



*City of Arts & Innovation*

# City Council Memorandum

**TO: HONORABLE MAYOR AND CITY COUNCIL      DATE: OCTOBER 18, 2016**

**FROM: COMMUNITY & ECONOMIC DEVELOPMENT      WARD: 3**  
**DEPARTMENT**

**SUBJECT: PLANNING CASE P16-0161 (CONDITIONAL USE PERMIT), BY KYLE KNOWLAND OF ALTA VISTA CHARTER SCHOOL, TO APPEAL THE DECISION OF THE COUNTY OF RIVERSIDE AIRPORT LAND USE COMMISSION AT 5188 ARLINGTON AVENUE.**

## **ISSUES:**

Consider an appeal requested by Kyle Knowland of Alta Vista Public Charter School to overrule the Riverside County Airport Land Use Commission findings of inconsistency for a Conditional Use Permit to permit a public charter school within a 10,250 square foot tenant space in an existing commercial shopping center to be located at 5188 Arlington Avenue, and schedule a second public hearing for consideration of this request. The property is located in Zones C and D of the Riverside County Airport Land Use Compatibility Plan (RCALUCP).

## **RECOMMENDATIONS:**

That the City Council:

1. Express its intent, by a 2/3 vote, to adopt the findings contained in this report and within the attached resolution overruling Riverside County Airport Land Use Commission findings of inconsistency with the Riverside County Airport Land Use Compatibility Plan; and
2. Schedule a second public hearing on January 10, 2017, for consideration of Conditional Use Permit (P16-0161) for a public charter school and Riverside County Airport Land Use Commission overrule.

## **STAFF/PLANNING COMMISSION RECOMMENDATIONS:**

On August 11, 2016, the City Planning Commission recommended approval of Planning Case P16-0161 by a vote of 5 ayes and 2 noes, subject to staff's recommended conditions.

## **BACKGROUND:**

The applicant, Kyle Knowland of Alta Vista Public Charter School, is requesting approval of a Conditional Use Permit to establish a public charter school (Alta Vista) within an existing 10,250 square foot tenant space in an existing shopping center (Heritage Plaza). Alta Vista Public Charter School would operate as a "Resource Center", where students in grades 9 through 12

would be offered an alternative instructional strategy under the general supervision of a credentialed teacher. The proposed resource center would accommodate up to 400 students, ages 14 through 19, 16 teachers, and 4 support staff. The resource center would be open from 8:00 a.m. to 6:00 p.m. Monday through Friday. A maximum of 12 students and 8 teachers and 4 support staff would be on site at any given time. Independent study students at Alta Vista Public Charter School do not attend in-school instruction on a daily basis and no classroom instruction is offered. The weekly meetings with the teacher are approximately one-hour. The students complete their assignments at home.

On August 11, 2016, the Planning Commission considered the Conditional Use Permit request and were informed of the ALUC inconsistency determination and subsequent applicant appeal of the determination. Two Commissioners expressed their concern about approving a project determined by ALUC to be inconsistent with the RCALUCP. No action was required to be taken by the Planning Commission on this appeal.

The Planning Commission recommended approval of the proposed Conditional Use Permit based on the following:

1. The definition of schools, provided by the Federal Aviation Administration (FAA), does not differentiate a traditional school use with a large population of students and the proposed low intensity resource center that would have a maximum of 12 students on-site at any given time. The FAA is the Federal agency responsible for ensuring the safe and efficient use of airports and airspace. ALUC follows protocol established by FAA and as such, utilizes definitions established by FAA.
2. A retail use in this tenant space, which is permitted by right without ALUC review, would have the potential for a greater number of people of all ages than the proposed resource center.

#### *Riverside County Airport Land Use Commission*

The subject site is within Compatibility Zones C and D of the Riverside County Airport Land Use Compatibility Plan (RCALUCP). Compatibility Zones are established by the RCALUCP for the purpose of assessing land use compatibility within the airport influence area. Zone C prohibits the establishment of children's schools and Zone D discourages children's schools. Since schools are prohibited in Zone C, the project required Riverside County Airport Land Use Commission (ALUC) consideration.

On May 12, 2016, ALUC determined that the proposal was "Inconsistent" with the RCALUCP because "schools" are prohibited in Zone C and the proposal exceeds the maximum allowable number of people per acre for Compatibility Zones C and D. Based on the Zones C and D acreage and allowable average intensity, a maximum Zone C occupancy of 5 people could be allowed, and a maximum Zone D occupancy of 16 people could be allowed, for a total site occupancy of 21 people. While the applicant is proposing a total enrollment of 400 students, there would be a total of 24 people on site at any given time due to the operational characteristics of the use. The number of people proposed to be on site at any given time would only exceed the allowable average intensity by 3 people.

### *Appeal of the ALUC's decision*

On May 18, 2016, the applicant filed an appeal of ALUC's decision to the City Council. However, before consideration of the appeal by City Council, Planning Commission review is required to first establish approval of the public charter school. Pursuant to Public Utilities Code section 21676, the City Council has the authority to overrule ALUC's determination based on specific findings that the proposal is consistent with the purposes of ALUC law "to protect public health, safety and welfare by ensuring 1) the orderly expansion of airports and 2) 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."

### *Process to Overrule ALUC's Determination*

The process to overrule ALUC's determination involves two City Council hearings. The first public hearing is required to express the City Council's intent to overrule ALUC's determination. The second public hearing, recommended to be scheduled for January 10, 2017, is required to consider the appeal to overrule ALUC's determination. A 2/3 vote by Council is required at the first public hearing to express its intent to adopt the following findings:

- 1- The Project involves a non-traditional school where at any given time there will be up to 12 students, 8 teachers and 4 support staff in the subject tenant space. The operational characteristics of the school do not require students to attend on-site classroom instruction as typical in a conventional school system.
- 2- The definition of schools, provided by Federal Aviation Administration (FAA), does not take into consideration the type of low intensity educational resource centers, such as this Project, where a small number of students are on site at any given time. The definition only considers a traditional school scenario where students are dropped off and picked up at the same time, and receive simultaneous instruction in a traditional "school" setting.
- 3- Based on the Zones C and D acreage and allowable average intensity, a maximum Zone C occupancy of 5 people could be allowed, and a maximum Zone D occupancy of 16 people could be allowed, for a total site occupancy of 21 people. Zones C and D of the RCALUCP allow by right, without ALUC determination, retail uses that would have the potential for a greater number of people of all ages at any given time than the Project. In this instance, the craft and hobby retail use that previously occupied this tenant space would have accommodated approximately 171 persons, based on 50 percent of maximum Building Code occupancy, which by far exceeds the allowable average intensity of the Zones, whereas the Project would accommodate up to 24 persons on site at any given time. Thus, the proposed use of the Project would result in a lower occupancy. While the Applicant is proposing a total enrollment of 400 students, there would only be a total of 24 people on site at any given time due to the operational characteristics of the use. The number of people proposed to be on site at any given time would only exceed the allowable average intensity by 3 people.
- 4- Based on the single-acre intensity, this Project will be well under the maximum allowed. According to ALUC, the single-acre intensity for this Project will result in 671 occupancy, which exceeds the allowable occupancy in Zones C and D, which is 450 total. However, this Project will only result in a maximum occupancy of 24 people on site at any given time, thus complying with and well under the single-acre intensity allowed in the C and D Zones.

- 5- Although the site is located within the 55-60 dBA CNEL contour from Riverside Municipal Airport, the Project is acceptable at this site because the school activities are proposed to be conducted entirely indoors and does not proposed to have any outdoor area, and as such there will not be any excessive exposure to noise.
- 6- The existing retail center, Heritage Plaza, contains businesses with more intensive uses and people at any given time than will be at the Project suite.

Should City Council express its intent to overrule ALUC's finding of inconsistency, a copy of the City Council's decision and findings will be provided to both ALUC and Caltrans Division of Aeronautics, as required by the Public Utilities Code, to allow both agencies the opportunity to provide written comments to Council. Any written comments submitted would be provided to Council for consideration at the second public hearing on January 10, 2017.

For additional details, please see attachments from the August 11, 2016 City Planning Commission staff report, recommended conditions of approval and draft minutes.

### **FISCAL IMPACT:**

There is no impact to the General Fund, since all project costs are borne by the applicant.

Prepared by: Rafael Guzman, Community & Economic Development Director  
Certified as to  
availability of funds: Scott G. Miller, PhD, Chief Financial Officer/City Treasurer  
Approved by: Al Zelinka, FAICP, Assistant City Manager  
Approved as to form: Gary G. Geuss, City Attorney

### **Attachments:**

1. Draft Resolution to Overrule ALUC's Decision
2. Appeal Letter from applicant dated May 18, 2016
3. City Planning Commission Approved Conditions
4. City Planning Commission Report – August 11, 2016
5. City Planning Commission Draft Minutes – August 11, 2016
6. Documents submitted at City Planning Commission
7. ALUC Letter and Staff Report - June 6, 2016
8. Presentation