



# City of Millbrae

621 Magnolia Avenue, Millbrae, CA 94030

**ANNE OLIVA**  
Mayor

**GINA PAPAN**  
Vice Mayor

**ANDERS FUNG**  
Councilmember

**REUBEN D. HOLOBER**  
Councilmember

**ANN SCHNEIDER**  
Councilmember

September 28, 2022

Susy Kalkin  
ALUC Staff  
City/County Association of Governments of San Mateo County  
555 County Center, 5th Floor  
Redwood City, CA 94063  
Email: [kkalkin@smcgov.org](mailto:kkalkin@smcgov.org)

RE: Notice of Intent to Consider an Overrule of ALUC Findings of Inconsistency for Millbrae Station Area Specific Plan Zoning Text Amendment

Dear Ms. Kalkin:

This letter serves as a notification that the City Council of the City of Millbrae has directed staff to initiate the process to consider an overrule of the Airport Land Use Commission (ALUC) finding at the July 14, 2022 meeting that the proposed Zoning Text Amendment to the Millbrae Station Area Specific Plan (MSASP) to allow, with a Conditional Use Permit, hazardous uses classified as "Biosafety Level 2" uses in the Transit Oriented Development Zone portions located north of Millbrae Avenue, south of the MSASP boundary, east of El Camino Real and west of the railroad, within the Comprehensive Airport Land Use Compatibility Plan for the Environs of San Francisco International Airport Safety Compatibility Zone 2, is inconsistent with the land use policies of the Airport Land Use Compatibility Plan (ALUCP) for the environs of the San Francisco International Airport.

On September 27, 2022, the City of Millbrae City Council adopted a resolution making draft findings and declaring an intent to consider overruling the ALUC's determination of inconsistency and directed staff to provide notice to the ALUC and the Caltrans Division of Aeronautics, in accordance with Sections 21676(b) and 21676.5(a) of the State Public Utilities Code. The City Council resolution and draft findings are attached to this letter. This notification letter and attachments have also been forwarded to the Caltrans Division of Aeronautics.

A public hearing date for the City Council to consider the overrule has not been set; it will be scheduled at least 45 days from the transmittal of this letter and attached materials, per Public Utilities Code Sections 21676(c) and 21676.5. Please advise if you want me to inform you of when the City Council meeting is scheduled, and I can send you the agenda when it is published.

Consistent with Public Utilities Code Sections 21676(c) and 21676.5, the ALUC may provide comments on this notice to consider an overrule within 30 days of receiving the proposed decision and findings. For the City to consider the ALUC's comments and include them in the record of the final decision on the overrule, please provide any comments by the close of business on Friday, October 28, 2022.

Sincerely,



Roscoe Mata  
Planning Manager  
rmata@ci.millbrae.ca.us  
650.259.2335

---

City Council/City Manager/City Clerk  
(650) 259-2334

Building Division/Permits  
(650) 259-2330

Community Development  
(650) 259-2341

Finance  
(650) 259-2350

Fire  
(650) 558-7600

Police  
(650) 259-2300

Public Works/Engineering  
(650) 259-2339

Recreation  
(650) 259-2360

RESOLUTION 22-XX

**CITY OF MILLBRAE, COUNTY OF SAN MATEO  
STATE OF CALIFORNIA**

\*\*\*

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILLBRAE  
MAKING DRAFT FINDINGS AND DECLARING AN INTENT TO CONSIDER  
OVERRIDING THE SAN MATEO CITY / COUNTY ASSOCIATION OF  
GOVERNMENTS SAN MATEO COUNTY AIRPORT LAND USE COMMISSION'S  
DETERMINATION OF INCONSISTENCY WITH THE POLICIES OF THE  
COMPREHENSIVE AIRPORT LAND USE COMPATIBILITY PLAN FOR THE  
ENVIRONS OF SAN FRANCISCO INTERNATIONAL AIRPORT REGARDING THE  
ZONING TEXT AMENDMENT TO THE MILLBRAE STATION AREA SPECIFIC  
PLAN TO ALLOW, WITH A CONDITIONAL USE PERMIT, HAZARDOUS USES  
CLASSIFIED AS "BIOSAFETY LEVEL 2" USES IN THE TRANSIT ORIENTED  
DEVELOPMENT ZONE PORTIONS LOCATED NORTH OF MILLBRAE AVENUE,  
SOUTH OF THE MSASP BOUNDARY, EAST OF EL CAMINO REAL AND WEST OF  
THE RAILROAD, WITHIN THE COMPREHENSIVE AIRPORT LAND USE  
COMPATIBILITY PLAN FOR THE ENVIRONS OF SAN FRANCISCO  
INTERNATIONAL AIRPORT SAFETY COMPATIBILITY ZONE 2.**

**WHEREAS**, the City of Millbrae ("City") is considering amending the Millbrae Station Area Specific Plan ("MSASP") to allow Biotechnology/Scientific Labs, Tech/Biotech Product Assembly and Tech/Biotech Component Manufacturing as Light Industrial uses subject to a Conditional Use Permit in the portion of the Transit-Oriented Development (TOD) Zone north of Millbrae Avenue, south of the MSASP boundary, east of El Camino Real and west of the railroad; and

**WHEREAS**, the proposed zoning text amendments to the MSASP would allow uses defined as "Biosafety Level 2" uses in the TOD Zone north of Millbrae Avenue subject to a Conditional Use Permit, within Safety Combability Zone 2, of the Comprehensive Airport Land Use Compatibility Plan for the Environs of San Francisco International Airport ("SFO ALUCP"); and

**WHEREAS**, the TOD Zone is located within Airport Influence Area B for San Francisco International Airport, an area subject to formal review by the San Mateo City/County Association of Governments ("C/CAG") Airport Land Use Commission ("ALUC"); and

**WHEREAS**, pursuant to the provisions of Section 21670 et seq. of the Public Utilities Code ("Section 21670"), the City referred the proposed MSASP Amendments to the C/CAG ALUC for a determination of consistency with the Comprehensive Airport Land Use Compatibility Plan for the Environs of San Francisco International Airport ("ALUCP"); and

**WHEREAS**, on July 14, 2022, the ALUC, acting pursuant to its authority under Section 21670, determined that the proposed MSASP zoning text amendments were inconsistent with the Safety Compatibility policies and criteria contained in the ALUCP; and

**WHEREAS**, as a final review authority, the City Council, may, after a public hearing, choose to overrule the ALUC determination by a two-thirds vote of the City Council, if the City Council makes specific findings that the proposed zoning amendment is consistent with the purposes of the Section 21670 regarding the protection of public health, safety and welfare in the areas surrounding airports and by providing the C/CAG, ALUC, and the Caltrans Division of Aeronautics ("Division") with notice of the City's intent to consider overruling the ALUC determination along with supportive findings at least 45 days prior to the City's action to overrule the ALUC; and

**WHEREAS**, the Public Utilities Code provides that the C/CAG, ALUC, and the Division shall respond to the referral of the findings of override within 30 days of receiving the proposed decision and findings; and

**WHEREAS**, in the event that the ALUC or Division's comments are not available within this timeframe, the City may act without them; and

**WHEREAS**, the comments by the C/CAG, ALUC, and Division are advisory to the City under state law; and

**WHEREAS**, the City Council shall include comments from the C/CAG, ALUC, and the Division in the final record of any final decision to overrule the ALUC, which may only be adopted by a two-thirds vote of the City Council; and

**WHEREAS**, the draft findings attached as Exhibit A to the resolution do not constitute the final findings of the City with regard to the proposed MSASP Amendments' consistency with the purposes of Section 21760 and such draft findings may be revised, amended, and/or supplemented as part of any final decision to overrule the ALUC's determination and/or approve the Amendment; and

**WHEREAS**, should the City Council adopt this resolution making the draft findings and declaring an intent to consider overruling the ALUC determination that the MSASP Amendments are inconsistent with the ALUCP and directing staff to transmit the required notice to the ALUC and the Caltrans Division of Aeronautics, a public hearing will be required for City Council consideration of the final override and the Project entitlements.

**NOW, THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF MILLBRAE HEREBY TAKES THE FOLLOWING ACTIONS:**

1. Makes the draft findings attached hereto and incorporated herein as Exhibit A; and

2. Declares an intent to consider overriding the Airport Land Use Commission's determination that the proposed zoning text amendments to the MSASP are inconsistent with the Airport Land Use Consistency Plan of the Environs of the San Francisco International Airport with respect to Safety Compatibility Policies; and

3. Directs staff to provide notice in accordance with Sections 21676(b) and 21676.5(a) of the State Public Utilities Code to the Airport Land Use Commission and the State of California Department of Transportation's Division of Aeronautics at least 45 days prior to the scheduled public hearing date for consideration of the proposed zoning amendment and proposed overruling action by the City Council.

**PASSED AND ADOPTED** at a regular meeting of the City Council of the City of Millbrae, California, held on the 27<sup>th</sup> of September, 2022, by the following vote:

REGULARLY PASSED AND ADOPTED this 27<sup>th</sup> day of September, 2022.

---

Mayor

ATTEST:

---

City Clerk

**FINDINGS**

1. The foregoing recitals are true and correct and made part of this Resolution.
2. That the Public Utilities Code sections 21676 and 21676.5 prove that a local governing body may overrule the Airport Land Use Commission (ALUC) if it makes specific findings that the proposed action is consistent with the purposes of the Public Utilities Code section 21670. In that regard, the City Council therefore finds the following:
  - a. The first purpose of section 21670 *et seq.* 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 California airport noise standards and to prevent the creation of new noise and safety problems. The second purpose of section 21670 is 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.
  - b. With respect to the Airspace Protection Policies, per the SFO Airport Land Use Compatibility Plan (ALUCP), airspace protection policies are established to avoid the degradation in the safety, utility, efficiency, and air service capability of the Airport that could be caused by the attendant need to raise visibility minimums, increase minimum rates of climb, or cancel, restrict, or redesign flight procedures. The proposed Amendment does not modify the height limits previously approved by the ALUC and is therefore consistent with the Airspace Protection Policies.
  - c. With respect to noise, the ALUCP establishes Noise Compatibility Zones to protect the public from excessive noise. The Amendment area is located outside of the noise exposure area per the per the ALUCP.
  - d. With respect to public health, safety, and welfare, the majority of the proposed Amendment area is located within Safety Compatibility Zone 2, per the ALUCP. Safety Compatibility Zone 2 designates as incompatible a variety of uses that involve hazardous materials, critical public utilities, theaters, meeting halls, places of assembly seating more than 300 people, stadiums, arenas, and those accommodating potentially vulnerable populations – such as children’s schools, child day care facilities, hospitals, and nursing homes. Hazardous uses are defined to include “medical and biological research facilities handling highly toxic or infectious agents,” which are categorized by “Biosafety Levels.” Biosafety Levels range from Level 1 (the lowest level of biosafety precautions) to Level 4 (the highest level of biosafety precautions). Under the ALUCP, all uses above Biosafety Level 1 are incompatible with Safety Compatibility Zone 2. Biosafety Level 2 involves clinical, diagnostic, teaching and other laboratories working with indigenous moderate-risk agents that are already present in the community. Biosafety Level 3 involves clinical, diagnostic, teaching, research, or production facilities in which work is done with indigenous or exotic agents with

a potential for respiratory transmission which may cause serious and potentially lethal infection. Biosafety Level 4 involves work with dangerous and exotic agents that pose a high individual risk of life-threatening disease, which may be transmitted via the aerosol route and for which there is no available vaccine or therapy.

- e. The current development climate and work lifestyle has been greatly affected by the COVID-19 pandemic. With the future of office space demand being permanently altered, the ability to attract other uses within the MSASP north of Millbrae Avenue, south of the MSASP boundary, east of El Camino Real and west of the railroad is paramount. Life Science companies battling the COVID virus and other maladies require Biosafety Level 2 labs. Level 2 labs are the most commonly used in the South San Francisco and Brisbane areas just north of the airport as few life science companies will tenant buildings that only allow Biosafety Level 1. Given today's need for development and services in the life science industry, the Amendment offers increased flexibility for the City to allow such uses in the Transit Oriented Development zone.
- f. The Amendment would greatly aid in the City's economic development through the ability to attract development and tenants to the Millbrae Station Area, thereby creating jobs and helping to maximize regional interest and occupancy throughout Millbrae Station area developments. The proposed Amendment would also allow for Biosafety Level 2 in Safety Compatibility Zone 2. As demand is high for biotechnology space along the peninsula, the City of Millbrae Planning staff has received a number of inquiries from potential applicants regarding the possibility of developing biotechnology uses north of Millbrae Avenue, south of the MSASP boundary, east of El Camino Real and west of the railroad within the MSASP. Biotechnology uses are already permitted in the Employment/Light Industrial Zone directly south of the TOD zone. Allowing for biotechnology uses in the Transit Oriented Development zone north of Millbrae Avenue, south of the MSASP boundary, east of El Camino Real and west of the railroad would enable the City to achieve some of the goals set by the Millbrae General Plan in terms of Land Use and Economic Development.
- g. In assessing the potential risks of permitting Biosafety Level 2 uses in that portion of the TOD Zone located north of Millbrae Avenue, south of the MSASP boundary, east of El Camino Real and west of the railroad, which is currently in Safety Compatibility Zone 2 under the ALUCP, the City has determined that, due to the low use of Runways 19 L/R (which, according to the Airport are used for only 2 to 5% of landings), the risk is much lower than is reflected in the Safety Compatibility Zone maps in the ALUCP.
- h. The Amendment will minimize the public's exposure to safety hazards to the extent feasible. The Biosafety Levels used in the SFO ALUCP are derived from guidance from the Center for Disease Control, Biosafety in Microbiological and Biomedical Laboratories, which also explains that Level 2 involves agents "that are already present in the community" and that "[w]ith good microbiological

techniques, these agents can be used safely.” Because Level 2 does not authorize respiratory or aerosolized agents, it does not present a materially greater risk to public safety than Level 1 activities. Each project in the Amendment area would go through environmental analysis as part of the Conditional Use Permit process in regards to hazardous materials and any other environmental concerns. A Program Environmental Impact Report (EIR) and Mitigation Monitoring and Reporting Program was prepared for the Millbrae Station Area Specific Plan and was adopted by the City Council on January 12, 2016. Therefore, site specific, individual projects, can be evaluated using the Program EIR to decide if all potentially significant environmental impacts of the individual project:

- i. Have been previously identified (are not new) and are not substantially more severe than those identified in the Program EIR;
    - ii. Will be avoided or mitigated to the extent feasible as a result of the EIR; and
    - iii. Have been examined in the EIR, site-specific project revisions, or the implementation of standards development standard regulations.
  - i. To determine if the above conditions are met, an Initial Study/Environmental Checklist must be prepared for any proposed project for a biotechnology use in the TOD zone. The analysis will determine whether the proposed project is within the scope of the previous EIR, or whether an additional environmental document is required, in accordance with the California Environmental Quality Act (CEQA) Guidelines.
  - j. As illustrated by the above discussion, approval of the proposed Amendment as configured would provide for orderly development adjacent to the airport and promote the overall goals and objectives of the California airport noise standards and prevent the creation of new noise and safety problems because the proposed Project provides much needed commercial plus job creating land use near transit, while also utilizing advanced construction techniques to minimize any noise impacts to residents, and the location, size, height and configuration of the Project would not create any safety problems. Furthermore, approval of the proposed Project protects public health, safety and welfare because as configured the Project minimizes the public’s exposure to excessive airport noise through the application of advanced construction techniques and does not expose the public to any safety hazards or create any aircraft hazards.
3. The documents and other material constituting the record for these proceedings are located at the Planning Division for the City of Millbrae, 621 Magnolia Avenue, Millbrae CA, 94030.