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ORDINANCE OF THE COUNCIL OF THE CITY OF FRESNO  
PROPOSED AND INITIATED BY \_\_\_\_\_  
MOVED BY Borgeas SECONDED BY Xiong

BILL NO. B-20

ORDINANCE NO. 2009-20

AN ORDINANCE OF THE CITY OF FRESNO, CALIFORNIA, AMENDING THE OFFICIAL ZONE MAP OF THE CITY OF FRESNO HERETOFORE ADOPTED BY ARTICLES 1 TO 4.5 INCLUSIVE, CHAPTER 12, OF THE FRESNO MUNICIPAL CODE, BEING THE ZONING ORDINANCE OF THE CITY OF FRESNO

WHEREAS, Rezone Application No. R-08-23 has been filed by the Fresno Metropolitan Flood Control District, to rezone property as described hereinbelow; and,

WHEREAS, the Council District 2 Plan Implementation Committee recommended approval of the proposed project on August 25, 2008; and,

WHEREAS, pursuant to the provisions of Article 4, Chapter 12, of the Fresno Municipal Code the Planning Commission of the City of Fresno held a public hearing on the 21st day of January, 2009, to consider Rezone Application No. R-08-23 and related Environmental Assessment No. R-08-23, during which the Commission recommended to the Council of the City of Fresno approval of the subject environmental assessment and rezone application amending the City's Zoning Ordinance on real property described hereinbelow from the AE-5/UGM (*Five Acre Agriculture Exclusive/Urban Growth Management*) zone district to the O/UGM/cz (*Open Space/Urban Growth Management/conditions of zoning*) zone district; and,

Adopted 5/14/09  
Approved 5/14/09  
Effective See Sec. 6

2009-20



Ordinance Amending Official Zone Map  
Rezone Application No. R-08-23  
May 14, 2009  
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WHEREAS, the Council of the City of Fresno, on the 14<sup>th</sup> day of May 2009, received the recommendation of the Fresno City Planning Commission.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF FRESNO DOES ORDAIN AS FOLLOWS:

SECTION 1. Based upon the testimony and information presented at the hearing and upon review and consideration of the environmental documentation provided, the adoption of the proposed rezoning is in the best interest of the City of Fresno. The Council finds in accordance with its own independent judgment that there is no substantial evidence in the record that the rezoning may have additional significant effects on the environment that were not identified in the 2025 Fresno General Plan Master Environmental Impact Report No. 10130 ("MEIR") and that no new or additional mitigation measures or alternatives may be required. Pursuant to Public Resources Code, Section 21157.6(b)(1), Council further finds that no substantial changes have occurred with respect to the circumstances under which the MEIR was certified and that no new information, which was not known and could not have been known at the time that the MEIR was certified as complete has become available. Accordingly, Environmental Assessment No. R-08-23, which is a Finding of Conformity with the MEIR, is hereby approved.

SECTION 2. The Council finds the requested AE-5/UGM (*Five Acre Agriculture Exclusive/Urban Growth Management*) zone district to the O/UGM/cz (*Open Space/Urban Growth Management/conditions of zoning*) zone district is consistent with the existing open space-ponding basin planned land use designation of the Bullard Community Plan and the 2025 Fresno General Plan, as specified in Section 12-403 of the Fresno Municipal Code.

SECTION 3. The Council finds that the zone district of the real property described hereinbelow, located in the City of Fresno and shown on the Official Zone Map of the City of Fresno, is reclassified from the AE-5/UGM (*Five Acre Agriculture Exclusive/Urban Growth Management*) zone district to the O/UGM/cz (*Open Space/Urban Growth Management/conditions of zoning*) zone district.



From AE-5/UGM to O/UGM/cz:

Lots 5 to 59 inclusive, in Figarden Subdivision No. 1, in the County of Fresno, State of California, according to the map thereof recorded in Book 8 page 89 of Plats, Fresno County Records.

Together with that portion of W. Escalon Avenue, North Burnswick Avenue, North Stanford Avenue, West Kadota Avenue and West Calimyrna Avenue vacated by Fresno City Council Resolution 81-336, a copy of said resolution recorded September 9, 1981 in book 7783 pages 994 through 996 of Official Records of Fresno County, which would accrue by operation of law.

Together with that portion of North Santa Fe Avenue vacated by Fresno City Council 90-354, a copy of said resolution recorded February 10, 1993 as instrument No. 93-019677 of Official Records of Fresno County, which would accrue by operation of law.

Excepting therefrom one half of all minerals, oil, gas and hydrocarbon rights without right of surface entry as reserved by Gateways Mental Health Center endowment fund to Rancho Amboy, a limited partnership, whose general partners are Richard M. Firestone, Martin A. Scott, and Alan Scharff, recorded August 28, 1968 in Book 5608 page 1 of Official Records, instrument No. 60629, Fresno County Records.

SECTION 4. The Council further notes that the Project is within the environs of the Sierra Sky Park Airport Land Use Policy Plan (ALUPP) and finds as follows:

1. Airspace Protection

The project site is located within the Horizontal Surface, outside of Safety Zones I-IV established via Part 77, Subpart C, of the Federal Aviation Regulation (FAR). The Horizontal Surface is designated to protect airspace above 150 feet in the vicinity of the project, as measured from the stated elevation of the runway surface. Under the City of Fresno Municipal Code Section 12-204.5, the proposed Open Space/Urban Growth Management (O/UGM) Zone District limits buildings or structures to a maximum height of 35 feet. Written notice was/has been provided to the Airport Land Use Commission (ALUC) that the Planning Director was modified the 35 feet height restriction to be 80 feet, a height still within the 150 feet limit of the Horizontal Surface. An Avigation Easement and Agreement will be required to limit all structures and trees to building heights imposed by FAR at this location and allow ongoing ingress and egress for the purpose of removing, marking or lighting objects, including trees, which may penetrate any surface as described under Part 77. Based on the Zone District restrictions of the project site and the conditions recommended to ensure airspace concerns are addressed, the proposal can be found to be consistent with the safety regulations of the adopted ALUPP.

2. Safety

The area of review is the Traffic Pattern Zone of the Airport. No land uses are restricted within the Traffic Pattern Zone other than those that the height of which exceeds the standards listed in FAR



77 in the Airspace Protection section above or those that create dust, smoke, steam, glare, etc or attract birds. Under the City of Fresno Municipal Code Section 12-204.5, the proposed Open Space/Urban Growth Management (O/UGM) Zone District limits buildings or structures to a maximum height of 35 feet. Written notice was/has been provided to the ALUC that the Planning Director was/has modified the 35 feet height restriction to be 80 feet, a height still within the 150 feet limit of the Horizontal Surface. An Avigation Easement and Agreement will be required to limit all structures and trees to building heights imposed by FAR at this location and prohibit uses that create dust, smoke, steam, glare, etc or attract birds. Lights must be hooded, pointed in a downward direction and away from airport traffic patterns. All structures must be non-glare and tops lighted or clearly marked. Based on the project site and the conditions recommended to ensure safety concerns are addressed, the proposal can be found to be consistent with the safety regulations of the adopted ALUPP.

SECTION 5. The development of the property described in Section 3 shall be conditioned upon the following conditions of zoning, which are recorded and on file in the Fresno County Recorder's Office, to ensure the compliance with the adopted Sierra Sky Park Airport Land Use Policy Plan and ensure development that is appropriately compatible with planned land uses and existing properties surrounding the site.

1. An avigation easement and agreement be dedicated to the City of Fresno for those areas of the project located within any FAR Part 77 Zone, Safety Zone, or Noise Contour of the Airport Land Use Commission's adopted Sierra Sky Park Land Use Policy Plan. This avigation easement should conform to standards contained in the Caltrans Division of Aeronautics *California Airport Land Use Planning Handbook*.
2. The standards imposed in the Airport Land Use Commission's adopted Sierra Sky Park Land Use Policy Plan (ALUPP) shall apply when considering and issuing any land use or building permit within any FAR Part 77 Zone, Safety Zone, or Noise Contour of the Sierra Sky Park Airport.
3. The density of the development shall not exceed the standards of the Airport Land Use Commission's adopted Sierra Sky Park Land Use Policy Plan or those published in the Caltrans Division of Aeronautics *California Airport Land Use Planning Handbook*.
4. Any proposed construction or development shall be undertaken only after acoustical studies are performed, a detailed analysis of noise reduction requirements is made, and noise insulation features added to sensitive occupancy areas and included in the building design. Any proposed buildings shall be required to implement noise mitigating building construction measures, and show proof of such, in compliance with Title 24 energy standards. A condition for approval of a proposed land use which is shown on Table 1 of the ALUPP to be "marginal" or "normally unacceptable" for a given noise environment shall be that the building intended for habitation or occupation will provide a satisfactory degree of noise attenuation. Also Table 2 of the ALUPP sets forth the minimum noise level attenuation required. If the structure can reduce the noise exposure by the indicated



amount, the use may be acceptable.

5. Structures and uses shall not create dust, smoke, steam, distracting sources of light, electrical interference, or attract birds.
6. Conditions related to adopted airspace protection criteria as stated in the Sierra Sky Park Land Use Policy Plan shall be enforced.
  - a. All structures shall be limited to a maximum height requirement of 150 feet.
  - b. All structures and trees shall be limited to comply with the FAR Part 77 regulations for any exceptions to the 150-foot height limitation considered by the Airport Land Use Commission.
  - c. Ongoing ingress and egress for the purpose of removing, marking, or lighting objects, including trees, which may penetrate any surface as described under FAR Part 77 shall be allowed.

SECTION 6. This ordinance shall become effective and in full force and effect at 12:01 a.m. on the thirty-first day after its passage and upon annexation of the subject property into the City of Fresno.

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CLERK'S CERTIFICATION

STATE OF CALIFORNIA )  
COUNTY OF FRESNO )  
CITY OF FRESNO )

I, REBECCA E. KLISCH, City Clerk of the City of Fresno, certify that the foregoing ordinance was adopted by the Council of the City of Fresno, California, at a regular meeting held on the 14th day of May, 2009, by the following vote:

Ayes: Borgeas, Brand, Dages, Perea, Westerlund, Xiong, Sterling  
Noes: None  
Absent: None  
Abstain: None

REBECCA E. KLISCH  
City Clerk

By Rebecca E. Klisch

APPROVED AS TO FORM:

JAMES C. SANCHEZ  
City Attorney

By: John W. Fox  
John Fox, Deputy  
5/11/2009

Rezone Application No. R-08-23  
Filed by the Fresno Metropolitan Flood  
Control District  
Assessor Parcel Nos. 507-330-58ST, 59ST