

RESOLUTION NUMBER R- 310371

DATE OF FINAL PASSAGE APR 19 2016

A RESOLUTION OF THE COUNCIL OF THE CITY OF  
SAN DIEGO OVERRULING THE SAN DIEGO  
INTERNATIONAL AIRPORT LAND USE COMMISSION  
WITH RESPECT TO THE 1909 INDIA STREET PROJECT.

WHEREAS, Arsalun Tafazoli, on behalf of Late Mornings, Inc., a California corporation dba "Born & Raised," (Permittee), and Dino Cresci, on behalf of Mary J. Giolzetti Trust dated 11/17/92; Giolzetti 1987 Family Trust Dated 11/12/87 Exemption Trust; Cresci Family Trust dated 9/26/94 / Dino Cresci, (Owner), filed an application on November 20, 2015 to request an overrule of the determination of inconsistency by the San Diego International Airport Land Use Commission (ALUC) for Born & Raised, a proposed eating and drinking establishment located at 1909 India Street, San Diego, California 92101 (Project); and

WHEREAS, the property is legally described as: Lot 6, Block 43, Middletown, according to Map thereof No. CC1-1874, recorded in the Office of the County Recorder for San Diego County, on January 3, 1986, located within the Little Italy neighborhood of the Downtown Community Plan (DCP) area and the Centre City Planned District; and

WHEREAS, the project site is located on a 5,000 square foot premises located at the northeast corner of India Street and Fir Street in the Neighborhood Mixed-Use Center land use district and the Fine Grain, Little Italy Sun Access, and Main Street overlays of the Centre City Planned District. The project site is also located within Airport Review Area 1, Safety Zone 3 Southeast – Little Italy, and the 60 to 65 Decibel (dB) Community Noise Equivalent Level (CNEL) Noise Contour of the San Diego International Airport Land Use Compatibility Plan (ALUCP); and

WHEREAS, at its meeting on October 10, 2015, the San Diego County Regional Airport Authority, acting in its capacity as the ALUC, reviewed the Project and determined it inconsistent with the ALUCP because it exceeds the ALUCP's allowable intensity factor for nonresidential uses in the area in which it is located, Safety Zone 3 Southeast – Little Italy; and

WHEREAS, California Public Utilities Code (CPUC) section 21676.5(a) grants the City Council the authority to overrule a determination of inconsistency from the ALUC; and

WHEREAS, this activity is covered under the Final Environmental Impact Report (FEIR) for the San Diego DCP, Centre City Planned District Ordinance (CCPDO), and 10<sup>th</sup> Amendment to the Centre City Redevelopment Plan, certified by the former Redevelopment Agency (“Former Agency”) and the City Council on March 14, 2006 (Resolutions R-04001 and R-301265, respectively) and subsequent addenda to the FEIR certified by the Former Agency on August 3, 2007 (Former Agency Resolution R-04193), April 21, 2010 (Former Agency Resolution R-04510), and August 3, 2010 (Former Agency Resolution R-04544), and certified by the City Council on February 12, 2014 (City Council Resolution R-308724) and July 14, 2014 (City Council Resolution R-309115). The FEIR is a “Program EIR” prepared in compliance with California Environmental Quality Act (CEQA) Guidelines Section 15168. The project is within the scope of the development program described in the FEIR; therefore, no further environmental documentation is required under CEQA; and

WHEREAS, on March 1, 2016, following the procedures set forth in the CPUC, the City Council declared its proposal to overrule the determination on this matter by City Council Resolution No. R-310285; and

WHEREAS, following the procedures set forth in the CPUC, a copy of the proposed decision and findings were provided to the appropriate parties and, by way of correspondence

dated March 15, 2016, the California Department of Transportation, Division of Aeronautics, provided comments that the proposed findings are insufficient to warrant the overrule, which correspondence is incorporated herein by reference; and

WHEREAS, the matter was set for public hearing on April 19, 2016, testimony having been heard, evidence having been submitted, and the City Council having fully considered the matter and being fully advised concerning the same; and

WHEREAS, under Charter section 280(a)(2), this resolution is not subject to veto by the Mayor because this matter requires the City Council to act as quasi-judicial body and where a public hearing was required by law implicating due process rights of individuals affected by the decision and where the Council was required by law to consider evidence at the hearing and to make legal findings based on the evidence present; and

WHEREAS, pursuant to the CPUC, a two-thirds vote of the Council is required for passage of this resolution; NOW, THEREFORE,

BE IT RESOLVED, that the City Council overrules the ALUC, finding that the Project is consistent with the purposes of CPUC section 21670, based on the information stated within this resolution and contained in the record of proceedings for the Project; specifically, that the Project is consistent with the purpose 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 around public airports to the extent that these areas are not already devoted to incompatible uses.

BE IT FURTHER RESOLVED, that the City Council determines that the Project is protective of public health, safety, and welfare.

The Project is a permitted use that is consistent with the Neighborhood Mixed-Use land use district of the CCPDO and compatible with similar uses in the area. It is also consistent with the goals and vision of the DCP for the Little Italy neighborhood. The Project exhibits a land use and human intensity similar to other properties in the immediate neighborhood, including other restaurants and properties occupied by similar human intensities. Considering the consistency and compatibility of the Project with applicable land use plans and similar uses in the neighborhood, including those with similar human intensities, permitting the Project to locate in an area already devoted to similar land uses meets the intent of CPUC section 21670. No elements of the Project contribute to an increased risk or hazard to the public as compared to numerous properties with similar human intensities in the immediate neighborhood.

Further, the Project is located at the southern edge of the ALUCP's outermost safety zone, Safety Zone 3 Southeast – Little Italy: its distance from the aircraft approach path minimizes exposure to safety hazards associated with the airport. In fact, the Project site is partly outside the safety zone boundary. Properties outside the ALUCP safety zones are not subject to the density and intensity thresholds. This Project poses less of a risk than if it were located wholly within a safety zone or if it were closer to the approach path of aircraft.

The ALUC recognizes that high intensity service uses are conditionally compatible with airport uses. The ALUC's inconsistency finding was based on the occupant load of the proposed restaurant, not the land use itself. The ALUCP recognizes that this land use is a significant distance from the approach path to the airport runway and there are very few instances of aircraft overflight this far south. The ALUC determined that the Project is located outside the San Diego International Airport threshold siting surface height restrictions and is in compliance with the ALUCP airspace protection surfaces.

The Project will activate a vacant building located in an active urban environment, which would improve public safety and the welfare of the community.

BE IT FURTHER RESOLVED, that the City Council determines that the Project does not interfere with the orderly expansion of airports and that it implements land use measures that minimize the public's exposure to excessive noise and safety hazards.

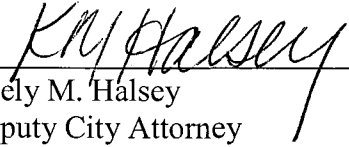
This Project will not have an adverse effect on airport expansion because it will have a minimal impact on the existing neighborhood and complies with applicable land use measures. The proposed development will minimize the public's exposure to excessive noise by implementing required design features into the design of the Project. While the first level of the proposed restaurant will be fully indoors, the second level will include a rooftop outdoor dining area. This outdoor area will incorporate measures to both contain and deflect noise from patrons, to minimize the public's exposure to excessive noise and also minimize noise from aircraft. These design elements include the covering structure on the roof and specialized sound walls on the north perimeter wall that will help contain and deflect noise. As recognized by the ALUC, the Project does not involve any residential use subject to overflight notification requirements. In addition, the Project is located within the 60 to 65 dB CNEL noise contour of the ALUCP, which deems high intensity service uses, such as restaurants, compatible. The Project will not be exposed to any additional noise beyond what already exists in the neighborhood. The Project is consistent with the goals, policies, and regulations identified in the applicable land use plans, the DCP, and CCPDO.

Further, the Project's location on the edge of – and partly outside – the boundary of Safety Zone 3 Southeast – Little Italy is evidence of its significant distance from the approach path of aircraft: its location minimizes its exposure to safety hazards. In addition, the building

itself is lower in height than adjacent buildings and therefore substantially shielded by existing structures and natural terrain, which would not increase its exposure to safety hazards. The ALUC recognized that, as such, the Project cannot reasonably have an adverse effect on air navigation.

BE IT FURTHER RESOLVED, that, based on the findings hereinbefore adopted by the City Council, the City Council overrules the determination of inconsistency by the San Diego International Airport Land Use Commission.

APPROVED: JAN I. GOLDSMITH, City Attorney

By   
Keely M. Halsey  
Deputy City Attorney

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04/04/2016  
04/29/2016 Cor.Copy  
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Passed by the Council of The City of San Diego on APR 19 2016, 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"/>
Lorie Zapf	<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"/>
Chris Cate	<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 type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Marti Emerald	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Date of final passage APR 19 2016

(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 Mary Teramoly, Deputy

Office of the City Clerk, San Diego, California  
Resolution Number R- 310371