

RESOLUTION NUMBER R- 309198

DATE OF FINAL PASSAGE SEP 15 2014

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN DIEGO OVERRULING THE AIRPORT LAND USE COMMISSION'S DETERMINATION OF INCONSISTENCY FOR ORDINANCE NO. O-20357 REGARDING MOBILE FOOD TRUCKS.

WHEREAS, on March 18, 2014, the City Council of the City of San Diego adopted Ordinance No. O-20357 regulating mobile food trucks (Project); and

WHEREAS, Public Utilities Code section 21676 requires that all zoning ordinances for property located within the planning boundary established by the airport land use commission shall be referred to the airport land use commission for a determination of consistency with the airport land use compatibility plan; and

WHEREAS, on June 5, 2014, the Airport Land Use Commission (ALUC) for San Diego County adopted a Determination of Inconsistency that found the Project inconsistent with the Marine Corps Air Station Miramar (MCAS Miramar) Airport Land Use Compatibility Plan; and

WHEREAS, Public Utilities Code subsection 21676(b) provides that the governing body of a local agency may overrule a determination of inconsistency if the governing body undertakes a two-part process, with both parts requiring a two-thirds vote as follows: (1) makes proposed findings regarding purpose and intent of Public Utilities Code section 21670, and (2) approves the overrule at a noticed public hearing; and

WHEREAS, San Diego Municipal Code section 132.1555 requires that for the City Council to overrule a determination of inconsistency, it must adopt not only the proposed findings regarding purpose and intent set forth in Public Utilities Code section 21670, but also findings that the development is not detrimental to the public health, safety, and welfare, and that the development will minimize the public's exposure to excessive noise and safety hazards to the extent feasible; and

WHEREAS, on July 15, 2014, the City Council held a noticed public hearing, and by a two-thirds vote, made the proposed findings set forth in Public Utilities Code section 21670 and San Diego Municipal Code section 132.1555; and

WHEREAS, Public Utilities Code subsection 21676(b) provides that at least 45 days prior to the decision to overrule the Determination of Inconsistency, the local agency governing body shall provide a copy of the proposed decision and findings to the ALUC and the Division of Aeronautics of the State of California Department of Transportation (DOT); and

WHEREAS, on July 21, 2014, the City provided a copy of the proposed findings to the ALUC and the DOT, as well as MCAS Miramar; and

WHEREAS, on August 19, 2014, the City received a letter from the DOT stating that the proposed findings did not show that the Project will meet the requirements of Public Utilities Code subsection 21670(a), which letter is on file in the Office of the City Clerk as document number RR- 309198

WHEREAS, Public Utilities Code subsection 21676(b) provides that comments from the ALUC or the DOT are advisory to the local agency governing body; and

WHEREAS, on September 15, 2014, after notice satisfying San Diego Municipal Code subsections 112.0301(c) and (e), the City Council held a noticed public hearing to make a final decision regarding the potential overrule of the Determination of Inconsistency; NOW, THEREFORE,

BE IT RESOLVED, based upon the oral testimony and written information presented at the hearing, along with information provided by the DOT in its letter dated August 14, 2014, that the Council of the City of San Diego hereby overrules the Airport Land Use Commission's Determination of Inconsistency dated June 5, 2014, which found the Project inconsistent with the MCAS Miramar Airport Land Use Compatibility Plan; and

BE IT FURTHER RESOLVED, that the Council of the City of San Diego finds that the Project is consistent with the purposes of the State Aeronautics Act and the Airport Land Use Commission set forth in Public Utilities code section 21670, as evidenced by the following findings:

1. The proposed ordinance will not be detrimental to the public health, safety, and welfare.

The mobile food truck ordinance will not be detrimental to the public health, safety, and welfare. The ordinance establishes regulations to allow food trucks to legally operate on private property and in the public right-of-way, and clarifies where food trucks are allowed to operate in accordance with applicable limitations. The City of San Diego Municipal Code (SDMC) Chapter 13, Article 2, Division 15 (Airport Land Use Compatibility Overlay Zone (ALUCOZ)) limits development and land use, in airport influence areas consistent with applicable Airport Land Use Compatibility Plans (ALUCP) and MCAS Miramar Airport Installations Compatible Use Zones (AICUZ). Mobile food truck operations are not explicitly regulated by the ALUCOZ, but nevertheless would effectively be limited by the City in all safety zones and noise exposure ranges, including MCAS Miramar Accident Potential Zones I and II. Where permitted by the underlying base zone, mobile food trucks will be permitted in the ALUCOZ within aircraft noise exposure ranges up to 75dB, and permitted within the following safety zones subject to

maximum people per acre limitations: Accident Potential Zone I, Accident Potential Zone II, and Transition Zone; and Zones 2, 3, 4, 5, and 6.

The MCAS Miramar ALUCP allows a variety of low intensity commercial and industrial uses in the Accident Potential Zone (APZ I) up to a maximum intensity of 25 people per acre. SDMC Section 131.0110 provides for the City to classify the use for the purpose of zoning using the most similar use category in terms of intensity and function. The closest use category for mobile vending via a food truck is “pushcarts,” which involves mobile vending from a facility without a motor. All mobile vending (including pushcarts and mobile food trucks) in APZ I must comply with the 25 people per acre standard for low intensity development consistent with the adopted Miramar ALUCP and AICUZ.

The availability of mobile food truck sales is an amenity for the employees of the existing businesses, which are located within an area identified by the City’s General Plan as Prime Industrial Lands, and in an area without restaurants due to Miramar ALUCP and AICUZ restrictions. As further limited by existing ALUCOZ, mobile food truck operations would not be permitted to increase the overall site intensity beyond 25 people per acre in APZ I. Food trucks therefore do not increase the safety risk to the public because they do not increase the number of people at a site beyond what is already allowed.

This narrow allowance for use of food trucks in APZ I will benefit the public as a whole by reducing potential vehicular traffic (average daily trips) at the site by removing the need for employees to drive to get food, a reduction that accords with adopted General Plan and Mira Mesa community plan policies. This type of mobile food truck activity within APZ I will function similarly to other accessory commercial activities already permitted by right including catering services by food trucks, coffee carts, food delivery services to individual employees, and non-food mail and product delivery. The ordinance is consistent with ALUCP, Miramar AICUZ, and ALUCOZ requirements intended to protect the public health, safety, and welfare.

2. The proposed ordinance will minimize the public’s exposure to excessive noise and safety hazards to the extent feasible.

The mobile food truck ordinance will minimize the public’s exposure to excessive noise and safety hazards to the extent feasible. No permanent development is associated with the operation of a mobile food truck. Furthermore, the ordinance limits mobile food truck operations in airport influence areas consistent with noise and safety standards in the ALUCPs, MCAS Miramar AICUZ, and the City’s ALUCOZ. Within ALUCOZ safety zones, mobile food truck operations are limited to functioning as a low intensity outdoor retail activity in accordance with safety zone limits of 25 people per acre. Where mobile food trucks are permitted by the underlying base zone, they will be permitted in the ALUCOZ overlay zone within aircraft noise exposure ranges

up to 75dB, and permitted within the following safety zones subject to ALUC adopted safety limitations: MCAS Miramar Accident Potential Zone I, Accident Potential Zone II, and Transition Zone; and urban airport (Brown Field and Montgomery Field) Zones 2, 3, 4, 5, and 6; and San Diego International Airport zones 2, 3, 4, and 5. For example, in the APZ I safety zone, a 25 people per acre limit applies to activity on the site as a whole, which means that only mobile food trucks serving existing occupants of the site would likely comply. Food trucks therefore do not increase the safety risk to the public because they do not increase the number of people at a site beyond what is already allowed. Similar accessory commercial activities have already been accepted by the ALUC as compatible with airport operations and APZ I (i.e. delivery of food and non-food products, food truck catering service, coffee carts, and hot dog carts). While mobile food trucks in other parts of the City may operate in a manner that attracts large groups of customers from off-site locations, that type of mobile food truck operation would exceed the safety zone site intensity limits of APZ I. Such large-scale operation would violate the SDMC and be subject to penalties and enforcement:

3. The proposed ordinance will meet the purpose and intent of the California Public Utilities Code section 21670.

The purpose and intent of the California Public Utilities Code section 21670 is to “provide for the orderly development of each public use airport in the state and the area surrounding these airports so as to promote the overall goals and objectives of the California airport noise standards adopted pursuant to Section 21669 and to prevent the creation of new noise and safety problems.” In addition, the purpose and intent of the section is also “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 noise and safety hazards within areas located around public airports to the extent that these areas are not already devoted to incompatible uses.”

The mobile food truck ordinance and resulting mobile food truck activity does not involve any permanent development and will not impact development or expansion of the MCAS Miramar airport. The mobile food truck ordinance will not impact airport operations. All mobile food truck operations must be self contained within the food truck. The ordinance must comply with airport related limitations in ALUCOZ that ensure that the site intensity within airport influence areas complies with ALUCPs, the MCAS Miramar AICUZ, and the City’s ALUCOZ. The ALUCOZ requires that commercial activity in APZ I, including mobile food trucks, must comply with the existing and ALUC-approved APZ I standard of 25 people per acre to ensure that the concentration of people on the site remains low intensity. Any food truck activity in APZ I that would cause a site’s intensity to exceed 25 people per acre would constitute a violation of the SDMC. Therefore, through compliance with the land use measures described in this section and for the reasons described in findings 1 and 2 above, the ordinance does not

increase the intensity of use on the site beyond what is currently permitted; prevents new noise and safety problems; provides for the orderly development of airports and the area surrounding them, including MCAS Miramar; protects 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 located around them, including MCAS Miramar.

APPROVED: JAN I. GOLDSMITH, City Attorney

By Inga B. Lintvedt
Inga B. Lintvedt
Deputy City Attorney

IBL: mm
9/2/2014
Or. Dept: DSD
Doc. No. 853512_3

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of SEP 15 2014.

ELIZABETH S. MALAND

City Clerk

By Janette J. Dantz
Deputy City Clerk

Approved: 9/15/14

Kevin L. Faulconer

KEVIN L. FAULCONER, Mayor

Vetoed: _____

KEVIN L. FAULCONER, Mayor

Passed by the Council of The City of San Diego on SEP 15 2014, by the following vote:

| Councilmembers | Yeas | Nays | Not Present | Recused |
|-----------------|-------------------------------------|-------------------------------------|-------------------------------------|--------------------------|
| Sherri Lightner | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Ed Harris | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Todd Gloria | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Myrtle Cole | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Mark Kersey | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Lorie Zapf | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Scott Sherman | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| David Alvarez | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Marti Emerald | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Date of final passage SEP 15 2014.

(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

(Seal)

By *Janette J. Park*, Deputy

Office of the City Clerk, San Diego, California

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