that comprise Chapter 10, Article 6 of the Hayward Municipal Code and that were adopted in 1964, are outdated and will be repealed. The purpose of the new AOZ Ordinance is to:

- a. Implement the City's General Plan Policies to ensure that all land uses within the Airport Overlay Zone (AOZ) are consistent with the State Aeronautics Act, [Cal. Public Utilities Code § 21670, et seq.](#), federal law, FAA regulations, and the California Department of Transportation's Division of Aeronautics [2011 California Airport Land Use Planning Handbook](#) (Handbook) guidance;
- b. Ensure that land uses and development within the AOZ are compatible with existing and future Hayward Airport operations;
- c. Avoid or minimize exposure of persons to potential hazards associated with current and future Hayward Airport operations;
- d. Prohibit development, uses or any installations or activities which represent a hazard to existing and future flight operations;
- e. Achieve a necessary balance between the economic vitality and long term development goals of the City, and the growth and economic integrity of the Airport;
- f. Recognize unique constraints and considerations applicable to properties potentially affected by airport operations by establishing regulations and review criteria for land use and development which applies specifically to properties within the AOZ; and

- g. Recognize the AOZ as encompassing the “Airport Influence Area”¹.

BACKGROUND

Hayward's Current Regulations – Chapter 10, Article 6 of the Hayward Municipal Code ([Airport Approach Zoning Regulations](#)) was adopted over fifty years ago “for the purpose of promoting the health, safety, and general welfare of the inhabitants of the City of Hayward by preventing the creation or establishment of airport hazards, thereby protecting the lives and property of the users of the Hayward Air Terminal and of the occupants of the land in its vicinity, and preventing destruction or impairment of the utility of the airport and the public investment therein.” However, due to changes in regulations associated with airport land use planning, this five-page set of regulations has become outdated. For example, Section 10-6.35 (Use Restrictions) provides little guidance in terms of objective development standards, including density and intensity, for developers and planners as it states, “Notwithstanding any other provisions of this Article, no use may be made of land within any airport approach zone, airport turning zone or airport transition zone in such a manner as to create harmful electrical interference with radio communication between the airport and aircraft, make it difficult for flyers to distinguish between airport lights and other lights, result in harmful glare in the eyes of the flyers using the airport, impair visibility in the vicinity of the airport, or otherwise endanger the landing, take off or maneuvering of aircraft.”

Policy Foundation/Context – Hayward’s [2040 General Plan](#), which was adopted in 2014, contains several policies from the Hazards and Mobility Chapters that encourage the adoption of the proposed regulations. Those specific policies are identified in the findings in the attached resolution.

Alameda County Airport Land Use Commission and Hayward Airport Land Use Compatibility Plan – An updated [Hayward Executive Airport Land Use Compatibility Plan \(ALUCP\)](#) was approved by the Alameda County Airport Land Use Commission (ALUC) on July 18, 2012. Per Section 21676(b) of the California Public Utilities Code (PUC), the City was therefore required to refer to the ALUC any amendment of a general plan or specific plan, or the adoption or approval of a zoning ordinance or building regulation affecting property within the ALUCP’s Airport Influence Area. The ALUC would then make a determination on whether or not the proposal would be consistent with the adopted ALUCP. If the ALUC determined that the proposed amendment or adoption was not consistent with the ALUCP, the City would have up to 180 days after such determination to modify its General Plan or referred document to achieve consistency or take an overrule action. The overrule action would require a 2/3 vote of City Council and the Council making certain findings related to the ALUC’s determination of inconsistency. If Hayward did not modify its General Plan or take an overrule action within 180 days, it would be required to refer to the ALUC any local land use action, regulation, and permit within the Airport Influence

¹ Per the Handbook, “An Airport Influence Area (AIA) is the area or areas in which current or future airport-related noise, over flight, safety, and/or airspace protection factors may significantly affect land uses or necessitate restrictions on those uses.”

Area, which would obviously negatively impact the goal of having a streamlined development review process.²

2013 Overture Action - On May 28, 2013, after making findings and expressing concerns related to potential impacts on future development at Southland Mall, the [City Council](#) took an overrule action on ALUCP Section 2.7.5.7 (infill development, nonconforming uses, and other related items). The City forwarded the overrule determination with findings to the ALUC and the State Department of Transportation's Division of Aeronautics. In response, the ALUC and the State provided several responses outlining concerns with the Council's findings, and staff determined a better strategy would be to wait until a new General Plan was adopted and, if necessary, take an overrule action if the ALUC determined the General Plan was inconsistent with the ALUCP. That way, the City and developers could have some assurance that development applications that were consistent with the General Plan would be processed in a timely fashion. Therefore, no required final overrule action that considered written responses from the State and the ALUC was taken by the City Council.

2014 General Plan Referral to the ALUC and Adoption - Related to the General Plan, the City satisfied the referral requirement by sending a draft of the new General Plan to the ALUC in January of 2014. Although City staff received some comments from ALUC staff in March of 2014, no notice of determination of inconsistency was ever received from the ALUC. Under [CA Public Utilities Code Section 21676\(d\)](#), the ALUC had 60 days from the City's January 2014 referral to make a determination regarding consistency. In the absence of such timely determination of consistency, the General Plan was automatically deemed consistent with the ALUCP. Thus, by operation of law, there is no longer a need to refer development projects that are consistent with the existing General Plan to the ALUC. The proposed regulations are simply implementing General Plan policies, which are identified in the attached resolution.

Review by the Council Airport Committee on January 28, 2016 – Staff presented an overview of the regulations and an early draft of the airport safety zones map and related land use compatibility table to the Committee in late January of last year. Committee members asked how the new regulations would impact Southland Mall and general questions about the regulations. The manager of Southland Mall attended the meeting. The minutes from that meeting are included as Attachment IV.

Review by the City Council on April 19, 2016 – The City Council held a work session in the spring of last year to discuss proposed regulations (see meeting minutes, Attachment V). A few speakers at the beginning of the meeting expressed concerns about noise and safety as they relate to the Hayward Executive Airport. Council members asked questions about various aspects of the regulations and generally expressed support for the new provisions.

Review by the Planning Commission on May 12, 2016 – The Planning Commission held a work session in 2016 three weeks after City Council held one to discuss the proposed new

² The City referred a proposed zone change for a new fitness facility at Southland Mall (since constructed as *City Sport*) in September of 2013. The ALUC voted 3 to 1 that such facility was consistent with the ALUCP; however, a minimum vote of four was required for action and therefore, technically, no action (or subsequently taken) was taken.

regulations (see meeting minutes, Attachment VI). Commissioners asked questions about height restrictions, intensity of uses, history of the Hayward Airport Land Use Compatibility Plan, land use authority, and clarification regarding to what areas the regulations would apply.

[Planning Commission Hearing on June 8, 2017](#) – The Planning Commission reviewed the proposed AOZ Ordinance at a public hearing on June 8 and, after receiving testimony from one member of the public, recommended 6:0:0 that the City Council adopt the proposed regulations and determine such action is exempt from the California Environmental Quality Act. Commissioners asked questions about the airport operations and some of the proposed provisions, to which staff responded. Draft minutes from that meeting are included as Attachment VII.

DISCUSSION AND STAFF ANALYSIS

Attachment II (Resolution) provides findings required to be made, and as recommended by the Planning Commission and staff, for the recommended Text Amendment and AOZ Ordinance adoption.

The new AOZ Ordinance (see Exhibit A to Attachment III) will serve as an overlay zone, with additional regulations above and beyond the underlying General Plan land use designations and zoning district designations. The AOZ Ordinance will require that all ministerial and discretionary actions within the AOZ be reviewed for consistency with the AOZ Ordinance prior to approval. While some of the proposed regulations are similar to those in the Hayward Airport ALUCP, they differ in that they allow a greater overall intensity per acre than do the ALUCP standards, and utilize the 2011 California Airport Land Use Planning Handbook, versus the previous 2002 version upon which the ALUCP was developed.

[Overview of the AOZ Ordinance](#) - The proposed AOZ regulations comply with federal statutes and regulations, including, but not limited to, 49 U.S.C. § 47107 (establishing the City's contractual obligations to the federal government); 14 C.F.R. Part 77 (governing allowable heights of structures surrounding airports); and with State law setting forth criteria related to land use, safety and airspace protection. 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. More specifically, the proposed AOZ Ordinance addresses, among other items, density and intensity of uses, noise requirements, overflight and height and obstruction provisions, and disclosure requirements regarding airport operations.

[Land Use, Intensity and Density \(Section 10-6.30 in the proposed AOZ Ordinance\)](#) – Land uses within the AOZ are more restricted the closer a property is to the Hayward Airport's runways. Figure 1 in the AOZ Ordinance shows locations of the various airport safety zones. Table 1 in the AOZ Ordinance is a land use compatibility table that indicates where various uses are allowed, conditionally allowed, or prohibited. The table was developed utilizing Table 3-2 of the ALUCP to be consistent with Handbook criteria and standards. There are differences

between this table and the one in the ALUCP adopted by the Alameda County Airport Land Use Commission in 2012. Unlike the ALUCP table, there are no uses listed as being conditionally compatible with the ALUCP that would normally need to be referred to the ALUC for a consistency determination. As long as new uses would be consistent with the new AOZ Ordinance regulations and criteria, there would be no need to refer development projects to the ALUC. Only if amendments are proposed to the General Plan, Zoning Ordinance, AOZ Ordinance, applicable specific plans, or building regulations, would there be a need for referral to the ALUC.

Readers will note that most of the central portion of the Southland Mall property is in Zone 2 (Inner Approach/Departure Zone), which is the second most restrictive safety zone, as indicated in Table 1 in the AOZ. The southwest portions of the Mall, including along Hesperian Boulevard, are located in Zone 3 (Inner Turning Zone), which allows a greater variety of uses than does Zone 2; with the northern and eastern portions of the Mall, including Sears and the approved new theater complex, located in Zone 6 (Traffic Pattern Zone), which is the least restrictive safety zone.

Although new uses are restricted in Zones 2 and 3, which comprise the majority of the Southland Mall property, provisions in the recommended new regulations allow for infill development or new development that replaces nonconforming development as long as it is no more intense than existing development. Specifically, Section 10-6.10(b) references the nonconforming provisions of the Zoning Ordinance. Those provisions include the following language:

“A nonconforming use or a portion of a nonconforming commercial or industrial center or complex may be established or replaced by another similar nonconforming use when the Planning Director finds:

- (1) That the nonconforming use is similar to or less intensive than the ones originally allowed in the center or complex;
- (2) That the nonconforming use will not adversely affect or be materially detrimental to adjoining properties; and
- (3) That the use of the entire center or complex has not been vacant or discontinued for a period of six or more calendar months.”

Construction of Famous Dave’s BBQ restaurant that replaced Marie Callender’s restaurant, Buffalo Wild Wings restaurant that replaced Mimi’s Café, the new City Sport Fitness/Health center that replaced commercial space, and the proposed Seafood City market that will replace previous retail space, were all processed and approved using this approach.

Noise (Section 10-6.50 in the proposed AOZ Ordinance) - Regarding noise, the proposed AOZ Ordinance will ensure that development in the Safety Compatibility Zones will not expose persons or property to excessive noise levels and will meet noise standards of the Handbook, the 2002 Hayward Airport Master Plan, and the General Plan. Figure 2 (from the Hayward Airport Master Plan) and Table 2 (from the Hayward General Plan) included in the proposed AOZ Ordinance show noise contour lines (primarily located near and at the end of the airport

runways) and noise thresholds in decibels expressed as Community Noise Equivalent Level (CNEL)³ for a variety of land uses.

Airspace Protection(Section 10-6.40 in the proposed AOZ Ordinance) – Airspace protection standards are intended to reduce the risk of harm to people and property resulting from an aircraft accident by preventing the creation of land use features, and the prohibition of any activities, that can pose hazards to the airspace used by aircraft in flight. The AOZ Ordinance requires proponents of a project to file a Notice of Construction or Alternation with the FAA if it meets certain standards, including if a proposed structure rises more than 200 feet above ground level or exceeds one foot in height for every 100 feet from the edge of the nearest point on the runway for a distance up to 20,000 feet. Building permits shall not be issued for a project until a determination of no hazard has been issued by the FAA and any conditions in that determination are met. Other hazards, such as lighting or glare, sources of smoke, dust, and plumes, and concentration of wildlife are also addressed in the attached AOZ Ordinance.

Overflight Notice (Section 10-6.60 in the proposed AOZ Ordinance) – In that 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 all discretionary actions for projects within safety zones 5 and 6 include a condition of approval requiring owners of property offered for sale or lease within the AOZ to provide the Real Estate Transfer Disclosure Statement required by law prior to selling or leasing property. For new residential land uses, the overflight notification shall be recorded and appear with the property deed as required by the Handbook.

Future Referrals to the ALUC - Proposed future General Plan land use amendments, zoning amendments and specific plan amendments that impact density or intensity of development within the AOZ in such a way so as to be inconsistent with the existing General Plan shall be referred to the ALUC for a determination of compatibility with the adopted ALUCP. The City will still have the ability to take an overrule action on any finding by the ALUC of inconsistency with the ALUCP.

Environmental Review – As indicated in the findings in Attachment II, California Environmental Quality Act (CEQA) Guidelines Section 15061(b)(3) indicates 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.”

The proposed AOZ Ordinance implements policies of the General Plan related to mobility and hazards, as noted previously in this report, 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

³ Noise measurements that are a weighted average of noise levels athered throughout a 24-hour period.

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 that 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.

ECONOMIC BENEFITS AND FISCAL IMPACTS

Regarding economic benefits, having regulations that bring predictability regarding regulations associated with properties in proximity to the Hayward Executive Airport will help streamline the development review process and help attract new developments. Although restrictions will exist regarding future development at Southland Mall and within the AOZ, such restrictions would allow for redevelopment at the Mall that is not more intensive than existing development. Also, the proposed regulations are in line with State and Federal laws and will ensure safe and compatible uses exist in the vicinity of the Hayward Airport. Finally, such regulations will also help ensure the City remains eligible for FAA grants and awards related to the Hayward Airport operations and facilities. There are no identified fiscal impacts related to the General Fund associated with these regulations.

PUBLIC OUTREACH

Nearly 2,000 notices were sent last year to owners of property within Hayward and unincorporated areas within the Airport Safety Zones for the Council and Commission work sessions held in April and May of last year.

Notice of this public hearing was published in *The Daily Review* newspaper on May 26, 2017. Additionally, on May 26, over 1,600 notices were mailed to owners of property within the City and in Airport Safety Zones 1 through 5 (the most restrictive of the six zones), including the owner of Southland Mall, informing them of the Planning Commission's June 8 hearing and this hearing. Staff also communicated with the owner of Southland Mall to discuss these draft regulations. In response to the notices, staff received approximately five inquiries from residents, including three from unincorporated San Lorenzo area, inquiring how the proposed regulations would impact their properties. Staff provided an explanation to each resident.

NEXT STEPS

Should the Council adopt the attached resolution and introduce the attached ordinance, the ordinance will be presented to Council for adoption at its July 11 meeting. Should the ordinance be adopted, it would become effective upon adoption and establish a new overlay zone and related regulations for non-airport properties located in the City and within the Hayward Airport's Influence Area, which is coterminous with the AOZ.

Prepared and recommended by: David Rizk, AICP, Development Services Director

Approved by:

A handwritten signature in black ink, appearing to read 'K. McAadoo', written in a cursive style.

Kelly McAadoo, City Manager