

RESOLUTION NUMBER R- 312874

DATE OF FINAL PASSAGE MAR 09 2020

ITEM# 202 B  
3/9/20

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO DECLARING ITS PROPOSAL TO OVERRULE THE SAN DIEGO AIRPORT LAND USE COMMISSION'S DETERMINATION THAT THE PROPOSED 4th AVENUE APARTMENTS PROJECT IS INCONSISTENT WITH THE AIRPORT LAND USE COMPATIBILITY PLAN FOR THE SAN DIEGO INTERNATIONAL AIRPORT.

WHEREAS, Fourth and Laurel, a California limited partnership, Owner, and Richard Simis, Permittee, are proposing the construction of a 36-dwelling unit mixed-use development known as the 4th Avenue Apartments project (Project) on a vacant 0.23-acre property located at 2426 4th Avenue, between Laurel Street and Kalmia Street, within the Uptown Community Plan area and legally described as Lot "H" and "I" in Block 280 of Horton's Addition, in the City of San Diego, County of San Diego, State of California, According to Map thereof by LL. Lockling, Filed in the Office of the County Recorded of San Diego County; and

WHEREAS, the site is in the CC-3-9 Zone, Very High Fire Hazard Severity Overlay Zone, Community Plan Implementation Overlay Zone (CPIOZ-A), Residential Tandem Parking Overlay Zone, Transit Priority Area, Airport Influence Area for San Diego International Airport (SDIA) – Review Area 1, SDIA 60-65 Community Noise Equivalent Level (CNEL), SDIA Safety Zone 3 Northeast (3NE), Federal Aviation Administration (FAA) Part 77 Notification Area for SDIA and North Island Naval Air Station (NAS), the Airport Environs Overlay Zone (AEOZ), and the Airport Approach Overlay Zone (AAOZ) for SDIA; and

WHEREAS, the Project must be submitted to the San Diego County Regional Airport Authority (SDCRAA), serving as the Airport Land Use Commission (ALUC), for a consistency

determination with SDIA Airport Land Use Compatibility Plan (ALUCP) because of the Project's proposed density and location within SDIA-Review Area 1; and

WHEREAS, at its meeting on October 4, 2018, the SDCRAA, 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 mixed-use development with respect to residential density for the area in which it is located, Safety Zone 3 Northeast (3NE); 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 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) approved the overrule at a noticed public hearing; and

WHEREAS, San Diego Municipal Code (SDMC) 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, the matter was set for public hearing on March 9, 2020, 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 City 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 CPUC section 21676.5(a) and SDMC section 132.1555, a two-thirds vote of the City Council is required for passage of this resolution; NOW, THEREFORE,

BE IT RESOLVED that the City Council declares its proposal to overrule the ALUC, finding that the Project is consistent with the purposes of CPUC section 21670, and adopts these findings as set forth in SDMC section 132.1555:

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

The Project proposes a residential and commercial mixed-use development consisting of 36 dwelling units, including four very-low income dwelling units, and an approximately 1,174 square-foot retail suite, parking and associated site improvements, with five development incentives in accordance with the City's Affordable Housing Regulations. The Project is a permitted use that is consistent with the Uptown Community Plan's Community Commercial land use designation, which allows up to 109 dwelling units per acre as part of a mixed-use development, the underlying CC-3-9 Zone, and the City's Affordable Housing Regulations. The Project site is located within the Uptown Community Plan's Neighborhood Village, which promotes very-high residential densities along major commercial transit corridors and proposes a development intensity which is consistent with the average intensity of the existing office and commercial mixed-use developments in the immediate area.

The Project site is located approximately 0.9 miles from the San Diego International Airport (SDIA) in a highly urban area. Project is an infill development subject to the policies and criteria of the Airport Land Use Compatibility Plan (ALUCP) for SDIA. In 2014, the SDCRAA as the ALUC, adopted a comprehensive update to the ALUCP for SDIA. The ALUCP is intended to provide for the orderly development of the SDIA and the area surrounding the SDIA and protect public health, safety and welfare in areas around the SDIA.

For airspace protection, the ALUCP uses Threshold Sitting Surface (TSS) as the planning tool to limit building heights. The project site is outside of the TSS area and is therefore consistent with the ALUCP for airspace protection. The Project is also subject to the Federal Aviation Regulations (FAR), Part 77 which requires that projects submit application to the Federal Aviation Administration (FAA) to determine if the proposed buildings would be a hazard to air navigation. The City and the ALUCP also require that development projects obtain a "no hazard" to air navigation determination from the FAA. The Project received a determination of no hazard to air navigation from the FAA on July 18, 2017 and an extension of the determination on February 7, 2019. The proposed Project is consistent with the ALUCP for building height and has received a determination of no hazard from the FAA. Furthermore, the

Project has been reviewed pursuant to the California Environmental Quality Act, and the environmental analysis did not find any significant impacts to the public health and safety. Therefore, the proposed development will not be detrimental to the public health, safety, and welfare.

**2. The proposed development will minimize the public's exposure to excessive noise and safety hazards to the extent feasible.**

The Project will minimize the public's exposure to excessive noise and safety hazards to the extent feasible. The Project is located within the 60-65 decibel Community Noise Equivalent Level (dB CNEL) noise contour. The ALUCP for SDIA identifies commercial uses located within the 60-65 dB CNEL noise contour as compatible with airport uses, and identifies residential uses located within the 60-65 dB CNEL noise contour as conditionally compatible with airport uses, provided that the residences are sound attenuated to 45 dB CNEL interior noise level. The ALUCP for SDIA contains policies to ensure that noise attenuation is required to ensure an interior noise level of 45 dB CNEL for developments exposed to exterior aircraft noise levels 60 dB CNEL or greater. An acoustical report prepared for the Project evaluated traffic levels on Fourth Avenue and aircraft noise associated with the San Diego International Airport in relation to the proposed Project. The acoustical report indicates that the building face of the proposed Project would be exposed to a traffic noise level of 65.0 dB CNEL and that ultimate noise level from aircraft are estimated at 62 dB CNEL. The result is a combined noise level of 67 dB CNEL.

According to Table NE-3 of the General Plan, proposed projects having a noise level of 65-70 dB CNEL are "conditionally compatible" and must be capable of attenuating exterior noise to an indoor level of 45 dB CNEL. Based on calculations performed as part of the noise study, a minimum noise reduction of 22 dB would be achieved through provision of mechanical ventilation and acoustical treatments. Therefore, the proposed Project would meet the dB 45 CNEL interior noise level. The proposed Project will also be providing an avigation easement regarding the overflight of aircraft to the San Diego County Regional Airport Authority as a condition of approval as required by the Noise Element of the General Plan, and the ALUCP for SDIA.

**3. The proposed development 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 proposed Project received a “no hazard” to air navigation determination from the FAA and is outside of Threshold Siting Surface used by the ALUCP for SDIA to limit building heights and protect airspace within the runway approach area; and therefore, the proposed development would not impact existing or an expansion of future airport operations.

An acoustical report prepared for the Project evaluated traffic levels on Fourth Avenue and aircraft noise associated with the San Diego International Airport in relation to the proposed Project. The acoustical report indicates that the building face of the proposed Project would be exposed to a traffic noise level of 65.0 dB CNEL and that ultimate noise level from aircraft are estimated at 62 dB CNEL. The result is a combined noise level of 67 dB CNEL. Based on calculations performed as part of the noise study, a minimum noise reduction of 22 dB would be achieved through provision of mechanical ventilation and acoustical treatments. The Project would have an interior noise level that would not exceed 45 dB CNEL for habitable areas consistent with the ALUCP for SDIA; and therefore, the proposed development would not expose the people living or working in the building to excessive noise hazards.

The proposed Project site is in a neighborhood with existing higher density multifamily and commercial uses. The proposed residential commercial mixed-use project is consistent with the adopted community plan land use. The ALUCP for SDIA identifies residential and commercial uses as compatible uses for the site of the proposed Project; and therefore, the Project uses are consistent with the ALUCP for SDIA.

The ALUCP for SDIA limits density and intensity for proposed uses by safety zone and neighborhood based on the average existing development intensity and density. Residential uses are measured by dwelling units per acre and commercial uses are measured by people per acre. For mixed-use development, the ALUCP allows for residential density to be converted to intensity measured by people per acre, based on a people per household factor in the ALUCP, which is then added to the commercial intensity for the total intensity. A maximum of 50 percent of the maximum site intensity may be applied for residential uses, and the Project exceeds that threshold.

The Project is located in the Uptown Safety Zone 3NE. The overall ALUCP people per acre intensity for that zone location is 278 people per acre, which equates to 64 people for the 0.23-acre site. The residential portion of this Project cannot exceed 50 percent, which is 32 people ( $64/2$ ). The maximum compatible number of units would be 22, using the ALUCP factor of 1.48 people per household ( $32/1.48$ ).

The other 32 people that comprise the nonresidential half of the mixed-use project is multiplied by the occupancy factor in the ALUCP to determine the maximum compatible commercial use. Retail sales has an occupancy factor of 170 square feet per person, which yields a total maximum area of 5,440 square feet as compatible with the ALUCP ( $32 \times 170 = 5,440$ ). The nonresidential component of the Project, consisting of an approximately 1,174 square-foot retail suite, is significantly below the compatibility threshold. The Project would have a total intensity of 60 people (53 residents and 7 retail space occupants) which does not exceed the 64 people ALUCP limitation for the site.

California Public Utilities Code section 21670 directs Caltrans to prepare an Airport Land Use Planning Handbook (Handbook) to provide guidance to local ALUCs when preparing an ALUCP. Within high density areas with high-rise and mid-rise buildings, the Handbook allows for infill development at the average density and intensity of existing uses. The Project's proposed land use intensity is consistent with the existing average intensity for the high density residential and commercial mixed-use developments in the immediate area as shown in the following table. The existing office and mixed-use higher intensity developments shown in the table have an average of 351 people per acre. The Project would have an intensity of 261 people per acre; and therefore, the Project is consistent with the Handbook and CPUC section 21670.

<b>Comparison between Existing Development and the Project</b>							
<b>Name</b>	<b>Address</b>	<b>Lot Size</b>	<b>Stories</b>	<b>Use</b>	<b>Non-Res Floor Area</b>	<b>Units</b>	<b>People per Acre</b>
5 <sup>th</sup> & Laurel Financial Centre	2550 5 <sup>th</sup> Ave	1.38 Acres	18	Office	160,000	0	539
5 <sup>th</sup> & Laurel Corporate Center	2445 5 <sup>th</sup> Ave	0.36 Acres	6	Office	40,000	0	517
Imperial Towner Apartments	2399 5 <sup>th</sup> Ave	0.46 Acres	14	Mixed-Use	13,000	89	420
4 <sup>th</sup> Avenue Apartments	2455 4 <sup>th</sup> Ave	0.23	6	Mixed-Use	1,174	36	261
2400 6 <sup>th</sup> Apartments	2400 6 <sup>th</sup> Ave	0.35 Acres	11	Multi-Family	0	60	254
Laurel Bay	2400 5 <sup>th</sup> Ave	1.38 Acres	5	Mixed-Use	18,000	150	238
Park Laurel	2515 5 <sup>th</sup> Ave	1.34 Acres	14	Mixed-Use	10,000	94	139

The restriction of residential development based on a people per household factor and the 50 percent maximum site intensity that is applied to residential use for a mixed-use development per the ALUCP results in under-utilization of land and the inability of the Project to maximize density at a location along a major commercial transit corridor intended for high residential density. Furthermore, the Project's proposed land use intensity is consistent with existing high intensity office, residential, and commercial mixed-use developments in the immediate area. Based on the above, and considering the consistency and compatibility of the Project with the land use designation per the Uptown Community Plan, and the City's Affordable Housing regulations, the Project's intensity below the 64 people ALUCP limitation for the site, and below the average existing intensity of the high intensity development in the immediate area, and the Project's location in a highly urban area already devoted to similar land uses meets, the Project meets the intent of CPUC section 21670.

BE IT FURTHER RESOLVED, that based on the findings hereinbefore adopted by the City Council, the City Council proposes to overrule the determination of inconsistency by San Diego County Regional Airport Authority, acting as the Airport Land Use Commission for the San Diego County.

BE IT FURTHER RESOLVED, that staff is directed to send the Notice of Proposed Final Decision to Overrule to the ALUC, Caltrans Division of Aeronautics, and SDCRAA as the Airport Operator.

APPROVED: MARA W. ELLIOTT, City Attorney

By   
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Corrine L. Neuffer  
Deputy City Attorney

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02/19/2020  
Or.Dept:DSD  
Doc. No.: 2332205

Passed by the Council of The City of San Diego on MAR 09 2020, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Ward	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery	<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"/>
Vivian Moreno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Georgette Gómez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage MAR 09 2020.

**(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.

(Seal)

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

By , Deputy

Office of the City Clerk, San Diego, California

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