

**RESOLUTION NO. 2022-xx**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COSTA MESA TO OVERRULE THE ORANGE COUNTY AIRPORT LAND USE COMMISSION'S DETERMINATION THAT THE CITY OF COSTA MESA'S 2021-2029 SIXTH CYCLE HOUSING ELEMENT IS INCONSISTENT WITH THE JOHN WAYNE AIRPORT ENVIRONS LAND USE PLAN**

**THE CITY COUNCIL OF THE CITY OF COSTA MESA HEREBY FINDS AND DECLARES AS FOLLOWS:**

**WHEREAS**, California Government Code Section 65358(a) authorizes the City Council to amend the General Plan if it is deemed to be in the public interest;

**WHEREAS**, the General Plan is a long-range, comprehensive document that serves as a guide for the orderly development of the City of Costa Mesa;

**WHEREAS**, by its very nature, the General Plan is subject to update and revision to account for current and future community needs;

**WHEREAS**, the Housing Element is one of the seven State-mandated General Plan chapters or "elements" and is a component of the City of Costa Mesa 2015-2035 General Plan;

**WHEREAS**, California State Housing Element Law establishes the requirements for Housing Elements, and California Government Code Section 65588 requires that local governments review and revise the Housing Element of their comprehensive General Plans not less than once every eight years. Additionally, the California Legislature identifies overall housing goals for the State with the goal of ensuring every resident has access to housing and a suitable living environment;

**WHEREAS**, after the City of Costa Mesa completed extensive public outreach that included conducting two City-wide Townhall meetings on November 18, 2020 and September 2, 2021, hosting outreach meetings for each of the City's six voting districts on February 17, 2021 and February 18, 2021, a special study session with the Planning Commission was held on March 1, 2021 and with the City Council on March 23, 2021, and on April 27, 2021 and September 13, 2021, the City Council and Planning Commission held joint public study sessions;

**WHEREAS**, the Planning Commission reviewed and considered the 2021-2029 Sixth Cycle Housing Element at its regular meetings on November 8, 2021, November 22, 2021 and December 13, 2021 and, following consideration of public comments, recommended City Council approval by a 7-0 vote;

**WHEREAS**, the City Council of the City of Costa Mesa reviewed and considered the 2021-2029 Sixth Cycle Housing Element on January 18, 2022 and February 1, 2022, and following consideration of public comments, adopted the Housing Element by a 6-1 vote on February 1, 2022;

**WHEREAS**, the City Council of the City of Costa Mesa re-reviewed and considered edits to the 2021-2029 Sixth Cycle Housing Element based on HCD comments, and following consideration of public comments, adopted the Housing Element by a x-x vote on November 15, 2022;

**WHEREAS**, California Public Utilities Code Section 21676(b) requires the City of Costa Mesa to refer an amendment of the City's general plan or specific plan, or the adoption or approval of a zoning ordinance or building regulation within the planning boundary established by the Airport Land Use Commission (ALUC) pursuant to Section 21675 to the ALUC for their consideration.

**WHEREAS**, at a duly-noticed public hearing on March 17, 2022, the ALUC reviewed City of Costa Mesa's 2021-2029 Sixth Cycle Housing Element and found the proposed General Plan Housing Element Amendment to be inconsistent with the AELUP by a 4-0 vote;

**WHEREAS**, the City of Costa Mesa does not waive any objection to and/or right to challenge any failure by the ALUC or the Caltrans Division of Aeronautics to proceed in the manner required by law, including but not limited to, Public Utilities Code Sections 21670 through 21679.5, related to the above referenced March 17, 2022, finding of inconsistency.

**WHEREAS**, pursuant to Public Utilities Code Sections 21670 and 21676, the City of Costa Mesa may, after a public hearing, propose to overrule the ALUC by a two-thirds vote of the City Council, if the City of Costa Mesa makes specific findings that the proposed project is consistent with the purpose of Section 21670;

**WHEREAS**, at a duly-noticed public hearing on April 5, 2022, the Costa Mesa City Council took action to adopt Resolution No. 2022-19 that included specific findings that the 2021-2029 Sixth Cycle Housing Element is consistent with the purpose of the article stated in Section 21670 of the Public Utilities Code by a 6-0 vote;

**WHEREAS**, pursuant to Public Utilities Code Section 21676, on April 11, 2022, the City of Costa Mesa provided the ALUC and the Caltrans Division of Aeronautics the City's proposed decision to overrule the ALUC determination and specific findings that the 2021-2029 Sixth Cycle Housing Element is consistent with the purpose of the article stated in Section 21670;

**WHEREAS**, pursuant to Public Utilities Code Section 21676, the ALUC and the Caltrans Division of Aeronautics can and did provide comments regarding the City's proposed decision and findings to overrule the ALUC determination;

**WHEREAS**, pursuant to Public Utilities Code Section 21676, the ALUC and the Caltrans Division of Aeronautics comments regarding the City's proposed decision and findings to overrule the ALUC determination are advisory to the City, and the City must include these comments on the public record prior to a final decision to overrule the ALUC determination;

**WHEREAS**, the City has considered the ALUC and the Caltrans Division of Aeronautics comments regarding the City's proposed decision and findings to overrule the ALUC determination and these comments have been made as part of the public record of the City Council final decision to overrule the ALUC determination;

**NOW, THEREFORE**, the Costa Mesa City Council **DOES HEREBY RESOLVE** to overrule the Orange County Airport Land Use Commission Determination that the 2021-2029 Sixth Cycle Housing Element is inconsistent with the John Wayne Airport Environs Land Use Plan.

**BE IT FURTHER RESOLVED** that the City Council **DOES HEREBY MAKE** the findings that the 2021-2029 Sixth Cycle Housing Element is consistent with the purpose of the article stated in Section 21670 of the Public Utilities Code, as shown in Exhibit "A", FINDINGS.

**PASSED, APPROVED AND ADOPTED this 15<sup>th</sup> day of November, 2022.**

\_\_\_\_\_  
John Stephens, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Brenda Green, City Clerk

\_\_\_\_\_  
Kimberly Hall Barlow, City Attorney

STATE OF CALIFORNIA    )  
COUNTY OF ORANGE     )     ss  
CITY OF COSTA MESA     )

I, **BRENDA GREEN**, City Clerk of the City of Costa Mesa, DO HEREBY CERTIFY that the above and foregoing Resolution No. 2022-\_\_ was duly adopted at a regular meeting of the City Council of the City of Costa Mesa held on the 15th day of November, 2022, by the following roll call vote, to wit:

AYES:           COUNCILMEMBERS:

NOES:           COUNCILMEMBERS:

ABSENT:        COUNCILMEMBERS:

IN WITNESS WHEREOF, I have hereby set my hand and affixed the seal of the City of Costa Mesa this \_\_\_\_day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Brenda Green, City Clerk

## EXHIBIT “A”

### FINDINGS

The Costa Mesa City Council makes the following findings pursuant to Section 21670 of the Public Utilities Code as follows:

- A. **Finding No. 1:** *It is in the public interest 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.*

**Justification for finding:** The March 17, 2022 ALUC inconsistency determination did not identify concerns with noise in regard to the City’s Housing Element update. To the contrary, the ALUC determination indicated that the City’s candidate housing sites are appropriately located outside of airport noise contours of concern and further the City’s General Plan Noise Element addresses potential applicable residential noise impacts in General Plan Noise Element Policies N-1.1, N-1.5, N-1.6, N-2.4 and N-2.6. Specifically, the ALUC recognized that the City’s Noise Element Policy N-2.6 requires an “interior noise standard of 45 dBA CNEL be enforced for any new residential project,” which is consistent with the ALUC residential noise standards. Therefore, the City is justified to make the finding to overrule the ALUC inconsistency determination in regard to PUC Finding No. 1.

- B. **Finding No. 2:** *(2) It is the purpose of this article 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.*

**Justification for finding:** As indicated in the above section entitled “Justification for finding,” the City’s Noise Element Policies adequately address the public exposure to excessive noise.

In addition, at the March 17, 2022 ALUC hearing, the ALUC determined that that the City's existing maximum building height provisions were inconsistent with the Airport Environs Land Use Plan (AELUP) for nine candidate housing sites located in two geographic areas of the City. According to the ALUC staff report, the City's existing North Costa Mesa Specific Plan provisions permit a maximum building height that could potentially result in building construction that exceeds the 206-foot John Wayne Airport Imaginary Horizontal Surface. However, the City's Housing Element update does not grant any entitlements, change any land use standards or authorize any development beyond what is allowed under the City's current General Plan and Zoning Code (including the maximum building height identified inconsistent by the ALUC). Therefore, the ALUC's determination of inconsistency is not based on proposed policies of the Housing Element update but rather existing height standards in the North Costa Mesa Specific Plan.

In addition, both ALUC staff and at least one of the Commissioners during the public hearing recognized that the data used for calculating maximum building height elevation was likely not accurate (Google is the data source used to establish existing ground topography). Using imprecise and unreliable data is problematic in this situation as the ALUC determination for three candidate housing sites is based on discrepancies of only three to five feet. As such, this identified inconsistency is likely not inconsistent and can be addressed pending actual topographical data either at the time of the North Costa Mesa Specific Plan update or when an actual project is proposed, which will require additional ALUC review.

Lastly, the remaining six candidate housing sites that the ALUC determined were inconsistent were previously reviewed in 2006 and 2007 by the ALUC. In 2007, the City submitted a project for ALUC consideration that included a mixed-use development with both hotel and residential uses (referred to as the Wyndham Hotel and High Rise Residential Project) in the South Coast Plaza Town Center area. This area already contains Plaza Tower and Center Tower which exceed 20 stories. The project included a General Plan Amendment, a Specific Plan Amendment, an Environmental Impact Report (EIR), a Final Master Plan and a proposed subdivision. The ALUC determined that the project and the General Plan/Specific Plan amendments were inconsistent in regard to the inclusion of height standards that penetrate the AELUP horizontal imaginary surface, and the City subsequently overruled the ALUC determination. The City's overrule finding was based on the Federal Aviation Administration (FAA) findings that the then proposed building height of 304 feet Area Mean Sea Level (AMSL) "would not adversely affect air safety" and the FAA subsequently issued a "no hazard determination." Additionally, the FAA conditioned that any future buildings proposed in this area with height proposed above 173

feet above grade level would require a specific determination of “no hazard” by the FAA in order to move forward. This requirement is included in the height standards of the North Costa Mesa Specific Plan applicable to the candidate housing sites in question. Therefore, potential safety risks associated with future construction on these six candidate housing sites are addressed by the FAA requirement and the Specific Plan requirements and the City’s Housing Element Update. Therefore, the City is justified to make the finding to overrule the ALUC inconsistency determination in regard to PUC Finding No. 2.