



CITY COUNCIL  
**Staff Report**

**Meeting Date:** Feb. 27, 2024

**To:** Mayor and City Council

**From:** Scott Chadwick, City Manager

**Staff Contact:** Jason Haber, Intergovernmental Affairs Director  
jason.haber@carlsbadca.gov, 442-339-2958

**Subject:** Consider Discussing Proposed Revisions to the City's Code and General Plan Relating to McClellan-Palomar Airport

**Districts:** All

**Recommended Action**

Consider a request from Mayor Blackburn to engage in a discussion regarding a request from Citizens for a Friendly Airport relating to revisions to the City's Code and General Plan relating to McClellan-Palomar Airport.

**Executive Summary**

Mayor Blackburn submitted the attached email (Exhibit 1) to the City Manager on Jan. 30, 2024, requesting that the topics related to Palomar Airport that are contained in the background information sent by Hope Nelson, on behalf of Citizens for a Friendly Airport, on Jan. 3, 2024 (Exhibit 2), be placed on an upcoming City Council agenda.<sup>1</sup>

**Fiscal Analysis**

No city funding is being requested.

**Next Steps**

Staff will carry out the City Council's direction.

**Environmental Evaluation**

This action does not require environmental review because it does not constitute a project within the meaning of the California Environmental Quality Act under Public Resources Code Section 21065 in that it has no potential to cause either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment.

**Exhibits**

1. Jan. 30, 2024, request from Mayor Blackburn
2. Jan. 3, 2024, email from Hope Nelson

---

<sup>1</sup> Carlsbad Municipal Code Section 1.20.060(C) states, "Items of business may be placed on the agenda by any member of the council, the city manager or the city attorney, or by council action. Council-originated items must be submitted to the city manager not less than seven days before the date of the council meeting at which the member desires the item to appear on the agenda. Nothing in this section precludes a council member from requesting council action to place an item on the agenda for a future meeting."

**Sheila Cobian**

---

**Subject:** RE:

**From:** Keith Blackburn <[Keith.Blackburn@carlsbadca.gov](mailto:Keith.Blackburn@carlsbadca.gov)>

**Sent:** Tuesday, January 30, 2024 4:49:29 PM

**To:** Scott Chadwick <[Scott.Chadwick@carlsbadca.gov](mailto:Scott.Chadwick@carlsbadca.gov)>

**Subject:**

Good Afternoon,

Consistent with my authority under Carlsbad Municipal Code, Section 1.20.060 (C), I am requesting that the topics related to Palomar Airport that are contained in the background information sent by Hope Nelson on behalf of Citizens for a Friendly Airport on January 3, 2024 be placed on a future agenda for City Council discussion and consideration.

Thank you,

Get [Outlook for iOS](#)

**Sheila Cobian**

---

**Subject:** FW: Agendizing discussion of Palomar Airport  
**Attachments:** 2023-01-02 C4FA Memorandum to City\_fnl (1) (1).pdf

**From:** Hope Nelson <[hopefromthehood@gmail.com](mailto:hopefromthehood@gmail.com)>  
**Sent:** Wednesday, January 3, 2024 10:08 AM  
**To:** Keith Blackburn <[Keith.Blackburn@carlsbadca.gov](mailto:Keith.Blackburn@carlsbadca.gov)>  
**Cc:** Priya Bhat-Patel <[Priya.Bhat-Patel@carlsbadca.gov](mailto:Priya.Bhat-Patel@carlsbadca.gov)>; Melanie Burkholder <[Melanie.Burkholder@carlsbadca.gov](mailto:Melanie.Burkholder@carlsbadca.gov)>; Carolyn Luna <[Carolyn.Luna@carlsbadca.gov](mailto:Carolyn.Luna@carlsbadca.gov)>; Teresa Acosta <[Teresa.Acosta@carlsbadca.gov](mailto:Teresa.Acosta@carlsbadca.gov)>; Jason Haber <[Jason.Haber@carlsbadca.gov](mailto:Jason.Haber@carlsbadca.gov)>; Vickey Syage <[vickey.syage@gmail.com](mailto:vickey.syage@gmail.com)>; Mary Anne Viney <[maryanneviney@dslextreme.com](mailto:maryanneviney@dslextreme.com)>; Shirley Anderson <[sander1575@aol.com](mailto:sander1575@aol.com)>  
**Subject:** Agendizing discussion of Palomar Airport

Dear Mayor Blackburn,

Many thanks for all you are doing regarding Palomar Airport, and for our discussion.

For clarity, we would like the Council to consider the following in their discussion.

### Cornerstones

- *"Effective December 29, 1978, Palomar Airport was formally annexed to the City of Carlsbad, which will have final authority on any airfield expansion plans."* (Palomar Airport Summary Report, Jan 1979, General Information)
- San Diego Superior Court reaffirmed the City's responsibility in its January 2021 ruling in Citizens for a Friendly Airport v. County of San Diego.
- The Annexation Agreement and the Court's ruling gives the City of Carlsbad the clear responsibility to exercise the City's local control of Palomar Airport in the best interests of Carlsbad.
- The City of Carlsbad Resolutions, passed in 2019, state with clarity, the City's position regarding the Airport.

### Suggested Implementation Framework

#### Zoning

- Amend Carlsbad's zoning ordinances to include KK&R's (City's outside legal counsel) 2018 recommendations.
  - These recommendations were initially released for public review in 2018 and approved but not adopted by the City.
- Adopt the definition of Airport Expansion consistent with the definitions of the California Utilities Code (CPUC).

- The CPUC is the permitting agency for the Airport.
- Prevent the creation of any inconsistencies regarding the process for an amended CUP.
  - Ensure a City Council vote for any CUP changes or additions.
  - Resolve any inconsistencies within the City's Municipal Code.

### General Plan

- Memorialize procedural requirements to support the Annexation Agreement which specified Carlsbad's "final authority" and the Court's 2021 ruling, which states that "the County waived its immunities".
- Memorialize the City of Carlsbad's official position on the expansion of Palomar Airport.

### **Next Steps**

- Place the discussion of the Suggested Implementation Framework on the Feb 6, 2024 City Council Agenda
- Direct staff to return to the City Council within 60 days for the City Council discussion and potential action.

Documents from C4FA's attorneys are attached for your review. We provide them in the interest of sharing research.

If the City of Carlsbad adopts these suggested changes, many recommended by their outside counsel KK&R, our City Council will be able to ensure that the City's local control is honored for generations to come.

Respectfully,

Hope Nelson, on behalf of Citizens for a Friendly Airport

**CAUTION:** Do not open attachments or click on links unless you recognize the sender and know the content is safe.



**Chatten-Brown Law Group, APC**  
Kathryn Pettit | Associate  
325 W. Washington Street, Suite 2193  
San Diego, CA 92103  
kmp@chattenbrownlawgroup.com  
Phone: (619) 393-1440

January 2, 2024

City Council  
City of Carlsbad  
1200 Carlsbad Village Drive  
Carlsbad, CA 92008

**Re: Proposed Revisions to the City's Code and General Plan**

Dear Councilmembers:

Our firm represents Citizens for a Friendly Airport (C4FA). As you are well aware, in 2019, the City Council adopted resolutions 2019-178 and 2019-179 to establish the City of Carlsbad's position regarding the McClellan-Palomar Airport.

C4FA seeks to work with the City to reintroduce the proposed ordinance that was released for public review on January 18, 2018 (Exhibit A), and initially approved but not adopted by the City, along with additional revisions recommended by our office (Exhibit B), for City Council consideration (together, "Proposed Ordinance"). Additionally, C4FA presents narrowly-tailored revisions to the City's General Plan, for the City's consideration. (Exhibit C, "Proposed General Plan Amendment".)

Together, the Proposed Ordinance and Proposed General Plan Amendment would implement the City Council's resolutions, absolve any potential inconsistencies in the City Municipal Code, and memorialize the procedural requirements pursuant to the 1978 Annexation Agreement between the City and County of San Diego, as detailed in the San Diego Superior Court's ruling in *C4FA v. County of San Diego*.

Our office conducted extensive research into the Proposed Ordinance and Proposed General Plan Amendment.

In Section I, we first provide a summary of the current requirements under the City's code. We then summarize our recommended revisions to the City's code in Section II, and our recommended amendment to the General Plan in Section III.

**I. Current Procedural Requirements**

**a. Obtainment of a Conditional Use Permit**

The Annexation Agreement between the City and County established the City's zoning and land use authority over the airport. This includes the requirement that the County must obtain a conditional use permit ("CUP") from the City. As the Superior Court recently found:

[T]he County ...obtained CUP-172 as a condition of the City of Carlsbad's annexation of the airport and rezoning of the land for airport use. (citation.) Notably, the Local Agency Formation Commission stated the following: "In order to comply with the requirements of the Carlsbad Zoning Ordinance, an appropriate zoning designation must be placed upon the airport, and a Conditional Use Permit must be obtained by the County. The City of Carlsbad and the County are in agreement with this procedure." (citation.) Thus, the evidence in the administrative record indicates that the County voluntarily and intentionally relinquished its immunities with respect to the airport.

(Superior Court Case No. 37-2018-00057624-CU-TT-CTL, January 26, 2021 Ruling.)

The County's existing CUP-172 states that "permitted uses for Palomar Airport are limited to those outlined in Table 1 ... approval of any uses not specifically listed in Table 1 and/or expansion of the airport facility shall require an amendment to the Conditional Use Permit." (County Resolution 1699 re CUP-172, p.3-5 (1980).) Notably, the CUP-172 specifically omits runway extensions from uses not requiring discretionary review, indicating that the County must obtain the City's approval via the CUP process for any proposed runway extensions.

Thus, a CUP is required for any new or expanded airport uses. We are aware that the County has not treated "runway extensions" as "expansions." Therefore, we suggest revising the municipal code to clarify that the language of "airport expansion" mirrors Public Utilities Code Section 21664.5, to be consistent with the language and intent of CUP-172, as well as state law.

**b. City Council Vote**

Under our interpretation, the City's municipal code indicates an intent to require City Council approval for airport-related CUP requests. Airport uses are designated as "Process 3" throughout the code, which holds that "[t]he city council shall hear the matter." (Section 21.42.070.)

However, we identified potential inconsistencies in the code, thus requiring the Proposed Ordinance to ensure clarity in the process. The Municipal Code provides: "An approved [] conditional use permit may be amended pursuant to the provisions of Section 21.54.125 of this title. (Section 21.42.110 subd. (E).)

Accordingly, Code Section 21.54.125 provides: “any approved development permit may be amended by following *the same procedure required for the approval of said development permit* (except that if the city council approved the original permit, the planning commission shall have the authority to act upon the amendment) . . .” (emphasis added.)

While the 1980 CUP-172 Resolution only required approval from the Planning Commission, the Municipal Code currently requires City Council approval for any airport CUP.

Thus, it is not entirely clear what process is currently required for any CUP amendment, even for a proposed expansion of airport uses under the existing CUP. We believe this necessitates the Proposed Ordinance, including the new additions proposed by C4FA.

## **II. Overview of Proposed Ordinance**

The ordinance that was proposed by City staff in 2018 proposed the following changes:

- Amend Zoning Ordinance text and define “airport.”
- Allow an airport with approval of a conditional use permit by the City Council only within the boundary of McClellan-Palomar Airport proposed on the City’s Zoning Map.
- Prohibit an airport in all other zones and on all other properties within the City.

We reviewed the ordinance, and suggested the additional revisions:

- Amend Zoning Ordinance text to clarify the definition of “airport expansion,” consistent with state law (Public Utilities Code Section 21664.5)
- Prevent the creation of any inconsistencies regarding the process for an amended CUP.

## **III. Overview of Proposed General Plan Amendment**

We also believe that a General Plan Amendment to clearly set forth the process would bring great advantages to the public and future elected decisionmakers. While there are costs associated with updating or amending the municipal code and General Plan, a clear memorialization of the City’s procedures would prevent any confusion, application of the wrong process, or use of loopholes several years down the road.

The City’s General Plan already includes the following policy:

Prohibit approval of any zone change, general plan amendment or other legislative action that authorizes expansion of McClellan-Palomar Airport, unless authorized to do so by a majority vote of the Carlsbad electorate.

(City of Carlsbad General Plan, Land Use & Community Design Element, 2-45; see also Section 21.53.015, Carlsbad Municipal Code.)

Thus, we believe that the General Plan should be amended to establish the following clear policies of the City:

- Any airport expansion requires a CUP from the City.
- Expansion will be defined as consistent with the definition in the Public Utilities Code.
- Any CUP request– whether it is for a new CUP or an amendment to a CUP – for airport expansion requires a City Council vote.
- The City of Carlsbad supports the B-II Enhanced Alternative McClellan Palomar Airport Master Plan design classification, with no runway extension, and opposes the County Board of Supervisor's D-III Modified Standards Compliance Alternative.

We have included our proposed revisions in Exhibit C (revisions in blue text).

#### **IV. Conclusion**

Our office has spent considerable time researching the Proposed Ordinance, which is primarily the product of research conducted by the City's prior consultant, KK&R. Our firm only had two minor proposed revisions. The Proposed Ordinance would implement City Council resolutions 2019-178 and 2019-179, and ensure that the correct procedure is clear in the City's code.

We also thoroughly believe that a narrow General Plan Amendment is needed to memorialize the City Council's resolutions to maintain the airport's current B-II designation without any runway extension, as well as the required decision-making process that is set out in the City's code.

Thank you for your time and consideration of C4FA's proposal. We respectfully request a meeting with the City staff to further discuss the Proposed Ordinance and General Plan Amendment, especially to receive the City's input.

We are available at your earliest convenience. Please do not hesitate to call with any questions.

Sincerely,



Kathryn Pettit  
Josh Chatten-Brown



# Exhibit A

## **PUBLIC NOTICE**

### **TO INTERESTED PARTIES:**

Please be advised that the City of Carlsbad is considering text amendments to its Local Coastal Program (LCP) as summarized below. This LCP amendment is being proposed by the City of Carlsbad and is currently under review. This notice hereby opens a six-week review period after which the Planning Commission and City Council will consider all comments and act on the proposed LCP amendment. The Planning Commission hearing is expected to take place in spring 2019 and will be duly noticed. The City Council hearing is expected to take place in spring 2019 and will be duly noticed.

Copies of the LCP amendment are available for review at the following locations: (1) Carlsbad Planning Division, 1635 Faraday Avenue; (2) City Clerk's Office, 1200 Carlsbad Village Drive; (3) Carlsbad Main Library, 1775 Dove Lane; (4) Georgina Cole Library, 1250 Carlsbad Village Drive; and (5) the California Coastal Commission, 7575 Metropolitan Drive, Suite 103, San Diego, CA 92108-4402. The LCP Amendment is also posted on the city's website at <http://www.carlsbadca.gov/services/depts/planning/agendas.asp>.

### **PROPOSED LCP AMENDMENT SUMMARY LCPA 2018-0001 (PUB 2018-0022) – Zoning Code Amendment – Airports**

The City's Zoning Ordinance is the implementing ordinance for the City's LCP. Accordingly, the LCP amendment is necessary to ensure consistency between the City's proposed amended Zoning Ordinance and its Local Coastal Program. This specific Zoning Code Amendment is as follows:

The proposed amendment would amend Zoning Ordinance text and define "airport," allow an airport with approval of a conditional use permit by the City Council only within the boundary of McClellan-Palomar Airport proposed on the City's Zoning Map, and prohibit an airport in all other zones and on all other properties within the City.

Changes proposed to the Zoning Ordinance text are attached. Please note the airport and proposed boundary around it are outside the Coastal Zone. Further information about McClellan-Palomar Airport and related City and County actions is available at <http://www.carlsbadca.gov/residents/airportmasterplan.asp>.

If you have any questions, please contact Scott Donnell, Senior Planner, in the Planning Division at (760) 602-4681 or [scott.donnell@carlsbadca.gov](mailto:scott.donnell@carlsbadca.gov). Written comments should be sent to the Planning Division at 1635 Faraday Avenue, Carlsbad, California 92008.

PUBLISH DATE: January 18, 2018

PUBLISH DATE FOR U-T SAN DIEGO: January 18, 2018

PUBLISH DATE FOR COAST NEWS: January 18, 2018

**Community & Economic Development  
Planning Division**

1635 Faraday Avenue | Carlsbad, CA 92008 | 760-602-4600 | 760-602-8560 fax  
Feb. 27, 2024

Item #10

Page 10 of 16

**Proposed text changes to the Carlsbad Municipal Code (Title 21)**  
**Zoning Code Amendment - Airports**  
**ZCA 2018-0001 / ZC2018-0002 / LCPA 2018-0001 (PUB2018-0022)**

**Amendments to Chapter 21.04 Definitions**

Chapter 21.04 (Definitions) is proposed to be amended by adding new Section 21.04.024 to define "airport" as follows:

**21.04.024 Airport**

"Airport" means any area of land or water which is used, or intended for use, for the landing and take-off of aircraft, and any appurtenant areas which are used, or intended for use, for airport buildings or other airport facilities or rights of way, and all airport buildings and facilities located thereon. Airport safety areas and zones are included within this definition. This definition shall be used by the City when applying any requirements of the California Public Utilities Code Section 21661.6.

**Amendments to Chapter 21.07 E-A Exclusive Agriculture Zone**

Section 21.07.020 Table A (Permitted uses in the E-A, Exclusive Agricultural Zone) is proposed to be amended by deleting "airports" as follows:

Use	P	CUP	Acc
Airports		3	

**Amendments to Chapter 21.29 C-T Commercial Tourist Zone**

Section 21.29.030 Table A (Permitted uses in the C-T, Commercial Tourist Zone) is proposed to be amended by deleting "airports" as follows:

Use	P	CUP	Acc
Airports		3	

**Amendments to Chapter 21.30 C-M Heavy Commercial – Limited Industrial Zone**

Section 21.30.010 Table A (Permitted uses in the C-M, Heavy Commercial – Limited Industrial Zone) is proposed to be amended by deleting “airports” as follows:

Use	P	CUP	Acc
Airports		3	

**Amendments to Chapter 21.32 M Industrial Zone**

Section 21.32.010 Table A (Permitted uses in the M, Industrial Zone) is proposed to be amended by changing “airports” to “airport” and by adding Note 3 as follows:

Use	P	CUP	Acc
Airports <u>(see note 3 below)</u>		3	

- Notes:
- 3. Permitted by issuance of a conditional use permit by the city council and only within the boundary of McClellan-Palomar Airport as depicted on the zoning map of the city.

**Amendments to Chapter 21.34 P-M Planned Industrial Zone**

Section 21.34.020 Table A (Permitted uses in the P-M, Planned Industrial Zone) is proposed to be amended by changing “airports” to “airport” and adding Note 6 as follows:

Use	P	CUP	Acc
Airports <u>(see note 6 below)</u>		3	

- Notes:
- 6. Permitted by issuance of a conditional use permit by the city council and only within the boundary of McClellan-Palomar Airport as depicted on the zoning map of the city.

# Exhibit B

**Additional text changes to the Carlsbad Municipal Code (Title 21)  
Zoning Code Amendment - Airports**

**Amendments to Chapter 21.04 (Definitions)**

21.04.140.1 Expansion.

“Expansion” means to enlarge or increase the size of an existing structure or use including the physical size of the property, building, parking and other improvements. In the context of airports, “expansion” includes the acquisition of runway protection zones, or of any interest in land for the purpose of any other expansion, construction of a new runway, extension or realignment of an existing runway, or any other expansion of the airport’s physical facilities for the purpose of accomplishing or which are related to these purposes.

**Amendments to Chapter 21.32 M Industrial Zone**

Section 21.32.010 Table A (Permitted uses in the M, Industrial Zone) is proposed to be amended by changing “airports” to “airport” and by adding Note 3 as follows:

[No change to Proposed Ordinance’s Table revisions]

Notes:

3. Permitted by issuance of a conditional use permit by the city council and only within the boundary of McClellan-Palomar Airport as depicted on the zoning map of the city. The approval of any conditional use permit amendment shall also require a vote by the city council, notwithstanding any other sections of this code, including Sections 21.42.110 and 21.54.125.

**Amendments to Chapter 21.34 P-M Planned Industrial Zone**

Section 21.34.020 Table A (Permitted uses in the P-M, Planned Industrial Zone) is proposed to be amended by changing “airports” to “airport” and adding Note 6 as follows:

[No change to Proposed Ordinance’s Table revisions]

Notes:

6. Permitted by issuance of a conditional use permit by the city council and only within the boundary of McClellan-Palomar Airport as depicted on the zoning map of the city. The approval of any conditional use permit amendment shall also require a vote by the city council, notwithstanding any other sections of this code, including Sections 21.42.110 and 21.54.125.

# Exhibit C

- 2-P.39** Prohibit approval of any zone change, general plan amendment or other legislative action that authorizes expansion of McClellan-Palomar Airport, unless authorized to do so by a majority vote of the Carlsbad electorate. (Section 21.53.015, Carlsbad Municipal Code.)
- 2-P.40** Require any proposal for an expansion of airport uses to obtain a conditional use permit pursuant to a City Council vote.
- 2-P.41** Permit expansion only within the current boundary of McClellan-Palomar Airport.
- 2-P.42** Utilize the State Public Utilities Code definition of airport expansion, which includes the acquisition of runway protection zones, or of any interest in land for the purpose of any other expansion, construction of a new runway, extension or realignment of an existing runway, or any other expansion of the airport's physical facilities for the purpose of accomplishing or which are related to these purposes.
- 2-P.43** Oppose the McClellan-Palomar Airport Master Plan D-III Modified Standards Compliance Alternative design classification. (Resolution No. 2019-178.)
- 2-P.44** Support the B-11 Enhanced Alternative McClellan-Palomar Airport Master Plan design classification, with no runway extension. (Resolution No. 2019-179.)