

RESOLUTION NUMBER R- 315771

DATE OF FINAL PASSAGE SEP 17 2024

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO ADOPTING THE FINAL DECISION TO OVERRULE THE SAN DIEGO AIRPORT LAND USE COMMISSION'S DETERMINATION THAT THE PROJECT PROPOSED AT 2345 KETTNER BOULEVARD IS INCONSISTENT WITH THE AIRPORT LAND USE COMPATIBILITY PLAN FOR THE SAN DIEGO INTERNATIONAL AIRPORT.

RECITALS

The Council of the City of San Diego (Council) adopts this Resolution based on the following:

A. Inside Voice Ventures, LLC, Owner/Permittee, proposes a hotel with 60 guestrooms and supporting offices totaling 24,238 square feet, a wellness center of 6,721 square feet with a locker room of 1,694 square feet, offices totaling 5,300 square feet, two restaurants totaling 6,831 square feet, and a rooftop garden and underground parking for a total of 43,090 square feet for the site located at 2345 Kettner Boulevard, and legally described as Lot 3 In Block 66 of Middletown, in the City Of San Diego, County Of San Diego, State Of California, According to Partition Map thereof made by J.E. Jackson, on file in the Office of the County Clerk; 2311 Kettner Boulevard, and legally described as Lot 6 In Block 66 of Middletown, in the City of San Diego, County of San Diego, State Of California, According to Partition Map made by J.E. Jackson, filed in the Office of the County Recorder of said San Diego County, October 19, 1874.; 2321 Kettner Boulevard, and legally described as Lot 5 In Block 66 of Middletown, in the City of San Diego, County of San Diego, State of California, According to the Map thereof made by J. E. Jackson on file In the Office of the Clerk of said County; 2327 Kettner Boulevard, and legally described as Lot 4 In Block 66 of Middletown, in the City of San Diego, County of San Diego, State of California, According to the Map therefore

made By J. E. Jackson on file in the Office of the Clerk of said County; and 2328 India Street, and legally described as Lot 10 In Block 66 of Middletown, in the City Of San Diego, County of San Diego, State of California, According to the Map thereof made By J. E. Jackson on File in the Office of the Clerk of said County, in the Downtown Community Plan area, in the CCPD-MC (Mixed Commercial) land use district.

B. On December 15, 2023, the Airport Land Use Commission (ALUC) Determination Application was submitted to the San Diego County Regional Airport Authority (SDCRAA), serving as the ALUC, for a determination of consistency with the Airport Land Use Compatibility Plan (ALUCP) because the proposed use deviates from intensity thresholds for uses identified as “limited” within the Safety Zone 2E Centre City - Little Italy of the Airport Land Use Compatibility Plan.

C. On January 5, 2024, the SDCRAA, acting in its capacity as the ALUC, reviewed the ALUC Determination Application and determined it is not consistent with the ALUCP because it exceeds the ALUCP’s allowable intensity for Visitor Accommodation use, specifically the limitation of having no more than 56 rooms/acre and cannot have other uses unless the use is ancillary.

D. California Public Utilities Code (Public Utilities Code) section 21676.5(a) grants the 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) approve the overrule at a noticed public hearing.

E. San Diego Municipal Code (Municipal Code) section 132.1555 requires that for the Council to overrule a determination of inconsistency, it must adopt not only the proposed findings regarding purpose and intent outlined 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.

F. An application was filed with the City of San Diego for a Site Development Permit to request the Council propose a decision to overrule the determination of inconsistency with the San Diego International Airport (SDIA) Land Use Compatibility Plan by the SDCRAA, acting as the ALUC for SDIA, to allow a land use deviation from the maximum land use intensity limit (Overrule).

G. City staff determined the proposed use and intensity exceed the maximum intensity established by the ALUCP for a Visitor Accommodation use, and a Council overrule of this inconsistency determination is required pursuant to Municipal Code section 132.1555.

H. The Overrule requires a Site Development Permit for the Council to overrule the determination of inconsistency within Safety Zone 2E of the ALUCP in accordance with Municipal Code sections 132.1520(e) and 132.1520(c)(2).

I. Any decision to overrule a determination of consistency requires two hearings pursuant to Public Utilities Code section 21676.5(a). The first hearing shall be a proposed decision whether to overrule and the second hearing shall be a final decision whether to overrule.

J. On July 16, 2024, pursuant to the California Public Utilities (CPUC) and the Municipal Code, the Council voted 9-0 to propose to overrule the SDCRAA's determination of inconsistency and direct staff to send the Notice of Proposed Decision to Overrule to ALUC, Caltrans Division of Aeronautics, and SDCRAA as the Airport Operator (Council Resolution R-315687).

K. Following the procedures set forth in the CPUC and Municipal Code, a copy of the proposed decision and findings were provided to the ALUC, the SDCRAA as the airport operator, and the California Department of Transportation, Division of Aeronautics, and any comments received have been included in the final record, and the California Department of Transportation provided comments and expressed that the findings and the methodology for compatibility standards are insufficient to warrant the Overrule which has been included in the final record.

L. Pursuant to Public Utilities Code section 21676.5(a) and Municipal Code section 132.1555(f), a two-thirds vote of the Council is required to pass this Resolution.

M. The Office of the City Attorney has drafted this Resolution based on the information provided by City staff, including information provided by affected third parties and verified by City staff, with the understanding that this information is complete, true, and accurate.

N. Under San Diego Charter section 280(a)(2), this Resolution is not subject to veto by the Mayor because this matter requires the Council to act as a 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 presented.

ACTION ITEMS

Based on the Recitals set forth above, the Council resolves as follows:

1. The Council of the City of San Diego Overrules the ALUC, finding that the project is consistent with the purpose and intent of Public Utilities Code section 21670, and adopts these findings as outlined in Municipal Code section 132.1555:

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

The Overrule to allow a land use deviation from the maximum land use intensity limit pertains to the Visitor Accommodations use category of the Airport Land Use Compatibility Overlay Zone (ALUCOZ). Visitor Accommodations within Safety Zone 2E in the Airport Land Use Compatibility Plan are conditionally compatible provided certain regulations are met such as limiting Visitor Accommodations to no more than 56 rooms per acre and prohibiting other uses unless ancillary to the hotel use. Ancillary uses are defined in the ALUCP Policy S.9 as uses primarily intended for use by the employees and occupants of a land use project and cumulatively occupy no more than 10 percent of the total floor area of a building. Accordingly, the 24,754-SF (0.57 acre) subject site allows for a maximum of 32 hotel guest rooms. The Overrule raises the maximum land use intensity limit from 32 hotel guest rooms to 60 hotel guest rooms, increases the allowable ancillary use area from 10% to 15.6% of the total gross floor area of the building, and allows other non-ancillary uses for the site as shown in Table 1 below. The ancillary uses include hotel amenities such as spa, massage, and gym. The Overrule raises the maximum land use intensity limit, increases the ancillary use area, and allows other uses (restaurant and office) identified in Table 1 below for the subject site. This action is necessary for a development project to move forward at the subject site. Future development of the site will require all necessary permits to allow for construction.

	Maximum Allowed	Proposed	Difference
Hotel Guest Rooms	32 Rooms	60 rooms	+28 rooms
Ancillary Uses ²	10% (4,309 SF)	15.6% (6,721 SF)	+5.6% (2,412 SF)
Other Uses	Not allowed	Restaurants and Offices	+ Restaurants and Offices

¹ For visitor accommodations, no more than 56 rooms per acre, no conference facilities, and no other uses unless ancillary.

² Ancillary uses are primarily intended for use by the employees/residents/occupants of a land use project and cumulatively occupy no more than 10 percent of the total floor area per Airport Land Use Compatibility Plan – Policy S.9.

The applicant submitted an application narrative and supporting diagrams included with the staff report as Attachments 4 and 5. In the submitted documents, they describe the Overrule as compatible with the land use intensity of the surrounding existing uses. The California Airport Land Use Planning Handbook measures and compares compatibility of land use types using intensity (the number of people per acre) and defines compatibility as “uses that can coexist with a nearby airport without either constraining the safe and efficient operation of the airport or exposing people living or working nearby to unacceptable levels of noise or (safety) hazards.” The applicant surveyed similar uses and occupancy levels (people per square-foot) within a two-block radius of the subject site to compare the proposed land use intensity for the site to existing surrounding sites, as shown on the drawings (Sheet AP051, Attachment 5). Based upon the survey, the applicant determined that the average occupancy level of the blocks surrounding the subject site is 309 people per acre.

Pursuant to Section 132.1515(h) of the ALUCOZ, hotel uses cannot contain other uses unless they are ancillary to the hotel use. The Overrule will allow visitor accommodations use with non-ancillary uses. In this case, the land use intensity is calculated as a mix of two or more nonresidential uses, per Section 132.1515(c)(3)(B)(iv). The number of people in a building can be calculated by dividing the total floor area of a proposed use by the minimum square feet per occupant (occupancy factor) requirement listed in Table 132-15J of Section 132.1515. The maximum occupancy can then be divided by the size of the parcel in acres to determine the people per acre (intensity).

As shown in Table 2 below, a 60-hotel room within a 20,196-square-foot area with an occupancy factor of 200 square feet per person equates to 100 people per acre. A wellness center within a 2,412-square-foot area (5.6% over the required 10% of a building area) with an occupancy factor of 215 square feet per person equates to 11 people per acre. A restaurant within a 6,831-square-foot area with an occupancy factor of 60 square feet per person equates to 114 people per acre. Lastly, an office use within a 5,300-square-foot area with an occupancy factor of 215 square feet per person equates to 25 people per acre. Thus, the overrule will allow for an average land use intensity of 438 people per acre for the subject site.

Table 2 – Occupancy Load

	Occupancy Factor	Proposed Uses (SF)	Proposed Occupants (people per acre)
Hotel Guest Rooms	200 SF/person	20,196 SF	100
Ancillary Uses	215 SF/person (Wellness)	6,721 SF	11 ¹
Other Uses	60 SF/person (restaurant) 215 SF/person (office)	6,831 SF (restaurant) 5,300 SF (office)	114 25
Auxiliary Back of House	0	4,042 SF	0
Total Occupancy		43,090 SF	250
Site Area		24,754 SF (0.57 acre)	
Total Occupancy Level for Site			438 ²

¹ Based on the 2,412 SF beyond the 10% ancillary use limitation per Footnote 5 to Table 142-15I of Sec. 132.1515(h). 4,309 SF of ancillary use is permitted by right.

² Total occupancy for the site is derived from 250 people / acre divided by 0.57 acre.

Given the intensity for each use in Section 132.1515(h), the Overrule will allow for an average land use intensity of 438 people per acre for the subject site; however, as the applicant's survey concluded, the average intensity for the block (includes the subject site and abutting existing properties) would be 270 people per acre (Sheet AP052, Attachment 5), which is 39 people per acre less than the average occupancy level of the blocks surrounding the subject site (309 people per acre). The number of people in the subject site is lower than the average intensity of neighboring blocks, thus minimizing non-residential intensity and activities that attract people in the location and the risk resulting in the Overrule is no greater than that currently exist within the vicinity of the airport; therefore, it is not detrimental to the public health, safety, or welfare of the community.

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

The Overrule to allow a land use deviation from the maximum land use intensity limit pertains to the Visitor Accommodations use category of the ALUCOZ. The Overrule raises the maximum land use intensity limit, increase the ancillary use area, and allows other uses for the subject site. The Overrule raises the maximum land use intensity limit, increases the ancillary use area, and allows other uses (restaurant and office) for the subject site. This action is necessary for a development project to move forward at the subject site. Future development of the site will require all necessary permits to allow for construction.

Given the intensity for each use in Section 132.1515(h), the Overrule will allow for an average land use intensity of 438 people per acre for the subject site; however, as the applicant's survey concluded, the average intensity for the block (includes the subject site and abutting existing properties) would be 270 people per acre (Sheet AP052, Attachment 5), which is 39 people per acre less than the average occupancy level of the blocks surrounding the subject site (309 people per acre). The number of people in the subject site is lower than the average intensity of neighboring blocks, thus minimizing non-residential intensity and activities that attract people in the location and the risk resulting in the Overrule is no greater than that currently exist within the vicinity of the airports.

The subject site is within the 75+ decibel Community Noise Equivalent Level (dB CNEL) noise exposure contour. The ALUCP identifies Visitor Accommodation, Office and Eating & Drinking Establishment uses located within the 75+ dB CNEL noise contour as conditionally compatible with airport uses, provided that sleeping rooms are sound attenuated to 45 dB CNEL interior noise level and other indoor areas are attenuated to 50 dB CNEL interior noise level. Any construction permit must adhere to Noise Compatibility requirement pursuant to Section 132.1510 such as providing noise attenuation via the use of STC rated windows and doors to achieve a 45 db CNEL interior noise level within sleeping rooms and 50 dB CNEL noise level within other interior areas. The ALUC consistency determination acknowledges the location of the site in the 75+ dB CNEL noise exposure but does not state an inconsistency or objection based upon noise.

The subject site is within the Review Area 1. Within each airport influence area, an airspace protection area is designated to protect navigable airspace and to avoid creation of hazards to aircraft in flight in accordance with Code of Federal Regulations, Title 14, Part 77 (Federal Aviation Regulations Part 77). Any construction permit must adhere to the Airspace Protection Compatibility requirement pursuant to Section 132.1520 such as obtaining a Determination of no Hazard to Air Navigation from the Federal Aviation Administration and an avigation easement for airspace to be recorded with the County Recorder. The ALUC consistency determination stated that the project would be compatible with the ALCUP airspace protection surfaces provided that the structure is marked and lighted in accordance with a Determination of no Hazard to Air Navigation from the

Federal Aviation Administration and an aviation easement for airspace to be recorded with the County Recorder. As such, the proposed development will minimize the public's exposure to excessive noise and safety hazards to the extent feasible.

c. The proposed development will meet the purpose and intent of the California Public Utilities Code Section 21670.

The purpose of Section 21670 is to provide for the orderly development of each public use airport in this 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; and 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.

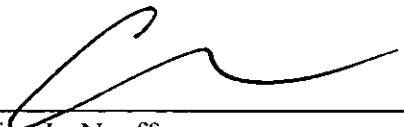
Given the intensity for each use in Section 132.1515(h), the Overrule will allow for an average land use intensity of 438 people per acre for the subject sites; however, as the applicant's survey concluded, the average intensity for the block would be 270 people per acre when the intensity of the subject site is added to the abutting existing properties on the same block (Sheet AP052, Attachment 5), which is 39 people per acre less than the average occupancy level of the blocks surrounding the subject site (309 people per acre). The number of people in the subject site is lower than the average intensity of neighboring blocks, thus minimizing non-residential intensity and activities that attract people in the location and the risk resulting in the Overrule is no greater than that currently exist within the vicinity of the airport; therefore, it is not detrimental to the public health, safety, or welfare of the community. In addition, any construction permit that initiates the utilization of this development permit must adhere to the Noise Compatibility and the Airspace Protection Compatibility requirements pursuant to Section 132.1510 and Section 132.1520. Thus, the ability for the orderly expansion of the San Diego International Airport will not be affected by the proposed land use intensity.

2. Based on the findings hereinbefore adopted by the Council, the Council overrules the determination of inconsistency by the San Diego County Regional Airport Authority, acting as the Airport Land Use Commission for San Diego County.

3. 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



Corrine L. Neuffer
Senior Chief Deputy City Attorney

CLN:jn:cm
August 27, 2024
Or.Dept.: Development Services Department
Doc. No. 3773921

I certify that the Council of the City of San Diego adopted this Resolution at a meeting held
on SEP 17 2024.

DIANA J.S. FUENTES
City Clerk

By 

Deputy City Clerk

Passed by the Council of The City of San Diego on SEP 17 2024, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Joe LaCava	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Stephen Whitburn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Henry L. Foster III	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marni von Wilpert	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kent Lee	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Raul A. Campillo	<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"/>
Sean Elo-Rivera	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage SEP 17 2024.

(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:

TODD GLORIA
Mayor of The City of San Diego, California.

(Seal)

DIANA J.S. FUENTES
City Clerk of The City of San Diego, California.

By , Deputy

Office of the City Clerk, San Diego, California
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