

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, REGULATING AND RESTRICTING THE HEIGHT OF STRUCTURES AND OBJECTS OF NATURAL GROWTH, AND OTHERWISE REGULATING THE USE OF PROPERTY IN THE VICINITY OF THE PHIL L. HUDSON MUNICIPAL AIRPORT BY CREATING THE APPROPRIATE ZONES AND ESTABLISHING THE BOUNDARIES THEREOF; PROVIDING FOR CHANGES IN THE RESTRICTIONS AND BOUNDARIES OF SUCH ZONES; DEFINING CERTAIN TERMS USED HEREIN; REFERRING TO THE PHIL L. HUDSON MUNICIPAL AIRPORT ZONING MAP WHICH IS INCORPORATED IN AND MADE A PART OF THIS ORDINANCE; PROVIDING FOR ENFORCEMENT; ESTABLISHING A BOARD OF ADJUSTMENT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY NOT TO EXCEED TWO HUNDRED DOLLARS (\$200.00) FOR EACH OFFENSE; AND DECLARING AN EMERGENCY.

WHEREAS, this ordinance is adopted pursuant to the authority conferred by the Airport Zoning Act, as amended, Tex. Rev. Civ. Stat. Ann., Article 46e-1 et seq (1969).

WHEREAS, it is hereby found that an obstruction has the potential for endangering the lives and property of users of Phil L. Hudson Municipal Airport, and property or occupants of land in its vicinity; that an obstruction may affect existing and future instrument approach minimums of Phil L. Hudson Municipal Airport, and that an obstruction may reduce the size of areas available for the landing, takeoff, and maneuvering of aircraft, thus tending to destroy or impair the utility of Phil L. Hudson Municipal Airport, and the public investment therein. Accordingly, it is declared:

- (1) That Phil L. Hudson Municipal Airport fulfills an essential community purpose;
- (2) That the creation or establishment of an obstruction has the potential of being a public nuisance and may injure the region served by Phil L. Hudson Municipal Airport.
- (3) That it is necessary in the interest of the public health, public safety, and general welfare that the creation or establishment of obstructions that are a hazard to air navigation be prevented; and
- (4) That the prevention of these obstructions should be accomplished, to the extent legally possible, by the exercise of the police power without compensation.

It is further declared that the prevention of the creation or establishment of hazards to air navigation, the elimination, removal, alteration or mitigation of hazards to air navigation, or the marking and lighting of obstructions are public purposes for which a political subdivision may raise and expend public funds and acquire land or interests in land.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, ACTING AS THE AIRPORT ZONING BOARD, AS APPROVED IN THE AIRPORT ZONING ACT:

SECTION 1. Short Title. This Ordinance shall be known and may be cited as the City of Mesquite Airport Zoning Ordinance.

SECTION 2. Definitions. As used in this Ordinance, unless the context otherwise requires:

- (1) AIRPORT - means Phil L. Hudson Municipal Airport.
- (2) AIRPORT ELEVATION - means the established elevation of the highest point on the usable landing area measured in feet from mean sea level.
- (3) AIRPORT HAZARD - means any structure or tree or use of land which obstructs the air space required for the flights of aircraft or which obstructs or interferes with the control or tracking and/or data acquisition in the landing, taking off or flight at an airport, or at any installation or facility relating to flight, and tracking and/or data acquisition of the flight craft; hazardous, interfering with or obstructing such landing, taking off or flight of aircraft or which is hazardous to or interferes with tracking and/or data acquisition pertaining to flight and flight vehicles.
- (4) AIRPORT HAZARD AREA - means any area of land or water upon which an airport hazard might be established if not prevented as provided in this Ordinance.
- (5) AIRPORT REFERENCE POINT - means the point established as the approximate geographic center of the airport landing area and so designated.
- (6) AIRPORT ZONING BOARD - means the City Council of the City of Mesquite, Texas.
- (7) APPROACH SURFACE - A surface longitudinally centered on the extended runway centerline, extending outward and upward from the end of the primary surface and at the same slope as the approach zone height limitation slope set forth in Section 4 of this Ordinance. In plan the perimeter of the approach surface coincides with the perimeter of the approach zone.

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- (8) APPROACH, TRANSITIONAL, HORIZONTAL, AND CONICAL ZONES - These zones are set forth in Section 3 of this Ordinance.
- (9) BOARD OF ADJUSTMENT - A Board consisting of five (5) members as set out in Section 9 of this Ordinance and as provided by Article 46e-10, Tex. Rev. Civ. Stat. Ann. (1969).
- (10) CONICAL SURFACE - A surface extending outward and upward from the periphery of the horizontal surface at a slope of 20 to 1 for a horizontal distance of 4,000 feet.
- (11) HAZARD TO AIR NAVIGATION - An obstruction determined to have a substantial adverse effect on the safe and efficient utilization of the navigable airspace.
- (12) HEIGHT - For the purpose of determining the height limits in all zones set forth in this Ordinance and shown on the zoning map, the datum shall be mean sea level elevation unless otherwise specified.
- (13) HORIZONTAL SURFACE - A horizontal plane 150 feet above the established airport elevation, the perimeter of which in plan coincides with the perimeter of the horizontal zone.
- (14) LANDING AREA - means the surface area of the Airport used for the landing, take-off or taxiing of aircraft.
- (15) NONCONFORMING USE - Any pre-existing structure, object of natural growth, or use of land which is inconsistent with the provisions of this Ordinance or an amendment thereto.
- (16) OBSTRUCTION - Any structure, growth, or other object, including a mobile object, which exceeds a limiting height set forth in Section 4 of this Ordinance.
- (17) PERSON - means an individual, firm, partnership, corporation, company, association, joint stock association, or body politic, and includes a trustee, receiver, assignee, administrator, executor, guardian, or other representative.
- (18) PRIMARY SURFACE - A surface longitudinally centered on a runway. When the runway has a specially prepared hard surface, the primary surface extends 200 feet beyond each end of that runway; but when the runway has

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no specially prepared hard surface, or planned hard surface, the primary surface ends at each end of that runway. The width of the primary surface of a runway will be that width prescribed in Part 77 of the Federal Aviation Regulations (FAR) for the most precise approach existing or planned for either end of that runway. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline.

The width of a primary surface: 500 feet for non-precision instrument runways having visibility minimums greater than three-fourths statute mile.

- (19) RUNWAY - A defined area on an airport prepared for landing and take-off of aircraft along its length.
- (20) STRUCTURE - An object, including a mobile object, constructed or installed by man, including, but not limited to, buildings, tower, cranes, smokestacks, earth formation, and overhead transmission lines.
- (21) TRANSITIONAL SURFACES - These surfaces extend outward at 90 degree angles to the runway centerline and the runway centerline extended at a slope of seven (7) feet horizontally for each foot vertically from the sides of the primary and approach surfaces to where they intersect the horizontal surface.
- (22) TREE - Any object of natural growth.
- (23) NONPRECISION INSTRUMENT RUNWAY - A runway having an existing instrument approach procedure utilizing air navigation facilities with only horizontal guidance, or area type navigation equipment, for which a straight-in nonprecision instrument approach procedure has been approved or planned.

SECTION 3. Zones. In order to carry out the provisions of this Ordinance, there are hereby created and established certain zones which include all of the land lying beneath the Approach Surfaces, Transition Surfaces, Horizontal Surface and Conical surface as they apply to Phil L. Hudson Municipal Airport. Such zones are shown on Zoning Map consisting of one (1) sheet, prepared by the Texas Aeronautics Commission, Austin, Texas, and dated January 12, 1982, which is attached to this Ordinance and made a part hereof. An area located in more than one of the following zones is considered to be only in the zone with the more restrictive height limitation. The various zones are hereby established and defined as follows:

- (1) APPROACH ZONES - Runway 17/35 Approach zone is established beneath the approach surface at the end of runway 17/35 on Phil L. Hudson Municipal Airport for non-precision instrument landings and take-offs. The inner edge of the approach zone shall have a width of 500 feet which coincides with the width of the primary surface at a distance of 200 feet beyond each end of the runway, widening thereafter uniformly to a width of 3,500 feet at a horizontal distance of 10,000 feet beyond each end of the primary surface, its centerline being the continuation of the centerline of the runway.
- (2) TRANSITION ZONES - Transition zones are hereby established beneath the transition surface adjacent to each runway and approach surface as indicated on the zoning map. Transition surfaces, symmetrically located on either side of runways, have variable widths as shown on the zoning map. Transitional surfaces extend outward and upward at right angles to the runway centerline and the runway centerline extended at a slope of 7 to 1 from the sides of the primary surface and from the sides of approach surfaces.
- (3) HORIZONTAL ZONE - The area beneath a horizontal plane 150 feet above the established airport elevation, the perimeter of which is constructed by swinging arcs of 10,000 feet radii from the center of each end of the primary surface of runway 17/35 and connecting the adjacent arcs by lines tangent to those arcs.
- (4) CONICAL ZONE - The area beneath the conical surface extending outward and upward from the periphery of the horizontal surface at a slope of 20:1 for a horizontal distance of 4,000 feet.

SECTION 4. Height Limitations. Except as otherwise provided in this Ordinance, no structure shall be erected, altered, or maintained, and no tree shall be allowed to grow in any zone created by this Ordinance to a height in excess of the applicable height limit herein established for such zone. Such applicable height limitations are hereby established for each of the zones in question as follows:

- (1) APPROACH ZONES - Runway 17/35 One (1) foot in height for each thirty-four (34) feet in horizontal distance beginning at the end of and the elevation of the primary surface and extending to a point 10,000 feet from the end of the primary surface.
- (2) TRANSITION ZONES - Slope seven (7) feet outward for each foot upward beginning at the sides of and at the same elevation as the primary surface and the approach

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surface, and extending to a height of 150 feet above the airport elevation which is 444 feet above mean sea level.

- (3) HORIZONTAL ZONE - Established at one hundred fifty (150) feet above the airport elevation, or a height 594 feet above mean sea level.
- (4) CONICAL ZONE - Slopes twenty (20) feet outward for each foot upward beginning at the periphery of the horizontal zone and at 150 feet above the airport elevation and extending to a height of 350 feet above the airport elevation.
- (5) EXCEPTED HEIGHT LIMITATIONS - Nothing in this Ordinance shall be construed as prohibiting the growth, construction or maintenance of any tree or structure to a height up to 50 feet above the surface of the land.

SECTION 5. Use Restrictions. Notwithstanding any other provisions of this Ordinance, no use may be made of land or water within any zone established by this Ordinance in such a manner as to create electrical interference with navigational signals or radio communication between the airport and aircraft, make it difficult for pilots to distinguish between airport lights and others, result in glare in the eyes of pilots using the airport, impair visibility in the vicinity of the airport, create bird strike hazards, or otherwise in any way endanger or interfere with the landing, taking off, or maneuvering of aircraft intending to use the airport.

SECTION 6. Nonconforming Uses.

(1) Regulations Not Retroactive. The regulations prescribed by this ordinance shall not be construed to require the removal, lowering, or other change or alteration of any structure or tree not conforming to the regulations as of the effective date of this Ordinance, or otherwise interfere with the continuance of any nonconforming use. Nothing herein contained shall require any change in the construction, alteration, or intended use of any structure, the construction, or alteration of which was begun prior to the effective date of this Ordinance, and is diligently prosecuted.

(2) Marking and Lighting. Notwithstanding the preceding provision of this Section, the owner of any nonconforming structure or tree is hereby required to permit the installation, operation, and maintenance thereon of such markers and lights as shall be deemed necessary by the City Manager, City of Mesquite, Texas, to indicate to the operators of aircraft in the vicinity of the Airport, the presence of such airport hazards. Such markers and lights shall be installed, operated, and maintained at the expense of the City of Mesquite, Texas.

SECTION 7. Permits

(1) Future Uses - Except as specifically provided in a and b, hereunder, no material change shall be made in the use of land, no structure shall be erected or otherwise established and no tree shall be planted in any zone hereby created unless a permit therefor shall have been applied for and granted. Each application for a permit shall indicate the purpose for which the permit is desired, with sufficient particularity to permit it to be determined whether the resulting use, structure, or tree would conform to the regulations herein prescribed. If such determination is in the affirmative, the permit shall be granted. No permit for a use inconsistent with the provisions of this Ordinance shall be granted unless a variance has been approved in accordance with Section 7, Par. (4).

(a) In the area lying within the limits of the horizontal zone and conical zone, no permit shall be required for any tree or structure less than seventy-five feet of vertical height above the ground, except when, because of terrain, land contour, or topographic features, such tree or structure would extend above the height limits prescribed for such zones.

(b) In areas lying within the limits of the approach zones, but at a horizontal distance of not less than 4,200 feet from each end of the runway, no permit shall be required for any tree or structure less than seventy-five feet of vertical height above the ground, except when such tree or structure would extend above the height limit prescribed for such approach zones.

Nothing contained in any of the foregoing exceptions shall be construed as permitting or intending to permit any construction, or alteration of any structure, or growth of any tree in excess of any of the height limits established by this Ordinance except as set forth in Section 4, Par. (5).

(2) Existing Uses. No permit shall be granted that would allow the establishment or creation of any airport hazard or permit a nonconforming use, structure, or tree to be made or become higher, or become a greater hazard to air navigation, than it was on the effective date of this Ordinance or any amendments thereto or than it is when the application for a permit is made. Except as indicated; all applications for such a permit shall be granted.

(3) Nonconforming Uses Abandoned or Destroyed. Whenever the City Manager, City of Mesquite, Texas, determines that a nonconforming structure or tree has been abandoned or more than 80 percent torn down, physically deteriorated, or decayed, no permit shall be granted that would allow such structure or tree to exceed the applicable height limit or otherwise deviate from the zoning regulations.

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(4) Variances. Any person desiring to erect or increase the height of any structure, or permit the growth of any tree, or use his property, in violation of the regulations prescribed in this Ordinance, may apply to the Board of Adjustment for a variance from such regulations in question. The application for variance shall be accompanied by a determination from the Federal Aviation Administration as to the effect of the proposal on the operation of air navigation facilities and the safe, efficient use of navigable airspace. Such variances shall be allowed where it is duly found that a literal application or enforcement of the regulations will result in unnecessary hardship and the relief granted would not be contrary to the public interest, but do substantial justice, and be in accordance with the spirit of this Ordinance. Additionally, no application for variance to the requirements of this Ordinance may be considered by the Board of Adjustment unless a copy of the application has been furnished to the Airport Manager of the Phil L. Hudson Municipal Airport for advice as to the aeronautical effects of the variance. If the Airport Manager does not respond to the application within fifteen (15) days after receipt, the Board of Adjustment may act on its own to grant or deny said application.

(5) Obstruction Marking and Lighting - Any permit or variance granted may, if such action is deemed advisable by the Mesquite City Manager or the Board of Adjustment to effectuate the purpose of this Ordinance and be reasonable in the circumstances, be so conditioned as to require the owner of the structure or tree in question to allow the City of Mesquite to install, operate, and maintain, at the expense of the City of Mesquite, Texas, such markings and lights as may be necessary.

SECTION 8. Enforcement - It shall be the duty of the City Manager, City of Mesquite, Texas, to administer and enforce the regulations prescribed herein. Applications for permits shall be made to the Chief Building Inspector, City of Mesquite, upon a form published for that purpose. Applications required by this Ordinance to be submitted to the Chief Building Inspector shall be promptly considered and granted or denied. Applications for variances shall be made to the Board of Adjustment by first filing said application for variance with the City Planner, City of Mesquite, who shall forthwith transmit said application to the Board of Adjustment for determination.

SECTION 9. Board of Adjustment.

(1) There is hereby created a Board of Adjustment to have and exercise the following powers:

(a) to hear and decide appeals from any order, requirement, decision, or determination made by the Chief Building Inspector, City of Mesquite, Texas, in the enforcement of this ordinance;

(b) to hear and decide special exceptions to the terms of this Ordinance upon which such Board of Adjustment under such regulations may be required to pass;

(c) to hear and decide specific variances. -

(2) The Board of Adjustment shall consist of five (5) members, three (3) members shall be appointed by the City Council of the City of Mesquite, Texas, and two (2) members shall be appointed by the Town Council of the Town of Sunnyvale, Texas, and each shall serve for a term of two (2) years and removable for cause by the appointment authority upon written charges, after a public hearing.

(3) The Board of Adjustment shall adopt rules for its governance and procedure in harmony with the provisions of this Ordinance. Meetings of the Board of Adjustment shall be held at the call of the Chairman and at such times as the Board of Adjustment may determine. The Chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All hearings of the Board of Adjustment shall be public. The Board of Adjustment shall keep minutes of its proceedings showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall immediately be filed in the office of the City Planner, City of Mesquite and shall be a public record.

(4) The Board of Adjustment shall make written findings of fact and conclusions of law stating the facts upon which it relied when making its legal conclusions in reversing, affirming, or modifying any order, requirement, decision, or determination which comes before it under the provisions of this Ordinance.

(5) The concurring vote of four (4) members of the Board of Adjustment shall be necessary to reverse any order, requirement, decision, or determination of the Chief Building Inspector or to decide in favor of the applicant on any matter upon which it is required to pass under this Ordinance, or to effect any variation in this Ordinance.

SECTION 10. Appeals.

(1) Any person aggrieved, or any taxpayer affected, by any decision of the Chief Building Inspector, City of Mesquite, Texas, made in his administration of this Ordinance, if of the opinion that a decision of the Chief Building Inspector is an improper application of these regulations, may appeal to the Board of Adjustment.

(2) All appeals hereunder must be taken within a reasonable time as provided by the rules of the Board of Adjustment, by filing with the City Planner, City of Mesquite, a notice of Appeal specifying the grounds thereof. The City Planner shall forthwith transmit to the Board of Adjustment all the papers constituting the record upon which the action appealed from was taken.

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(3) An appeal shall stay all proceedings in furtherance of the action appealed from, unless the Chief Building Inspector certifies to the Board of Adjustment, after the notice of appeal has been filed with it, that by reason of the facts stated in the certificate, a stay would, in the opinion of the Chief Building Inspector cause imminent peril to life or property. In such case, proceedings shall not be stayed except by order of the Board of Adjustment on notice to the Chief Building Inspector and on due cause shown.

(4) The Board of Adjustment shall fix a reasonable time for hearing appeals, give public notice and due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney.

(5) The Board of Adjustment may in conformity with the provisions of this Ordinance, reverse or affirm, in whole or in part, or modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination, as may be appropriate under the circumstances.

SECTION 11. Judicial Review. Any person aggrieved, or any taxpayer affected, by any decision of the Board of Adjustment, may appeal to a court of competent jurisdiction, as provided by the Airport Zoning Act, as amended, Tex. Rev. Civ. Stat. Ann., Art 46e-11 (1969).

SECTION 12. Enforcement and Remedies. The City Council of the City of Mesquite, Texas, may institute in any Court of competent jurisdiction, an action to prevent, restrain, correct, or abate any violation of this Ordinance or of any order or ruling made in connection with its administration or enforcement including but not limited to, an action for injunctive relief as provided by the Airport Zoning Act, as amended, Tex. Rev. Civ. Stat. Ann., Art. 46e-12 (1969).

SECTION 13. Penalties. Each violation of this Ordinance or of any regulation order, or ruling promulgated hereunder shall constitute a misdemeanor and upon conviction shall be punishable by a fine of not more than \$200.00 and each day a violation continues to exist shall constitute a separate offense.

SECTION 14. Conflicting Regulations. Where there exists a conflict between any of the regulations or limitations prescribed in this Ordinance and any other regulations applicable to the same area, whether the conflict be with respect to the height of structures or trees, the use of land, or any other matter, the more stringent limitation or requirement shall govern and prevail.

SECTION 15. Severability. If any of the provisions of this Ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or application of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

SECTION 16. Effective Date. WHEREAS, the immediate operation of the provisions of this Ordinance is necessary for the preservation of the public health, public safety, and general welfare an EMERGENCY is hereby declared to exist, and this Ordinance shall be in full force and effect from and after its passage by the Airport Zoning Board and publication and posting as required by law. Adopted by the City of Mesquite Airport Zoning Board this 16th day of May, 1983.

Mrs. Brunhilde Nystrom
Mrs. Brunhilde Nystrom
Mayor

ATTEST:

APPROVED AS TO FORM:

Norma G. McGaughy
Norma G. McGaughy
City Secretary

Elland Archer
City Attorney

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