



*City of Arts & Innovation*

# City Council Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL DATE: JUNE 25, 2024

FROM: COMMUNITY & ECONOMIC DEPARTMENT WARD: 3

SUBJECT: SCHEDULE A PUBLIC HEARING FOR SEPTEMBER 17, 2024, AT 3 P.M., TO CONSIDER THE OVERRULE AND ASSOCIATED APPEALS AND ENTITLEMENTS RELATED TO PLANNING CASES DP-2022-00035, DP-2022-00036, DP-2022-00025, SD-2022-00002, DP-2022-00047 AND DP-2022-00048 – LOCATED AT 5261 ARLINGTON AVENUE - SITUATED AT THE NORTHEAST CORNER OF ARLINGTON AVENUE AND STREETER AVENUE (FORMER SEARS BUILDING) AND REVIEW AND SEND THE DRAFT FINDINGS TO OVERRULE THE RIVERSIDE AIRPORT LAND USE COMMISSION (ALUC) DETERMINATION TO CALIFORNIA DIVISION OF AERONAUTICS AND TO THE ALUC

## ISSUES:

Schedule a Public Hearing to consider the Override of the ALUC determination of inconsistency, project appeals and project entitlements including a General Plan Amendment, Zoning Code Amendment, Site Plan Review, Tentative Parcel Map, and Certificate of Appropriateness to facilitate the construction of a mixed-use development consisting of 388 multifamily residential units and 25,320 square feet of commercial/retail space on 17.37 acres located in ALUC Zones B1, C and D of the Riverside County Airport Land Use Compatibility Plan (RCALUCP); and review and send the draft Resolution to Override the Riverside Airport Land Use Commission (ALUC) determination to the California Division of Aeronautics and to the ALUC for comment.

## RECOMMENDATIONS:

That the City Council:

1. Schedule a public hearing on September 17, 2024, for consideration of the ALUC override for Planning Cases DP-2022-00035 General Plan Amendment, DP-2022-00036 Zoning Code Amendment, DP-2022-00025 Site Plan Review, SD-2022-00002 Tentative Parcel Map, DP-2022-00047 Certificate of Appropriateness and DP-2022-00048 Environmental Impact Report and appeal of the Cultural Heritage Board's recommendation on the project; and
2. Review the attached draft resolution (Attachment 2); and provide a copy of the proposed decision and findings to both ALUC and the California Division of Aeronautics, a minimum of 45 days prior to a public hearing, whether or not to override ALUC.

## **BACKGROUND:**

The project site consists of a single 17.37-acre parcel, developed with a vacant 192,139 square foot former department store (Sears), constructed in 1964. The building includes an 87,900 square foot ground level retail area, a 90,526 square foot basement and 13,713 square foot automotive center.

Surrounding development in the area consists of medical office, community center and single and multifamily development to the north, commercial development to the south (across Arlington Avenue), single-family residential and medical office development to the west (across Streeter Avenue), and single-family residential development to the east.

The applicant filed a General Plan Amendment, Rezone, Site Plan Review, Tentative Parcel Map and Certificate of Appropriateness to facilitate construction of a mixed-use development consisting of 388 multifamily residential units and 25,320 square feet of commercial/retail space.

On January 12, 2023, the project was heard by the Riverside County Airport Land Use Commission (ALUC). The project was found to be inconsistent with the Airport Land Use Compatibility Plan, Although, found to be inconsistent, the General Plan and Zoning Code allow the City to overrule the Airport Land Use Commission inconsistency determinations consistent with California Utilities Code § 21670.

On April 17, 2024, the Cultural Heritage Board (CHB) recommended to City Council to deny both the requested Certificate of Appropriateness (COA) and Cultural Resources override request by a vote of 5-2 (Attachment 3 and 4).

On April 25, 2024, the Planning Commission (CPC) recommended to City Council to approve the requested General Plan Amendment, Rezone, Site Plan Review, Tentative Parcel Map and the Draft EIR by a vote of 6-0-1 (Attachment 5 and 6).

## **DISCUSSION:**

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

On January 12, 2023, the Riverside County Airport Land Use Commission (ALUC), by a vote of 6-0, found City of Riverside Planning Cases DP-2022-00035 General Plan Amendment, DP-2022-00036 Zoning Code Amendment, DP-2022-00025 Site Plan Review and SD-2022-00002 Tentative Parcel Map inconsistent with the 2005 Riverside Municipal Airport Land Use Compatibility Plan, due to the site's location within Compatibility Zones B1, C and D of the Riverside Municipal Airport.

- The project's residential density of 28.0 dwelling units per acre in Zone B1 and 1.0 dwelling unit per acre in Zone C are inconsistent with the Zone B1 maximum residential density criteria of 0.05 dwelling units per acre and Zone C maximum residential density criteria of 0.2 dwelling units per acre.
- The project's non-residential intensity for the multi-family amenity facility (leasing office and gym) results in an average intensity 49 people per acre and a single acre intensity of 769 people, both of which are inconsistent with Zone B1 average

intensity criterion of 25 people per acre, and maximum single acre intensity of 50 people.

- The project's non-residential intensity for the grocery store building in Zone B1 results in an average intensity of 81 people per acre and a single acre intensity of 203 people, both of which are inconsistent with Zone B1 average intensity criterion of 25 people per acre, and maximum single acre intensity of 50 people.
- The project's non-residential intensity for the retail store building in Zone C results in an average intensity of 134 people per acre, which is inconsistent with Zone C average intensity criterion of 75 people per acre.
- The project's proposed three-story buildings are inconsistent with Zone B1 criteria prohibiting buildings with more than two aboveground habitable floors.
- The project does not provide the required 4.99 acres of ALUC qualified open area and is therefore inconsistent with the Zone B1, C, and D open area criteria.
- The project's proposed general plan amending the site's general plan land use designation from Commercial to Mixed Use Village and rezoning the site from Commercial General Zone to Mixed Use -Village Zone, are inconsistent with the airport land use compatibility criteria for the reasons indicated above.

### Appeal of the ALUC's Decision/Findings

The applicant filed an appeal of ALUC's decision to the City Council (Attachment 1). 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."

While the project is inconsistent with the specific ALUC standards, as noted above, the General Plan, Zoning Code and California Government Code § 21676 grants local agencies (City Council) the ability to overrule inconsistency determinations, based upon the following findings:

1. The Project will not affect the orderly expansion of the Riverside Municipal Airport (RMA).
  - a. The Project is consistent with residential development surrounding RMA, specifically in Zone B1. The Project involves the redevelopment of an underutilized commercial parcel with multifamily residential and commercial development. The Project's proposed General Plan designation and zoning designation of Mixed Use-Village, is consistent with surrounding development, and would assist in transitioning land use between commercial and single-family residential uses.
  - b. The Project site is located north of the Heritage Plaza commercial shopping center, the Arlington Square Shopping Center and multiple multifamily developments, which have General Plan Land Use Designations of C – Commercial and HDR – High Density Residential and zoned CR – Commercial Retail, CG – Commercial General, O – Office, R-3-1500 Multifamily residential and R-3-2000 – Multifamily residential. Directly west of the Project is additional single-family residential, office, and commercial uses, which

have a General Plan Land Use Designation of MDR – Medium Density Residential, O – Office, C – Commercial, and PF – Public Facilities and is zoned CG – Commercial General, O – Office, and R-1-7000 – Single Family Residential. Directly north, the Project site is bordered by more single-family residential, office and vacant uses with a General Plan Land Use Designation of O – Office, PF – Public Facilities, and C – Commercial and is zoned CG – Commercial General and R-1-7000 – Single Family Residential. And lastly, the Project is bordered on the east with single-family residential and office uses with a General Plan Land Use Designation of MDR – Medium Density Residential and O – Office and is zoned R-1-7000 Single Family Residential and O – Office.

- c. The surrounding residential uses exceeds the 0.05 dwelling units per acre requirement of Zone B1 and the 0.2 dwelling units per acre requirement of Zone C. Of note, several multifamily residential and commercial uses are located in Zone B1, near the Project. Apartment complexes, Phoenix Gardens Apartments, located at 6930 Phoenix Avenue, and Concord Place, located at 5657 Arlington Avenue, are within proximity to the Project Site, closer to the airport. Additionally, large neighborhoods of single residential houses are directly east of the Project site in Zone C. The Heritage Plaza and Arlington Square Shopping Center, directly across the street from the Project site, host over fifteen commercial businesses, such as Ross Dress for Less, Big Lots, and Smart & Final Extra. Lastly, the total number of people concentrated on the site does not increase with the proposed project. In fact, given the nature of residential living, there are less people on the site during daytime hours as residents go to work, school, etc., which coincides with regular airport operational hours. The existing commercial permitted use would bring more people to the site during airport operational hours. The project is consistent with other residential and commercial developments in the B1 and C Zones.
  - d. Additionally, the Project consists of infill development of an underutilized commercial site. The vast majority of properties within the Zone B1 Zone have been built out, largely by residences and commercial uses. Few infill sites, such as the Project, are available for development. As such, the Project would not encourage other developments to exceed Zone B1 density standards or encroach upon RMA operations.
2. The project minimizes the public's exposure to excessive noise and safety hazards within areas around the RMA.
    - a. The Project is consistent with the aircraft noise standards of the ALUCP and the requirements of PUC Section 21670.
      - i. The RMA ALUCP provides the CNEL considered normally acceptable for new residential uses in the vicinity of RMA is 65 dBA. (ALUCP, § RI.2(2.1).) The Project site is approximately one mile from the end of the RMA Runway 9/27. The RMA ALUCP depicts the site as being below the 60 CNEL range from aircraft noise. Therefore, ALUC found no special measures were required to mitigate aircraft-generated noise. Because the Project is consistent with the noise standards in the RMA ALUCP, the Project also complies with the noise standards in the City of Riverside General Plan. (General Plan Noise Element, Figure N-10.) While multifamily or mixed uses are not defined in the City's General Plan Noise Element, the "normally acceptable" noise level for an infill single family residential use is between 55 and 65 dBA CNEL. Accordingly, noise exposure from RMA would not exceed normally acceptable levels for the

Project site.

- ii. The Project will comply with Riverside Municipal Code requirements regarding construction noise and will not compound noise related to RMA operations. All construction would take place between 7:00 a.m. and 7:00 p.m. on weekdays, 8:00 a.m. and 5:00 p.m. on Saturdays, and would not take place at any time on Sunday or a federal holiday. (RMC, § 7.35.020.)
    - iii. The Project will also comply with ALUC noticing conditions and will provide a “Notice of Airport in Vicinity” to all prospective purchasers and occupants of the property.
  3. The Project does not propose any uses specifically prohibited or discouraged in Compatibility Zone B1 (highly noise-sensitive outdoor nonresidential uses), such as major spectator-oriented sports stadiums, amphitheaters, concert halls and drive-in theaters. The Project also does not propose noise sensitive uses such as children’s schools, day care centers, libraries, hospitals, or nursing homes.
  4. The Project will have no impact on Federal Aviation Administration Federal Aviation Regulations (FAA FAR) Part 77.
    - a. The FAA FAR Part 77 Surface Map is a map used by the FAA and the ALUC to identify potential obstructions and hazards to aviation traffic. The ALUC uses the map as a height restriction boundary for purposes of making consistency determinations with its ALUCP. The elevation of Runway 9/27 at its northerly terminus is 815.8 feet above mean sea level (“MSL”). At a distance of approximately 5,151 feet from the project to the nearest point on the runway, FAA review would be required for any structures with top of roof exceeding 867 feet MSL. The site’s highest finished floor elevation is approximately 791 feet MSL with the highest proposed building height at 39-feet 11-inches, resulting in a top point elevation of roughly 831 feet MSL. Therefore, review of the building for height/elevation reasons by the FAA Obstruction Evaluation Service (“FAAOES”) is not required.
  5. The Project will not impose a safety hazard due to height.
    - a. The Project proposes to develop 27 residential apartment buildings consisting of 2 and 3-story structures and two commercial buildings. Of the thirteen 3-story residential buildings only one building tops out at 39-feet, 11 inches and the remainder are 38-feet, 1-inch. The fourteen 2-story residential buildings have a maximum height of 28-feet, 8-inches. Both the grocery store and multi-tenant commercial building both have maximum height just short of 31-feet. Zone B1 criteria prohibit buildings with more than two aboveground habitable floors, however, the maximum height of these buildings is well below City standards and FAA standards. Project height is below the proposed MU-V - Mixed Use – Village zone maximum height of 45 feet (RMC § 19.120.050), and well below the current CR - Commercial Retail Zone maximum height of 75 feet (RMC § 19.110.030). Development of the Project, as well as the proposed General Plan Amendment and change of zone, will result in a maximum height similar to what currently exists for the site and less than any project that could potentially be developed onsite if the current zoning is maintained. Thus, the Project will not create an obstruction or hazard to air navigation within the meaning of 14 C.F.R. Part 77 nor does it create a safety hazard pursuant to PUC Section 21670.
  6. The Project will not utilize equipment that would interfere with aircraft communications.

- a. There are no radar transmission or receiving facilities within the site. The Project's solar panels are low profile, oriented to limit glare, and present little risk of interfering with radar transmission. In addition, solar panels do not emit electromagnetic waves over distances that could interfere with radar signal transmissions, and any electrical facilities that do carry concentrated current will be buried beneath the ground and away from any signal transmission.
7. The Project cannot comply with the ALUC Open Area requirement. A 4.99-acre open area, 300 feet x 75 feet, with objects no greater than 4 feet in height with a diameter of 4 inches is not conducive to a multifamily development in an urban area. Alternatively, options exist for emergency landing locations, including: Arlington Avenue, Central Avenue, the SR-91 freeway, and parks to the north of the airport. (See Exhibit D in Applicants response to ALUC)
  8. While ALUC deemed the project inconsistent with the ALUC Compatibility Plan, Conditions of Approval were provided in the event the City Council approved the project and overrule request. The Project will comply with all feasible recommended ALUC conditions, as outlined below:
    - a. The Project will comply with a majority of recommended ALUC conditions of approval, including restrictions on maximum building height, noise attenuation measures, and notices and informational brochures for prospective purchasers and tenants. The Project also will comply with recommended conditions related to land uses with the minor requested modifications below, to continue to ensure safety, but allow for the best available use of the Project site.
      - i. Condition 10 Open Space - cannot be met based on the current size of the Project site. Similar to the surrounding uses such as the Heritage Plaza Shopping Center and Arlington Square Shopping Center, neighboring residential areas, and adjacent offices, there is no available acreage that could adhere to this requirement.
      - ii. Condition 2(e) Habitable Floors – The applicant is seeking to modify this condition by allowing habitable third floors to residential buildings. Based upon the discussion above the condition would be amended allowing habitable floors not to exceed the proposed MU-V Zone maximum height of 45 feet. As demonstrated above and through project plans the site's tallest building is 39-feet, 11-inches, roughly 3-feet taller than the existing Sears building. Additionally, the height is consistent with both the Zoning Code and FAA regulations based upon glide slope from runway 9/27.

Additional information regarding the project is included as Attachment 5 (Planning Commission Staff Report).

### Process to Overrule ALUC's Determination

The process to overrule ALUC's determination involves the following actions by City Council:

- June 25, 2024 - Review the attached draft resolution, direct staff to provide a copy of the proposed findings to both ALUC and the California Division of Aeronautics, and set a public hearing for consideration of ALUC Overrule;
- September 17, 2024 - Public Hearing to consider the associated entitlements, appeal to

the Cultural Heritage Board recommendation and appeal to overrule ALUC's determination. Please note a 2/3 majority vote by City Council is required at the public hearing for the overrule determination to express its intent to adopt the findings provided in the attached draft resolution.

Should City Council direct staff to provide a copy of the proposed findings to overrule ALUC's finding of inconsistency, a copy of the City Council's decision and findings will be provided to both ALUC and the California Division of Aeronautics, as required by the Public Utilities Code, 45 days prior to the decision to overrule ALUC. These agencies have 30 days in which to provide comments. Any written comments submitted would be provided to City Council for consideration at the public hearing on September 17, 2024.

### **STRATEGIC PLAN ALIGNMENT:**

This project contributes to the Envision Riverside 2025 City Council Strategic Plan Priority 2 – Community Well-Being (Goal 2.1 – Facilitate the development of a quality and diverse housing supply that is available and affordable to a wide range of income).

This item aligns with each of the five Cross-Cutting Threads, as follows:

1. **Community Trust** – The mixed-use development requires public hearings by the Cultural Heritage Board, Planning Commission and City Council. Additionally, public comment is and was encouraged throughout the process; including through the Notice of Preparation, the project scoping meeting, the 45-day DEIRI review period and at public meeting such as Riverside County Airport Land Use Commission, Cultural Heritage Board, Planning Commission and City Council.
2. **Equity** – The proposed mixed-use development provides housing opportunities that benefits all residences in the community and region.
3. **Fiscal Responsibility** – All project costs are borne by the applicant.
4. **Innovation** – The proposed mixed-use development meets the growing community's needs for increased housing opportunities while situating residents adjacent to community services and reducing vehicles miles traveled.
5. **Sustainability & Resiliency** – All new construction will meet the most up-to-date Building Codes. The proposed development is designed to meet the current and future needs of the community.

### **FISCAL IMPACT:**

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

Prepared by:	Brian Norton, Principal Planner
Approved by:	Jennifer Lilley, Community & Economic Development Director
Certified as to availability of funds:	Kristie Thomas, Finance Director/Assistant Chief Financial Officer
Approved by:	Rafael Guzman, Assistant City Manager
Approved as to form:	Phaedra A. Norton, City Attorney

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Name, Chair  
Name of Committee

Attachments:

1. Applicant ALUC Appeal Request, dated December 20, 2023
2. Draft Resolution of Intent to Overrule ALUC Decision
3. Cultural Heritage Board Staff Report and Exhibits – April 17, 2024
4. Cultural Heritage Board Minutes – April 17, 2024
5. Planning Commission Staff Report and Exhibits– April 25, 2024
6. Planning Commission Minutes – April 25, 2024