

ORDINANCE NO. ORD2010-09

AMENDING THE CITY OF KINGSVILLE CODE OF ORDINANCES BY AMENDING CHAPTER XV, LAND USE, ARTICLE 6, ZONING, SECTIONS 35-41 OF AIR INSTALLATION ZONING REGULATIONS; CHANGING RESTRICTIONS AND UPDATING LANGUAGE; REPEALING ALL ORDINANCES IN CONFLICT HERewith AND PROVIDING FOR AN EFFECTIVE DATE AND PUBLICATION.

WHEREAS, the City of Kingsville has obtained a Joint Land Use Study (JLUS) Implementation Grant to assist with the implementation of recommendations from the JLUS approved by the City Commission in April of 2008;

WHEREAS, the JLUS Implementation Committee has recommended approval of this ordinance amendment in order to comply with the JLUS;

WHEREAS, this Ordinance is necessary to protect the public safety, health, and welfare of the City of Kingsville.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF KINGSVILLE, TEXAS:

I.

THAT Sections 15-6-35 through 15-6-41 of the Air Installation Zoning Regulations of Article 6: Zoning of Chapter XV, Land Usage, of the Code of Ordinances of the City of Kingsville, Texas, shall be amended to read as follows:

AIR INSTALLATION ZONING REGULATIONS

Sec. 15-6-35. STATUTORY AUTHORIZATION; FINDINGS OF FACTS; PURPOSE; METHODS OF MITIGATION.

(A) *Statutory authorization.* In Tex. Local Gov. Code § 51.001 et seq. and § 241.001 et seq, the legislature of the state of Texas has delegated the responsibility to local government to adopt regulations to minimize airport hazards and incompatible development.

(B) *Findings of fact.*

(1) An airport hazard endangers the lives and property of users of the airport and of occupants of land in the vicinity of the airport;

(2) An airport hazard that is an obstruction reduces the size of the area available for the landing, taking off, and maneuvering of aircraft tending to destroy or impair the utility of the airport and the public investment in the airport:

(3) The creation of any airport hazard is a public nuisance and an injury to the community served by the airport affected by the hazard;

(4) It is necessary in the interest of the public health, public safety, and general welfare to prevent, the creation of an airport hazard;

(5) The creation of an airport hazard should be prevented, to the extent legally possible, by the exercise of the police power without compensation;

(6) The prevention of the creation of an airport hazard and the elimination, the removal, the alteration, the mitigation, the marking and lighting of an airport hazard are the public purposes for which a political subdivision may raise and spend public funds and acquire land or interests in land;

(7) The Naval Air Station (NAS) Kingsville fulfills an essential community purpose by training naval aviators to support the nation's defense;

(8) The current NAS Kingsville Air Installations Compatible Use Zones (AICUZ) study reflects an analysis of aircraft noise, accident potential, and land use compatibility associated with aircraft now in use and aircraft to be used in the reasonably immediate future;

(9) Adoption of the land use recommendations for noise zones, contained in Table 2, Air Installations Compatible Use Zones Suggested Land Use Compatibility in Noise Zones, Chief of Naval Operations Instruction (OPNAVINST) 11010.36B, 19 Dec 2002 (or as subsequently updated), and Accident Potential Zones, contained in Table 3, Air Installations Compatible Use Zones Suggested Land Use Compatibility in Accident Potential Zones, OPNAVINST 11010.36B, 19 Dec 2002 (or as subsequently updated), balances the rights of private landowners, the public interest in protecting NAS Kingsville from encroachment and in protecting the need to minimize injury to person and property due to noise and accident;

(10) Upon public release of an updated AICUZ study for NAS Kingsville, the AICUZ study, including current noise contours, safety zones, and height limitation areas, which define the AICUZ Overlay Zone, shall be filed as a matter of public record with the city; and

(C) *Purpose.*

(1) Protect human life and health;

(2) Minimize expenditures of public money for land acquisition, easements, or other methods of mitigation;

(3) Minimize damage to property from aircraft operations and accidents;

(4) Help maintain a sound local economy and stable tax base by assuring the continued operation and efficiency of the Naval Air Station;

(5) Insure that potential buyers of property are notified the property is near an airport and affected by aircraft operations;

(6) Insure that allowed development in noise zones is built to achieve noise decibel mitigation and that allowed development in Accident Potential Zones (APZs) is built to achieve density mitigation, as defined in the Chief of Naval Operations Instruction (OPNAVINST) 11010.36B (December 22, 2002) and as shown in the AICUZ footprint defined by the NAS Kingsville AICUZ Study (1998) as developed by the Department of Navy or as subsequently updated.

(D) *Methods of mitigation.* In order to accomplish its purpose this article uses the following methods:

(1) Restriction or prohibition of uses sensitive to aircraft noise or that constitutes an incompatible, use or risk;

(2) Restriction of minimum lot size, maximum lot coverage or floor area ratio; and

(3) Require construction techniques and materials that will achieve maximum noise attenuation consistent with the purposes herein.

Sec. 15-6-36. DEFINITIONS.

(A) There are hereby created and established certain airport hazard zones. These zones are defined as follows:

(1) **Accident potential zone, (APZ).** An area where an accident is most likely to occur if one occurs. APZ's are not predictors of accidents.

(2) **Accident Potential Zone 1, (APZ 1).** The area normally beyond the Clear Zone (CZ), which possesses a significant potential for accidents.

(3) **Accident Potential Zone 2, (APZ 2).** The area normally beyond APZ 1 which has a measurable potential for accidents. (See Map)

(4) **AICUZ Overlay Zone.** This area is defined as a polygon that completely encapsulates the areas defined in the current NAS Kingsville AICUZ study for the approach / departure zones, transitional zone, and the 65 dB DNL contour line(s). (See Map)

(5) **Approach; Departure Zones.** The area longitudinally centered on each runway extended center line, with an inner boundary 200 feet out from the end of the primary zone and the same width as the primary zone then extending outward for a distance of 50,000 feet expanding uniformly in width to 16,700 feet at the outer boundary. (See Map)

(6) **Clear Zone.** The area at the ends of the runways that possesses a high potential for accidents and in which no development is permitted. The fanned shaped area extending outward from the end of the primary zone. The inner boundary commences at and is the same width as the primary zone (2,200') and extends outward for a distance of 2,800' to an outer width of 3,012'. The designation for the Clear Zone is "CZ." (See Map)

(7) **Conical Zone.** The area extending outward from the periphery of the inner horizontal zone for a distance of 7,000 feet. (See Map)

(8) **Controlled Compatible Land Use Area.** Due to changing seasonal wind patterns, NAS Kingsville has four primary runways. To determine the most northern, southern, eastern, and western boundaries of the area subject to regulation, the "Controlled Compatible Land Use Area," as defined in 241.003(7) of the Texas Airport Zoning Act, must be measured from the center line of the runway situated to the outside relative to its adjacent runway.

(9) **Inner Horizontal Zone.** The area (excluding the primary zone, clear zone, transitional zone, and the approach-departure zone) with an outer perimeter formed by swinging arcs 7,500 feet radius about the extended center line of each runway at the end of each primary zone and connecting adjacent arcs by lines tangent to these arcs. (See Map)

(10) **Primary Zone.** The area longitudinally centered on each runway, and extending 200 feet beyond the runway end and 2,200' wide (750' out from the center line of each runway and the 700' distance between the center lines of each runway. (See Map)

(11) **Outer Horizontal Zone.** The area extending outward from the outer periphery of the conical zone for a distance of 30,000 feet. (See Map)

(12) **Transitional Zone.** The area with an inner boundary formed by the periphery of the primary zone, the sides of the clear zone and the approach-departure zone, extended outward at right angle to the runway center line and extended center line until the height matches the adjoining inner horizontal zones, conical zone and outer horizontal zone height limit. The height limit at the inner boundary is the same as the height of the adjoining inner horizontal zone and increases at the rate of one foot vertically for every seven feet horizontally to the outer boundary of the transitional zone, where it again matches the height of the adjoining outer horizontal zone. (See Map)

(13) **Noise Zones.** Areas between noise contours, having certain land use recommendations. The noise contours are given in decibels for a Day-Night Average Sound Level, DNL (sometimes also called Ldn). Areas

where the restriction or prohibition of development or use sensitive to aircraft noise or that constitutes an incompatible use or risk. The designation for the Noise Zones in this article are less than 65 DNL, 65-70 DNL, 70-75 DNL and greater than 75 DNL. (See Map)

(B) The zones created herein, and the maps and tables referenced, are based in substantial part on the Air Installation Compatible Use Zone (AICUZ) 1992, NAS Kingsville Zones, as developed by the Department of Navy or as subsequently updated.

Sec. 15-6-37. USE RESTRICTIONS.

(A) *Land Use Restrictions.* Notwithstanding any provisions of the Air Installation Zoning Regulations, the permitted land use for any property, or portion thereof, within the Controlled Compatible Land Use Area or AICUZ Overlay Zone, as shown on the Map, shall be in conformity with Tables 2 and 3 attached hereto and incorporated by reference.

(B) *Height Limitations.* Areas where the height of structures is considered to be hazardous due to the flight operations of the airport. Except as otherwise provided, no structure shall be constructed or maintained or tree permitted to grow, within any zone created in excess of the height limitation established herein. An area located in more than one of the described zones shall be considered to be only in the zone with the more restrictive height limitation. (See Map) The various zones and height limitations are more fully defined as follows:

(1) *Primary Zone.* No structure or obstruction that is not a part of the landing and take-off area is permitted in the primary zone if it is of a greater height than the nearest point on the runway. (See Map)

(2) *Clear Zone.* No structure or obstruction not a part of the landing and takeoff area is permitted if it is of a greater height than the end of the runway. (See Map)

(3) *Conical Zone.* Height limits in the conical zone commence at a height of 150 feet above airport elevation at the inner boundary where it adjoins the inner horizontal distance measured outward from the inner boundary to a height of 500 feet above airport elevation at the outer boundary. (See Map)

(4) *Inner Horizontal Zone.* No structure or obstruction will be permitted in the inner horizontal zone of a greater height than 150 feet above airport elevation. (See Map)

(5) *Outer Horizontal Zone.* The height limit within the outer horizontal zone is 500 feet above airport elevation. (See Map)

(6) *Approach; Departure Zones.* Height limits within the approach zones commence at the height of the runway end and increase at the rate

of one foot vertically for every 50 feet horizontally for a distance of 25,000 feet at which point it remains level at 500 feet above airport elevation to the outer boundary. (See Map)

(7) Transitional Zone, Inner Horizontal Zone, Conical Zone and Outer Horizontal Zone Height Limit. The height limit at the inner boundary is the same as the height of the adjoining inner horizontal zone and increases at the rate of one foot vertically for every seven feet horizontally to the outer boundary of the transitional zone, where it again matches the height of the adjoining outer horizontal zone. (See Map)

Sec. 15-6-38. GENERAL PROVISIONS.

(A) *Land to which this article applies.* This article shall apply to discretionary development applications for any property located within (or partially within) the Controlled Compatible Land Use Area or AICUZ Overlay Zone (as shown on the Map) that have not been approved or denied by the City Commission or Planning and Zoning Commission as of the date of adoption of this Article.

(B) *Discretionary Development Application.* For purposes of this Article, discretionary development applications shall include applications for:

- (1) Rezoning, including conditional zonings;
- (2) Conditional use permits for new uses or structures, or for alterations or enlargements of existing conditional uses where the occupant load would increase; and
- (3) Conversions or enlargements of nonconforming uses or structures, except where the application contemplates the construction of a new building or structure or expansion of an existing use or structure where the total occupant load would not increase.

(C) *Permit required.* A building permit is required to ensure conformance with this article.

(D) *Compliance.* No structure, building, or land shall hereafter be located, moved, built, altered or have its use changed without full compliance with the terms of this article and other applicable regulations.

(E) *Abrogation and greater restrictions.* This article is not intended to repeal, abrogate or impair any existing easements, covenants or deed restrictions. However, where this article or another conflict or overlap, whichever imposes the more stringent restriction shall apply.

(F) *Interpretation.* In the interpretation of this article, all provisions shall be:

- (1) Considered as minimum requirements;

- (2) Liberally construed in favor of the governing body; and
- (3) Deemed neither to limit nor repeal any other powers granted under state statute.

(G) *Warning and disclaimer of liability.* The measures required by this article are considered reasonable for regulatory purposes and are based on scientific and engineering considerations. Accidents and noise impacts outside of the areas designated may occur. Alteration in flight paths, operations, and aircraft type can increase or decrease the nature of the impact and geographic area affected. This article does not imply land outside the AICUZ areas will be free from aircraft noise or accidents. This article does not imply or create liability on the part of the city or, any officer or employee thereof for any damages or harm that may result from reliance on this article or any administrative decision lawfully made thereunder.

Sec. 15-6-39. ADMINISTRATION AND RESTRICTIONS.

(A) *Planning Director designated.* The Director of Planning is hereby appointed to administer and implement the provisions of this article. The Director may assign appropriate duties to the Building Official or other personnel.

(B) *Duties and responsibilities.* The Planning Director's duties shall include, but not be limited to:

- (1) Maintain and hold open for public inspection all records pertaining to this article;
- (2) Review, approve, deny or otherwise process applications made under the provisions of this article;
- (3) Interpret, as needed, the exact boundaries of noise and accident zones on the AICUZ map. Where actual field conditions or data supplied by licensed public surveyors conflict with the mapped boundary, the Planning Director shall establish the boundary; and
- (4) Any decision or interpretation of Planning Director or regulation of this article may be appealed to the Zoning Board of Adjustment. Any decision to overturn a ruling by the Planning Director or grant a variance must be supported by findings of fact and specifically enumerated by the Board.

(C) *Permit procedures.*

- (1) Applications shall be made by submission of a site plan indicating the location, dimensions, existing and proposed structures, floor area (square footage) of all structures and proposed use(s);
- (2) Permits shall be issued upon a finding that the proposed land use is compatible with the land use limitations contained in Table 1, as further amplified and explained in Table 2, *supra*.

(D) *Authority of Zoning Adjustment Board.*

(1) Variance authority.

(a) A person who desires to erect or increase the height of a structure, permit the growth of an object of natural growth, or otherwise use property in violation of an airport zoning regulation, may apply to the Board of Adjustment for a variance from the regulation.

(b) The Board shall allow a variance from an airport zoning regulation if:

1. A literal application or enforcement of the regulation would result in practical difficulty or unnecessary hardship; and
2. The granting of the relief would:
 - a. Result in substantial justice being done;
 - b. Not be contrary to the public interest; and
 - c. Be in accordance with the spirit of the regulation and this article.

(c) The Board may impose any reasonable conditions on the variance that it considers necessary to accomplish the purposes of this article.

(2) Variance procedure.

(a) The Zoning Board of Adjustment as established by the city shall hear and render judgments on requests for variances from the requirements of this title.

(b) The Board of Adjustment shall hear and render judgment on an appeal only when it is alleged there is an error in the enforcement or administration of this article.

(c) Any person aggrieved by the decision of the Board of Adjustment may appeal such decision in the court of competent jurisdiction.

(d) Variance shall be granted only upon:

1. A showing of good and sufficient cause;
2. A determination that failure to grant the variance would result in exceptional hardship rather than economic loss to the applicant; and

3. The conditions causing the hardship are unique to the property in the area and not caused or created by the applicant or some previous owner.

(E) *Subdivisions*. Subdivisions shall comply with all use and density requirements contained in this title.

Sec. 15-6-40. NONCONFORMING USES.

(A) Nonconforming uses may be continued unless abandoned for a continuous period of six months after which they may not be resumed.

(B) A nonconforming use shall not be changed to any other type of nonconforming use within any AICUZ area.

(C) Any nonconforming structure or building may be maintained unless damaged in excess of 50% of the market value of the building or structure. Repairs to a structure or building so damaged shall be in conformance with all current regulations.

(D) Existing buildings and structures may be remodeled, enlarged, expanded or altered provided additions, expansions and enlargements conform to this code and the remodeling/alteration does not decrease the degree of conformance.

Sec. 15-6-41. RESPONSIBILITY OF DEVELOPERS: SUBDIVISIONS.

(A) Each developer or landowner who owns property lying within the "controlled compatible land use area" must notify any prospective purchaser of such property of the existence of this article by having each buyer execute a "Disclosure Statement" containing the following language:

"I have been advised that this property is adjacent to a military airport and installation and lies within the 'controlled compatible land use area' as defined by the legislature of the state of Texas in Tex. Local Gov. Code § 241003. I understand that I shall have to include special noise attenuation materials and construction techniques in any construction undertaking designated as having decibel readings above 65 DNL. I am aware that development and construction within this area must conform to guidelines contained in the City of Kingsville Air Installation Zoning Regulation and other applicable law."

(B) Such "Disclosure Statement" shall be executed simultaneously with any "earnest money" contract or other agreement to buy land, and if no "earnest money" contract or other agreement to buy land is executed, prior to the "date of closing" as that term is understood in real estate transactions.

(C) Development within the noise zones designated on the current AICUZ map shall be built to mitigate the noise level to 45 DNL (indoors). It shall be the responsibility of the developer to provide to the Director of Development Services how this will be accomplished, to include site layout and type of material used.

II.

THAT all Ordinances or parts of Ordinances in conflict with this Ordinance are repealed to the extent of such conflict only.

III.

THAT if for any reason any section, paragraph, subdivision, clause, phrase, word or provision of this ordinance shall be held invalid or unconstitutional by final judgment of a court of competent jurisdiction, it shall not affect any other section, paragraph, subdivision, clause, phrase, word or provision of this ordinance, for it is the definite intent of this City Commission that every section, paragraph, subdivision, clause, phrase, word or provision hereof be given full force and effect for its purpose.

IV.

THAT this Ordinance shall be codified and become effective on and after adoption and publication as required by law.

INTRODUCED on this the 10th day of May, 2010.

PASSED AND APPROVED on this the 17th day of May, 2010.

/S/

Sam R. Fugate, Mayor

ATTEST:

/S/

Edna S. Lopez, City Secretary

APPROVED AS TO FORM:

/S/

Courtney Alvarez, City Attorney

EFFECTIVE DATE: June 2, 2010