

ORDINANCE NO. 17-

AN ORDINANCE AMENDING THE HAYWARD MUNICIPAL CODE TO ESTABLISH A NEW AIRPORT OVERLAY ZONE ORDINANCE

THE CITY COUNCIL OF THE CITY OF HAYWARD DOES ORDAIN AS FOLLOWS:

Section 1. The City Council incorporates by reference the findings contained in Resolution No. 17-\_\_\_\_, approving the text changes incorporated herein and per Text Amendment Application No. 201602095.

Section 2. Chapter 10, Article 6 of the Hayward Municipal Code is repealed in its entirety and replaced with new Chapter 10, Article 6 entitled "Airport Overlay Zone Ordinance," the text for which is attached as Exhibit A to this ordinance.

Section 3. Severance. Should any part of this ordinance be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of the City, such decision shall not affect the validity of the remainder of this ordinance, which shall continue in full force and effect, provided that the remainder of the ordinance, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the City Council.

Section 4. Effective Date. This Ordinance shall be effective upon adoption.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the 27<sup>th</sup> day of June, 2017, by Council Member \_\_\_\_\_.

ADOPTED at a regular meeting of the City Council of the City of Hayward, held the \_\_\_\_ day of \_\_\_\_, 2017, by the following votes of members of said City Council.

AYES: COUNCIL MEMBERS:

MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED: \_\_\_\_\_  
Mayor of the City of Hayward

DATE: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
City Clerk of the City of Hayward

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney of the City of Hayward

## Exhibit A

### ARTICLE 6

#### AIRPORT OVERLAY ZONE ORDINANCE

##### **SEC. 10-6.00 PURPOSE AND INTENT.**

The purpose and intent of the Airport Overlay Zone (AOZ) Ordinance is to:

- a. Implement the City's General Plan Policies to ensure that all land uses within the AOZ are consistent with the State Aeronautics Act, Cal. Pub. Util. Code § 21670, *et seq.*, federal law, FAA regulations, and Handbook guidance;
- b. Ensure that land uses and development within the AOZ are compatible with existing and future Airport operations;
- c. Avoid or minimize exposure of persons to potential hazards associated with current and future 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 which apply 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;
- g. Recognize the AOZ as encompassing the "Airport Influence Area" ("AIA") as defined in the Airport Land Use Compatibility Plan of the Hayward Executive Airport (see Figure 1 herein).

##### **SEC. 10-6.01 SHORT TITLE.**

This Article shall be known and may be cited as "The Airport Overlay Zone Ordinance of the City of Hayward."

##### **SEC. 10-6.10 APPLICABILITY.**

Regulations in this Article shall apply to all uses, activities and existing and proposed development on properties within the City of Hayward that are also located within the AOZ, which shall be coterminous with the AIA designated in the Handbook.

- a. Conflicting Regulations. In the event of conflict between this Article and any other regulations applicable to the same area or parcel of land, whether the

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conflict be with respect to the height of structures or trees, the use of land, or any other matter, and whether such other regulations were adopted by the City of Hayward or by some other public agency having land use approval authority, the more stringent limitations or requirements shall govern and prevail.

- b. Specific Plans. For properties located within the AOZ which are also located within Specific Plan areas, development regulations, standards and policies shall be followed per respective Specific Plans. In cases where policies or standards are not provided within the Specific Plan, the policies and standards within this Chapter shall apply in addition to other applicable zoning regulations, General Plan, or other standards and regulations which apply to the project or land use. In no case will a land use, activity or development be allowed to violate airspace protection standards set forth in Section 10-6.40 below.
- c. Nonconforming Uses. Existing land uses that are not consistent with this AOZ Ordinance are nonconforming uses and may continue, subject to the limitations and constraints specified in Zoning Ordinance, Sec. 10-1.2900, *et seq.* No increase in density for nonconforming residential land uses is permitted, nor is expansion of nonconforming nonresidential uses, unless such expansion complies with the Infill Development provisions herein. Nonconforming uses shall also comply with the provisions below.

The regulations prescribed herein shall not be construed to require the removal, lowering or other change or alteration of any structure or tree not conforming to the regulations as of the effective date hereof or otherwise interfere with the continuance of any nonconforming use. Nothing herein contained shall require any change in the construction, alteration or intended use of any structure, the construction or alteration of which was begun prior to the effective date of this Article and is diligently prosecuted and completed within two (2) years thereof. Before any non-conforming structure or tree may be replaced, substantially altered or repaired, rebuilt, allowed to grow higher or replanted, a permit must be secured authorizing such replacement, change or repair. No permit shall be granted for a development that fails to conform to the requirements of Section 10-6.40, Airspace Protection, of this Ordinance.

- d. Infill Development. Proposed development of undeveloped land contiguous to, and surrounded by, existing land uses ("infill") shall be subject to the approval of the Development Services Director, in accordance with the following criteria: (1) whether the proposed development is a conforming or nonconforming use; (2) size of the parcel proposed for infill; (3) the extent to which the parcel is bounded by uses of similar type and dimension, so as not to extend the perimeter of incompatible uses; (4) the density and intensity of the uses proposed for development; and (5) applicable development conditions to be imposed (*e.g.*, aviation easements).

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- e. “Existing” Development and Land Uses. Development or land uses shall be considered “existing” if one of the following conditions is met:
- (1) A Vesting Tentative Map or Development Agreement has been approved, and has not expired, or all discretionary approvals have been obtained and have not expired;
  - (2) Building Permits have been issued and have not expired, and construction has commenced; or
  - (3) The structures and site development have been legally established and physically exist.

### **SEC. 10-6.20 PROCEDURES.**

- a. Approval. All ministerial and discretionary actions within the AOZ shall be reviewed for consistency with the AOZ Ordinance prior to approval.
- b. Mandatory Findings for Approval. When a project or activity is subject to discretionary actions requiring a public hearing or notice, the applicable review authority shall make all of the following findings, as applicable:
- (1) The project or use complies with the noise compatibility policies of the AOZ Ordinance.
  - (2) The project or use complies with the residential and nonresidential density standards in Table 1 of the AOZ Ordinance.
  - (3) The project or use complies with the airspace protection policies of the AOZ Ordinance.
  - (4) The project or use complies with the overflight policies of the AOZ Ordinance.
- c. Amendments. Other than General Plan, Specific Plan, or Zoning Code changes addressed through a previous referral to the Alameda County Airport Land Use Commission (“ALUC”), and/or any action to overrule any determination of the ALUC, proposed 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 previously referred documents shall be referred to the ALUC for a determination of compatibility with the adopted Alameda County Airport Land Use Compatibility Plan (“ALUCP”), pursuant to Cal. Pub. Util. Code § 21676(b), and Cal. Gov. Code § 65302.3(a) and (b).
- d. Overrule Provisions. Should the ALUC find any action referred pursuant to Cal. Pub. Util. Code § 21676 inconsistent with then applicable ALUCP, or if the ALUC updates the ALUCP, the City Council of the City of Hayward shall review the finding of inconsistency or the updated ALUCP and may either make changes to applicable General Plan sections, zoning and implementing ordinances pursuant

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to Cal. Gov. Code § 65302.3(a) and (b), or pursuant to Cal. Pub. Util. Code § 21676(b), overrule the ALUC.

- e. Variiances. Any person desiring to erect any structure or increase the height of any structure or permit the growth of any tree or otherwise use his property in a manner that is different that required in this Article, may apply to the Planning Commission for a variance from the regulation in question, pursuant to the variance procedures set forth in Hayward Municipal Code § 10.1.3300, *et seq.* Such variance shall be allowed where a literal application or enforcement of the regulations would result in practical difficulty or unnecessary hardship and the relief granted would not be contrary to the public interest but do substantial justice and be in accordance with the spirit of the regulations and this Article; provided that any variance may be allowed, subject to any reasonable condition that the administrative agency may deem necessary to effectuate the purpose of this Article.
- f. City Council. The City Council shall have the authority to amend regulations governing the restrictions and boundaries of such zones as are herein established, in accordance with the procedure prescribed for amendments and reclassification of the Zoning Ordinance of the City. The Planning Commission, in addition to the powers delegated pursuant to subsection e of this Section, shall serve as an advisory body to the City Council in the implementation of the City Council's authority as set forth in this section.
- g. Administrative Agency. The Development Services Director of the City of Hayward is hereby designated the administrator charged with the duty of administering and enforcing the regulations herein described. The duties of the Development Services Director or his/her designee shall include that of reviewing all applications for planning applications and building permits within the approach zones, turning zones and transition zones of the Hayward Executed Airport, but the Development Services Director shall not have or exercise any of the powers or duties delegated to the City Council or Planning Commission.
- h. Violation. A Public Nuisance. In the event that any person should erect, construct, move, alter or attempt to erect, construct, move or alter any structure or allow any tree to grow to a height in violation of the provisions of this Article, the same is hereby declared a public nuisance, as defined in Chapter 4, Article 1 of the Hayward Municipal Code. It shall be the duty of the City Attorney, when ordered by the City Council, to bring and prosecute an action in any court of competent jurisdiction to enjoin such person from continuing such erection, construction, moving, alteration or growth. If, however, such erection, construction, moving, alteration or growth is being or has been accomplished, the City Attorney, when ordered by the City Council, shall enjoin such person from maintaining the same.

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- i. Limitation of Jurisdiction. The provisions of this Article shall only apply and be enforced on areas within the AIA as defined herein and set forth in Figure 1, excluding the Hayward Executive Airport property, but including airport approach zones, the turning zones, and the transition zones within the limits of the City of Hayward.

### **SEC. 10-6.30 AIRPORT OVERLAY ZONES/DEVELOPMENT STANDARDS AND USES.**

Land use compatibility standards are intended to minimize the risk to people and property on the ground as well as to occupants of aircraft in the event of accident or emergency occurring outside the Airport boundary.

- a. Allowable Uses. All uses allowed by the General Plan and Zoning Ordinance are allowed, some of which require discretionary use permits and approvals, unless such uses conflict with the allowance of uses identified in Table 1. Table 1 lists the uses that are allowable in the Safety Zones.

- (1) Residential Uses and Density. The applicable maximum density standards for residential uses shall be based on General Plan, Land Use and Community Character Element, Part 3, and with the Zoning Ordinance, or as indicated in Table 1. Density shall generally be calculated by dividing the number of housing units on the site (excluding second units on single-family lots) by the net acreage of the site (net acreage excludes land required for public and private streets, parks and other public facilities).

In addition, population density, or intensity, can be expressed as people per gross acre and determined by multiplying the maximum number of units allowed per net acre within a specific General Plan land use designation by the average number of persons per household in accordance with the most current California Department of Finance estimate.

- (2) Nonresidential Uses and Intensity. The maximum intensity standards for nonresidential development shall be based on General Plan, Land Use and Community Character Element, Part 3, or as indicated in Table 1, and shall be regulated by a maximum Floor Area Ratio ("FAR") standard as indicated in the General Plan and in terms of square feet per person or people per gross acre, as indicated in Table 1. FAR is calculated by dividing the floor area of all buildings on the site by the total square footage of the site. For example, a 12,500-square foot one-story building on a 25,000-square foot site has a FAR of 0.5. When calculating FAR, the building square footage includes finished interior spaces and excludes parking garages, structured parking levels, and exterior open space, such

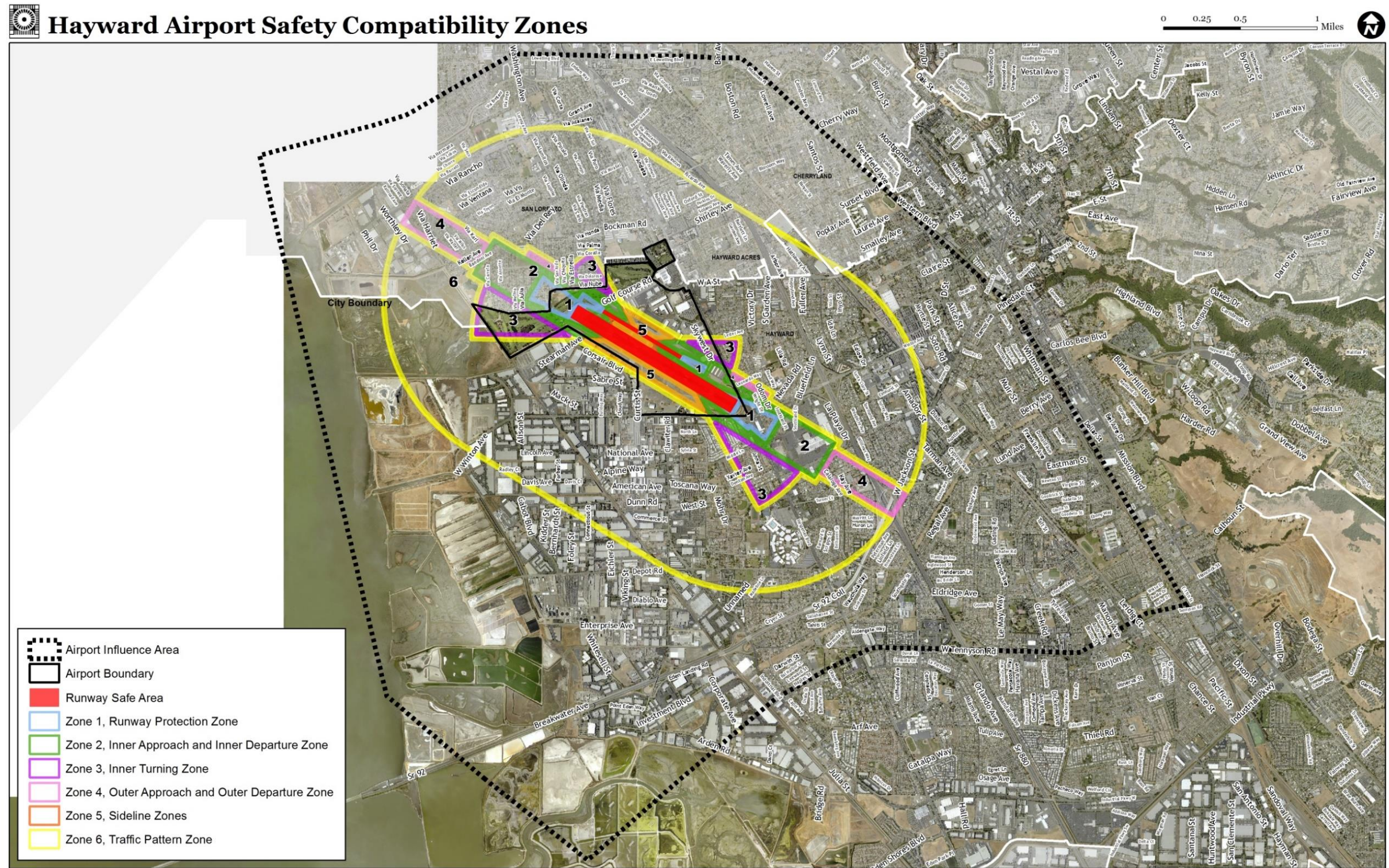
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as courtyards, roof gardens, and balconies. The net acreage of the site is also used for the FAR calculation. Net acreage excludes land required for public and private streets, parks and other public facilities.

- (3) Mixed-Use Development. The density and intensity of mixed-use developments that include both nonresidential and residential uses are regulated by both the maximum residential density and nonresidential intensity standards stated above, and the Maximum Intensities per Single Acre standards (People/Gross Acre) indicated in Table 1.
- b. Exceptions. The Director of Development Services/Planning Director may determine another method of density calculation is appropriate based on the particular characteristics of the proposed use and/or development. The method of calculations shall remain consistent, to the extent practicable, with recommended methodologies from Appendix "G" of the Handbook. In addition, when a use is not specifically listed as allowed, it shall be assumed that such uses are prohibited unless it is determined by the Planning Director or on appeal to the Planning Commission or City Council, per the appeal procedures of Hayward Municipal Code Section 10-1.2845, that the use is similar to and not more objectionable or intensive than the uses listed.



Figure 1 – Airport Safety Zones



Source: Airport Land Use Compatibility Plan GIS Data

April, 2016



**Table 1 – Airport Overlay Zone – Allowable Land Uses  
(Areas within AOZ and Outside Specific Plans)**

Land Uses	Safety Compatibility Zones					
	1 Runway Protection Zone	2 Inner Approach/ Departure Zone	3 Inner Turning Zone	4 Outer Approach/ Departure Zone	5 Sideline Zones	6 Traffic Pattern Zone
<b>Maximum Intensities (all uses) per Single Acre (People/Gross Acre) (Per Figures 4B-4G in the California Airport Land Use Planning Handbook)</b>	0	160	450	600	450	No Limit (Large stadiums and similar uses should be avoided.)
<b>Non-Residential Land Uses</b>						
<b>Maximum Site-wide Average Non- Residential Intensity (People/Gross Acre) (Per Figures 4B-4G in the California Airport Land Use Planning Handbook)</b>	0 (Exceptions can be permitted for agricultural activities, roads, and automobile parking provided that FAA criteria are satisfied.)	80	150	200	150	No Limit (Large stadiums and similar uses should be avoided.)
Note: Infill development is allowed in all zones, in accordance with Section 10-6.10(d) or as stated above. Land uses within Safety Zones 2 through 4 should be clustered, to the greatest extent practical, to preserve open space. No development shall be clustered in a manner that would exceed the intensity limits listed above.						
Offices (approx. 100 sq. ft./ person)	X	C	C	C	C	P
Small eateries/drinking establishments (approx. 15 sq. ft./ person)	X	X	C	C	C	P
Medium sized business (approx. 30 sq. ft./ person)	X	C	C	C	C	P
Mixed use retail centers with restaurant facilities (approx. 40 sq. ft./ person)	X	C	C	C	C	P
Retail center with no restaurant facilities (approx. 20 sq. ft./ person)	X	C	P	P	P	P

Land Uses	Safety Compatibility Zones					
	1 Runway Protection Zone	2 Inner Approach/ Departure Zone	3 Inner Turning Zone	4 Outer Approach/ Departure Zone	5 Sideline Zones	6 Traffic Pattern Zone
<b>Residential Land Uses</b>						
<b>Maximum Site-wide Average Residential Density (Dwelling Units/Gross Acre)</b> (Per Figures 4B-4G in the California Airport Land Use Planning Handbook)	0	0	Allow infill at up to the average of the surrounding residential area.	Allow infill at up to the average density of comparable surrounding uses	Allow infill at up to the average of the surrounding residential area.	No Limit (Noise and overflight should be considered.)
Note: Infill development is allowed in all zones, in accordance with Section 10-6.10(d) or as stated above. Land uses within safety zones 2 through 4 should be clustered, to the greatest extent practical, to preserve open space. No development shall be clustered in a manner that would exceed the intensity limits listed above.						
Short-term lodging facilities (≤ 30 nights): hotels, motels, etc. (approx. 200 sq. ft./person)	X	X	C	C	C	P
Long-term lodging facilities (>30 days): extended-stay hotels, dormitories, etc.	X	X	X	C	X	P
Single-family residential: detached dwellings, duplexes, townhomes, mobile homes	X	C	Zones 3 and 4: Incompatible at density > 9.0 units/ac		X	P
Multi-family residential: low-to-high density apartments, condominiums	X	X	Zones 3 and 4: Incompatible at density >12.0 units/ac		X	P
<b>Sensitive Land Uses (Land Uses of Particular Concern)</b>						
Note: Infill development is allowed in all zones, in accordance with Section 10-6.10(d). Where uses are listed as "C"-Conditional, please refer to Note 1 at the end of this table.						
Schools, K-12	X	X	X	C	X	C
Commercial Daycare (≥6 children)	X	X	X	X	X	C
Nurseries/In-home day care (≤14 children)	X	X	X	X	X	P
Inpatient facilities: hospitals, sanitariums, psychiatric facilities (approximately 240 sq. ft./person)	X	X	X	X	X	C
Outpatient facilities (>5 patients): dentist offices, clinics, etc. (approximately 100 sq. ft./person)	X	X	C	C	X	P
Congregate Care Facilities- ambulatory and non-ambulatory (includes assisted living, convalescent/rehab facilities, retirement homes)	X	X	X	X	X	C
Correctional Facilities	X	X	X	X	X	C
High Capacity Indoor assembly room (≥ 1,000 people)	X	X	X	X	X	X
Medium to large indoor assembly room (≥300. <1,000 people)	X	X	X	C	X	C
Low capacity indoor assembly Room (≤ 300 people)	X	X	C	C	X	C
Large outdoor assembly area (≥1,000 people)	X	X	X	X	X	X
Medium outdoor assembly area (≥300, <999 people)	X	X	C	C	X	C
Small outdoor assembly area (>50, <299 people)	X	X	C	C	X	C

Land Uses	Safety Compatibility Zones					
	1 Runway Protection Zone	2 Inner Approach/ Departure Zone	3 Inner Turning Zone	4 Outer Approach/ Departure Zone	5 Sideline Zones	6 Traffic Pattern Zone
<b>Manufacturing, R&amp;D, Industrial Land Uses</b>						
Note: Infill development is allowed in all zones, in accordance with Section 10-6.10(d). Land uses within safety Zones 2 through 4 should be clustered, to the greatest extent practical, to preserve open space. No development shall be clustered in a manner that would exceed the intensity limits listed above.						
Manufacturing, research and development (approx. 100 sq. ft./ person)	X	X	C	C	C	P
Occupancies utilizing hazardous (flammable, explosive, corrosive, or toxic) materials	X	X	Zones 3 - 5: C "Conditional": Special measures to minimize risk in the event of an aircraft accident to be determined by Hayward Fire Department or Approving Authority			P
Storage of hazardous materials: gas stations, etc.	X	X	C	P	P	P
Warehouses, distribution facilities (approx. 500 sq. ft./ person)	X	C	C	P	P	P
Repair garages not requiring use of flammable objects	X	P	P	P	P	P
Open parking garages	X	P	P	P	P	P
Private garages, carports, and agricultural buildings	X	P	P	P	P	P
<b>Agriculture, Natural Features, Resource Operations</b>						
Note: Infill development is allowed in all zones, in accordance with Section 10-6.10(d). These uses may attract birds or other wildlife considered potentially hazardous to flight. For uses listed as C- Conditional, see Note 2 at the end of this table and FAA Advisory Circular 150/5200-33B.						
Tree farms, landscape nurseries, and greenhouses	X	X	C	C	X	P
Community Gardens	X	X	C	C	X	P
Fish farms	X	X	X	X	X	P
Land reserves and open space	X	P	P	P	X	P
Waterways (rivers, creeks, swamps bays, lakes)	X	X	X	C	X	C
Reservoirs; quarry lakes; detention ponds; aquifer recharge; recycled water storage; flood control or water conveyance channels.	X	X	C	C	C	C
<b>Utilities</b>						
Note: Infill development is allowed in all zones, in accordance with Section 10-6.10(d). These uses may generate dust, smoke, thermal plumes, or other hazards to flight. These uses may attract birds or other wildlife considered potentially hazardous to flight. Power lines, smoke stacks, or other tall objects associated with these uses may be hazards to flight. For uses listed as C-Conditional, see Note 3 at the end of this table.						
Water treatment	X	C	C	C	X	C
Electrical substations	X	X	C	X	P	P
Power plants	X	X	X	C	X	X
Power lines	X	X	X	X	X	P
Roadways	C	P	P	P	P	P
Other transit-oriented uses (train stations, bus stations, etc.)	X	C	P	P	P	P

Land Uses	Safety Compatibility Zones					
	1 Runway Protection Zone	2 Inner Approach/ Departure Zone	3 Inner Turning Zone	4 Outer Approach/ Departure Zone	5 Sideline Zones	6 Traffic Pattern Zone
<b>Recreational Land Uses</b>						
Note: Infill development is allowed in all zones, in accordance with Section 10-6.10(d). Golf courses and parks may attract birds or other wildlife considered potentially hazardous to flight. For uses listed as C- Conditional, see Note 2 at the end of this table.						
Golf courses	C	C	C	C	X	P
Parks (playgrounds, picnic areas, athletic fields, tennis courts, etc.)	X	C	C	C	X	P
Riding stables and trails	X	P	P	P	P	P
<p><b>X – INCOMPATIBLE:</b> Uses should not be permitted under any circumstances as they may expose persons to airport-related safety hazards.</p> <p><b>C – CONDITIONAL:</b> Uses or activities that may be compatible with airport operations depending on their location, size, bulk, height, density and intensity of use. See notes below for conditional criteria on specific land uses.</p> <p><b>P – PERMITTED:</b> Uses or activities are compatible with airport operations; however, these activities should be reviewed to ensure that they will not create height hazard obstructions, smoke, glare, electronic, wildlife attractants, or other airspace hazards. Noise, airspace protection, and/or overflight policies may still apply.</p> <p><i>Secondary units, as defined by state law, shall be excluded from density calculations, and may be constructed on existing, non-conforming residential parcels.</i></p> <p><i>All uses or activities identified in Table 1 are subject to intensity and density limitations as indicated. Particular attention should be given to developments that, when located in combination with other permitted or limited activities, may create cumulative impacts on airport operations. All uses should be reviewed to ensure that they will not create airspace hazards. Noise, airspace protection, and/or overflight policies may still apply.</i></p>						

**Notes:**

1. Land uses which pose the greatest concern are those in which the occupants have reduced effective mobility or are unable to respond in emergency situations. Children's schools, day care centers, hospitals, nursing homes, and other uses in which the majority of occupants are children, elderly, and/or handicapped shall generally be prohibited within Zones 1 through 5.
  - a. For the purposes of these criteria, children's schools include all grades through grade 12. For zones 4 and 6, new schools should be reviewed on a case-by-case basis, considering such factors as age of school children, size of school, etc.
  - b. Day care centers and family day care homes are defined by state law. Non-commercial day care centers ancillary to a place of business are permitted in Zones 2 through 5 provided that the overall use of the property meets the intensity criteria indicated below. Family day care homes are permitted in any location where residential development is permitted and the intensity of the day care home is  $\leq 14$  people. Commercial day care centers are conditionally compatible in Zone 6.
  - c. In-patient health care facilities include hospitals, health care facilities, and other types of non-ambulatory medical centers. Land uses of these types are prohibited in Safety Zones 1 through 5, and permissible in Zone 6.
  - d. Out-patient health care facilities such as health care centers, clinics, dentists' offices, and other types of ambulatory facilities are conditionally acceptable in Safety Zone 3 and 4.
  - e. Storage of fuel and other hazardous materials within the airport environs are restricted as follows:
    - i. Within Zones 1 and 2, storage of any such substance is prohibited.
    - ii. Within Zones 3, 4, and 5, special measures to minimize risk in the event of an aircraft accident are to be determined by the Hayward Fire Department or approving authority.
  - f. Land uses within safety zones 2 through 4 should be clustered, to the greatest extent practical. No development shall be clustered in a manner that would exceed the intensity limits listed as incompatible in Table 1 above.
2. Land uses that may cause visual, electronic, navigational, or bird strike hazards to aircraft in flight shall be allowed within the airport influence area only if the uses are consistent with FAA rules and regulations, and/or have demonstrated consideration/application of appropriate FAA guidelines. Specific characteristics to be avoided include: Features that create an increased attraction for wildlife as identified in FAA rules, regulations, and guidelines including, but not limited to, FAA Order 5200.5A, *Waste Disposal Sites On or Near Airports*, and Advisory Circular 150/5200-33B, *Hazardous Wildlife Attractants On or Near Airports*. Land uses with the possibility of attracting hazardous wildlife include landfills and certain recreational or agricultural uses that attract large flocks of birds.
3. Due to their propensity to generate smoke, steam, and other visual and physical hazards to aircraft in flight, power plants should be avoided in the AIA. However, given the varying types of power plants (i.e., thermal, solar farms, wind farms, etc.), proposed land uses of this type should be evaluated on a case-by-case basis, and in accordance with FAA criteria and the policies set forth in this Article.

## **SEC. 10-6.40 AIRSPACE PROTECTION.**

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. Airspace protection standards regarding obstructions and hazards to air navigation are exclusively within the domain of the FAA and are defined in FAA regulation Part 77. FAA regulation Part 77 applies to land uses and development within the Airport Overlay Zone as summarized below:

- a. Objects Affecting Navigable Airspace. Federal Aviation Regulation (“FAR Part 77”) and Cal. Pub. Util. Code § 21659 require that structures not penetrate the airspace protection surfaces of the airport and require a determination by the FAA that the structure does not constitute a hazard to air navigation or would not create an unsafe condition for air navigation. The airspace surrounding the Airport is divided into segments called “imaginary surfaces” which identify height limits for objects that require further study by the FAA to avoid creating hazards to air navigation. Structures that fall within the areas specified in Part 77 shall be subject to the provisions listed below.
  - (1) Proponents of a project shall file a Notice of Construction or Alternation (Form 7460-1) with the FAA if it meets any of the standards set forth in FAR Part 77, 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. Filing Form 7460-1 will initiate an aeronautical study that will ensure a proposed structure does not constitute a hazard to air navigation or would not create an unsafe condition for air navigation, including impeding any en route or terminal instrument procedures as per the United States standard for terminal instrument procedures (“TERPS”) described in FAA Order 8260.3B (14 C.F.R. Part 77.29, Evaluating Aeronautical Effect).
  - (2) Where a structure is found by the FAA to be an obstruction but does not constitute a hazard to air navigation, approvals for such projects may include the requirement for an aviation easement, marking or lighting of the structure, or modifications to the structure. The aviation easement shall be consistent with the form and content of the illustration in Handbook, Appendix H, Exhibit H1.
  - (3) 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.

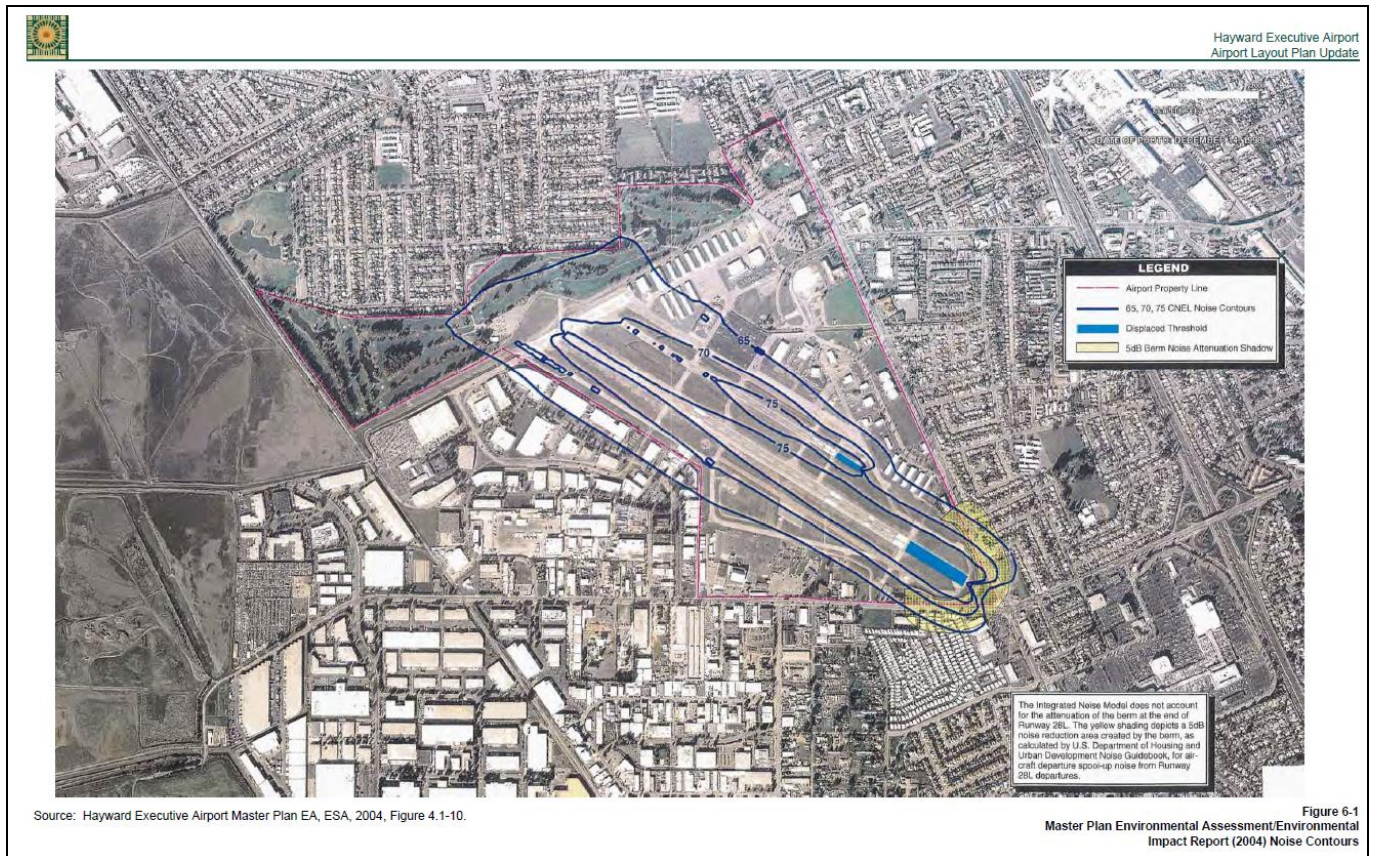
- b. Other Flight Hazards Prohibited. Any activities within the AOZ which could pose a hazard to flight operations are prohibited, including, but not limited to:
- (1) Glare or distracting lights that could be mistaken for Airport lights;
  - (2) Sources of dust, heat, steam, or smoke that may impair pilot vision, or light shows, or laser shows or spotlights;
  - (3) Any emissions that may cause thermal plumes or other forms of unstable air that generate turbulence within the flight path;
  - (4) Sources of electrical interference with aircraft communications or navigations;
  - (5) Features that create an increased attraction for wildlife that may be hazardous to Airport operations such as attractants of birds to the extent of creating a significant hazard of bird strikes (examples are outdoor storage or disposal of food of grain, or large, artificial water features). Features which may pose these risks shall be reviewed for consistency with the FAA's Advisory Circular 150/5200-33B, Hazardous Wildlife Attractants On or Near Airports by Hayward Executive Airport's Manager. This provision is not intended to prevent enhancement or protection of existing wetlands or the mitigation of wetlands' impacts. Similarly, the effect of wildlife attractants may be mitigated by methods set forth in Advisory Circular 150/5200-33B.

**SECT. 10-6.50 AIRPORT NOISE.**

- a. Airport Related Noise. Noise compatibility standards are intended to prevent the establishment of noise sensitive land uses in areas surrounding the Airport that are exposed to significant levels of aircraft noise. Noise policies from the most current Hayward Airport Master Plan and analyses from the Airport Master Plan Environmental Impact Report, or subsequent noise analysis used to update the Airport Master Plan, shall be used for mapping of the long term noise impacts of the Airport's aviation activity which includes future planned facilities development depicted in the FAA approved Airport Layout Plan. The relevant noise contours are shown below in Figure 2.



**Figure 2 - Noise Contour Map**



Where permitted within the AOZ, the following noise sensitive land uses shall comply with applicable noise exposure criteria.

b. New Residential Development.

- (1) Maximum Exterior Noise Levels. New residential uses within the 60 dB CNEL contour shall demonstrate consistency with the maximum exterior noise levels set forth in Table HAZ-1, General Plan, 2014, p. 3-146 (see Table 2 below).

**Table 2 – Exterior Noise Compatibility Standards**

<b>TABLE HAZ-1 Exterior Noise Compatibility Standards for Various Land Uses</b>	
<b>Land Use Type</b>	<b>Highest Level of Exterior Noise Exposure that is Regarded as “Normally Acceptable”<sup>a</sup> (CNEL)<sup>b</sup></b>
Residential: Single-Family Homes, Duplex, Mobile Home	60
Residential: Townhomes and Multi-Family Apartments and Condominiums	65
Urban Residential Infill <sup>c</sup> and Mixed-Use Projects <sup>d</sup>	70
Lodging: Motels and Hotels	65
Schools, Libraries, Churches, Hospitals, Nursing Homes	70
Auditoriums, Concert Hall, Amphitheaters	Mitigation based on site-specific study
Sports Arena, Outdoor Spectator Sports	Mitigation based on site-specific study
Playgrounds, Neighborhood Parks	70
Golf Courses, Riding Stables, Water Recreation, Cemeteries	75
Office Buildings: Business, Commercial, and Professional	70
Industrial Manufacturing, Utilities, Agriculture	75

*Source: Governor’s Office of Planning and Research, State of California General Plan Guidelines 2003, October 2003.*

- a. As defined in the *State of California General Plan Guidelines 2003*, “Normally Acceptable” means that the specified land uses is satisfactory, based upon the assumption that any building involved is of normal conventional construction, without any special noise mitigation. For projects located along major transportation corridors (major freeways, arterials, and rail lines) this “normally acceptable” exterior noise level may be exceeded for certain areas of the project site (e.g. the frontage adjacent to the corridor or parking areas) with the exception of primary open space areas (see policies HAZ-8.5 and HAZ-8.6).
- b. CNEL or Community Noise Equivalent Level measurements are a weighted average of sound levels gathered throughout a 24-hour period.
- c. Urban residential infill would include all types of residential development within existing or planned urban areas (such as Downtown, The Cannery Neighborhood, and the South Hayward BART Urban Neighborhood) and along major corridors (such as Mission Boulevard).
- d. Mixed-Use Projects would include all mixed-use developments throughout the City of Hayward.

(2) Maximum Interior Noise Levels. Noise analysis, construction details, or other information deemed necessary by the Director of Development Services/Planning Director shall be submitted to verify conformance with maximum interior noise levels as set forth below:

- (a) Interior Noise Levels Not to Exceed 45 dB CNEL. As set forth in Handbook, Chapter 3, p. 3-4, for the following noise-sensitive land uses, aircraft related, interior noise levels shall not exceed 45 dB CNEL (with windows closed):
  - (i) Living or sleeping areas of single or multi-family residences;
  - (ii) Hotels and motels;
  - (iii) Hospitals and convalescent homes;
  - (iv) Places of worship, meet halls, and mortuaries; and
  - (v) Schools.
- (b) Interior Noise Levels Not to Exceed 50 dB CNEL. For noise sensitive land uses such as those listed below, aircraft related, interior noise levels shall not exceed 50 dB CNEL (with windows closed):
  - (i) Office environments;
  - (ii) Eating and drinking establishments; and
  - (iii) Retail stores.

#### **SEC. 10-6.60 AIRCRAFT OVERFLIGHT NOTICE.**

Aircraft overflight standards are intended to provide overflight notification for land uses within Safety Compatibility Zones 5 and 6. All discretionary actions for projects within such areas shall 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 Cal. Civ. Code § 1103.4(c)(1) 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 Handbook, § 4.3.1, pp. 4-13, 14.

#### **SEC. 10-6.70 OPEN LAND.**

Open land areas are intended to increase the chances of a pilot successfully landing an aircraft in an emergency situation when he/she is unable to reach the runway. Where open space or conservation easements have been obtained and the topography supports it, the City shall not allow uses to be established that conflict with their availability to be used as a landing option in the event of an emergency. Where easements have yet to be obtained, the City shall explore opportunities to incorporate the requirement for open land as part of the discretionary approval process. Open land areas shall be consistent with Handbook standards for size, orientation and topography as per Handbook, § 4.4.5, pp. 4-31, 32.