

ORDINANCE NO. 2943

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, REPEALING ORDINANCE NO. 1883 AND ADOPTING A NEW ORDINANCE THAT SHALL BE KNOWN AS "PHIL L. HUDSON MUNICIPAL AIRPORT HAZARD ZONING ORDINANCE;" 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 HAZARD 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; AND DECLARING AN EMERGENCY.

WHEREAS, this ordinance is adopted pursuant to the authority conferred by the Airport Act, Tex. Local Gov't. Code Ann., §§241.001 et seq (Vernon 1988).

WHEREAS, it is hereby found that an obstruction has the potential for endangering the lives and the property of users of Phil L. Hudson Municipal Airport, and the 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, take-off 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 that:

- (1) Phil L. Hudson Municipal Airport fulfills an essential community purpose; and
- (2) The creation or establishment of an obstruction has the potential of being a nuisance and may injure the region served by Phil L. Hudson Municipal Airport; and
- (3) It is necessary in the interest of 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) 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:

SECTION 1. That the Mesquite Airport Zoning Ordinance previously adopted by the City Council of the City of Mesquite by Ordinance No. 1883 on May 16, 1983, is hereby repealed in its entirety and replaced with the following ordinance that shall be known and may be cited as "Phil L. Hudson Municipal Airport Hazard Zoning Ordinance."

A. *Definitions.* The following words, terms and phrases, when used in this ordinance, shall have the meanings ascribed to them, except where the context indicates a different meaning.

Airport means Phil L. Hudson Municipal Airport.

Airport Elevation means the established elevation of the highest point on the usable landing area measured in feet above mean sea level. The elevation of Phil L. Hudson Municipal Airport is four-hundred-forty-four (444) feet above mean sea level located on the runway centerline at the end of runway 17.

Airport Hazard means any structure or tree or use of land which obstructs the airspace required for the flight of aircraft or which obstructs or interferes with the control, tracking and/or data acquisition in the landing, taking off, or flight at an airport, or at any installation or facility relating to flight, tracking, and/or data acquisition of the flight craft; is hazardous, interferes with or obstructs 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.

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.

Airport Reference Point means the point established as the approximate geographic center of the airport landing area and so designated. The airport reference point (ARP) for Phil L. Hudson Municipal Airport is Latitude 32°44'43.4"N; Longitude 96°31'49.2"W.

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.

Approach, Transitional, Horizontal, and Conical Zones these zones are set forth in Section 3 of this ordinance.

Board of Adjustment a board consisting of five (5) members as set out in Section 9 of this ordinance and as provided by Tex. Local Gov't. Code Ann., §241.032 (Vernon 1988).

Conical Surface a surface extending outward and upward from the periphery of the horizontal surface at a slope of twenty (20) to one (1) for a horizontal distance of four-thousand (4,000) feet.

Hazard to Air Navigation an obstruction determined to have a substantial adverse effect on the safe and efficient utilization of the navigable airspace.

Height for the purpose of determining the height limits in all zones set forth in this ordinance and shown on the hazard zoning map, the datum shall be mean sea level elevation.

Horizontal Surface a horizontal plane one-hundred-fifty (150) feet above the established airport elevation, the perimeter of which in plan coincides with the perimeter of the horizontal zone.

Landing Area means the surface area of the airport used for the landing, take-off, or taxiing of aircraft.

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.

Obstruction any structure, growth, or other object, including a mobile object, which exceeds a limiting height set forth in Section 4 of this ordinance.

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.

Precision Instrument Runway a runway having an existing instrument approach procedure utilizing an Instrument Landing System (ILS), a Microwave Instrument Landing System (MLS), or a Precision Approach Radar (PAR). It also means a runway for which a precision approach system is planned and is so indicated on an approved Airport Layout Plan (ALP) or any other approved planning document.

Primary Surface a surface longitudinally centered on a runway. When the runway has a specially prepared hard surface, the primary surface extends two-hundred (200) feet beyond each end of that runway; but when the runway has 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 the primary surface is one-thousand (1,000) feet for precision instrument runways.

Runway a defined area on an airport prepared for landing and take-off of aircraft along its length. The zoned length of the Phil L. Hudson Municipal Airport runway is seven-thousand (7,000) feet.

Structure an object, including a mobile object, constructed or installed by man, including, but not limited to, buildings, towers, cranes, smokestacks, earth formations, and overhead transmission lines.

Transitional Surfaces these surfaces extend outward at ninety (90) degree angles to the runway centerline and the runway centerline extended at a slope of seven (7) feet horizontally for each one (1) foot vertically from the sides of the primary and approach surfaces to where they intersect the horizontal and conical surfaces. Transitional surfaces for those portions of the precision approach surface, which project through and beyond the limits of the conical surface, extend a distance of five-thousand (5,000) feet measured horizontally from the edge of the approach surface and at ninety (90) degree angles to the extended runway centerline.

Tree any object of natural growth.

B. 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, Mesquite, Texas. Such zones are shown on the hazard

zoning map consisting of one (1) sheet, prepared by the Texas Department of Transportation, Division of Aviation, Austin, Texas and dated September 9, 1991, and revised October 14, 1992, 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:

(a) Approach zones are established beneath the approach surfaces at the ends of Runway 17-35 at Phil L. Hudson Municipal Airport for precision instrument landings and take-offs. The inner edge of the approach zones shall have a width of one-thousand (1,000) feet which coincides with the width of the primary surface at a distance of two-hundred (200) feet beyond the ends of the runway, widening thereafter uniformly to a width of sixteen-thousand (16,000) feet at a horizontal distance of fifty-thousand (50,000) feet beyond the ends of the primary surface, the centerlines being the continuation of the centerline of the runway.

(b) Transitional zones are hereby established beneath the transition surfaces adjacent to the runway and approach surfaces as indicated on the hazard zoning map. Transition surfaces, symmetrically located on either side of the runway, have variable widths as shown on the hazard zoning map. Transitional surfaces extend outward and upward at right angles to the runway centerline and the primary surface and from the sides of the approach surfaces. Transitional surfaces for those portions of the precision approach surface which project through and beyond the limits of the conical surface, extend a distance of five-thousand (5,000) feet measured horizontally from the edge of the approach surface and at right angles to the runway centerline.

(c) The area beneath a horizontal plane one-hundred-fifty (150) feet above the established airport elevation, the perimeter of which is constructed by swinging arcs of ten-thousand (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.

(d) The area beneath the conical surface extending outward and upward from the periphery of the horizontal surface at a slope of twenty (20) to one (1) for a horizontal distance of four-thousand (4,000) feet.

C. 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:

(a) *Approach Zones.* One (1) foot in height for each fifty (50) feet in horizontal distance beginning at the end of and at the same elevation as the primary surface and extending to a point ten-thousand (10,000) feet from the end of the primary surface, then rising one (1) foot in height for each forty (40) feet in horizontal distance for an additional forty-thousand (40,000) feet.

(b) *Transition Zone.* Slopes seven (7) feet outward for each one (1) foot upward beginning at the sides of and at the same elevation as the primary surface and the approach surface, and extending to a height of one-hundred-fifty (150) feet above the airport elevation or to a height of five-hundred-ninety-four (594) feet above mean sea level. In addition to the foregoing, there are established height limits sloping seven (7) feet outward for each one (1) foot upward beginning at the sides of and at the same elevation as the approach surface, and extending to where they intersect the horizontal and conical surface. Where the precision instrument runway approach zone projects beyond the conical zone, there are established height limits sloping seven (7) feet outward for one (1) foot upward beginning at the sides of and at the same elevation as the approach surface, and extending a horizontal distance of five-thousand (5,000) feet measured at ninety (90) degree angles to the extended runway centerline.

(c) *Horizontal Zone.* Established at one-hundred-fifty (150) feet above the airport elevation, or a height of five-hundred-ninety-four (594) feet above mean sea level.

(d) *Conical Zone.* Slopes twenty (20) feet outward for each one (1) foot upward beginning at the periphery of the horizontal zone and at one-hundred-fifty (150) feet above the airport elevation and extending to a height of three-hundred-fifty (350) feet above the airport elevation or to a height of seven-hundred-ninety-four (794) feet above mean sea level.

(e) *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 fifty (50) feet above the surface of the land.

D. Land 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 Phil L. Hudson Municipal Airport.

E. Nonconforming Uses.

(a) *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.

(b) *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 of the City of Mesquite, Texas or his designated representative 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.

F. Permits.

(a) *Future Uses.* Except as specifically provided in (1), (2), and (3) hereunder, no material change shall be made in the use of land that would create a hazardous condition as described in Section 1.D., no structure shall be erected or otherwise established, and no tree shall be permitted to grow in any zone hereby created in excess of the "excepted height limitation" allowed in Section 1.C.(e), 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 1.F.(d).

- (1) In the area lying within the limits of the horizontal and conical zones, no permit shall be required for any tree or structure less than seventy-five (75) feet of vertical height above the ground, except when, because of terrain, land contour, or topographic features, the same would extend above the limits prescribed for such zones.
- (2) In areas lying within the limits of the approach zones, but at a horizontal distance of not less than four-thousand-two-hundred (4,200) feet from each end of the runways, no permit shall be required for any tree or structure less than seventy-five (75) 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 limit prescribed for such approach zone.

- (3) In the areas lying within the limits of the transitional zones beyond the perimeter of the horizontal zone, no permit shall be required for any tree or structure less than seventy-five (75) feet above the ground, except when, because of terrain, land contour, or topographic features, such tree or structure would extend above the height limit prescribed for such transitional zone.

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 E.

(b) *Existing Uses.* No permit shall be granted that would allow the creation or establishment 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 permits shall be granted.

(c) *Nonconforming Uses Abandoned Or Destroyed.* Whenever the City Manager of the City of Mesquite, Texas or his designated representative determines that a nonconforming structure or tree has been abandoned or more than eighty (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.

(d) *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 Airport 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 practical difficulty or 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 Airport Board of Adjustment unless a copy of the application has been furnished to the City of Mesquite Airport Advisory Board for advice as to the aeronautical effects of the variance. If the City of Mesquite Airport Advisory Board

does not respond to the application within fifteen (15) days after receipt, the Airport Board of Adjustment may act on its own to grant or deny said application. The Board may impose any reasonable condition on the variance that it considers necessary to accomplish the purposes of this ordinance.

(e) *Obstruction Marking and Lighting.* Any permit or variance granted may, if such action is deemed advisable by the City Manager of the City of Mesquite, Texas or his designated representative or the Airport 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 Manager of the City of Mesquite, Texas or his designated representative to install, operate, and maintain, at the expense of the City of Mesquite, Texas such markings and lights as may be necessary.

G. Enforcement.

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

H. Board of Adjustment.

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

- (1) To hear and decide appeals from any order, requirement, decision, or determination made by the City Manager or the City Planner of the City of Mesquite, Texas or their designated representatives in the enforcement of this ordinance; and
- (2) 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; and
- (3) To hear and decide specific variances.

(b) The Airport 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 be removable for cause by the appointing authority upon written charges, after a public hearing.

(c) The Airport Board of Adjustment shall adopt rules for its governance and procedure in harmony with the provisions of this ordinance, provided that the By-Laws of the Mesquite (Zoning) Board of Adjustment shall apply until such time that the Airport Board of Adjustment adopts its own rules. Meetings of the Airport Board of adjustment shall be held at the call of the chairman and at such times as the Airport 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 Airport Board of Adjustment shall be public. The Airport 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 of the City of Mesquite, Texas and shall be a public record.

(d) The Airport 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.

(e) The concurring vote of four (4) members of the Airport Board of Adjustment shall be necessary to reverse any order, requirement, decision, or determination of the City Manager of the City of Mesquite, Texas or his designated representative 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 as provided in the Tex. Local Gov't Code Ann., §241.032(d)(Vernon 1988).

I. Appeals.

(a) Any person aggrieved, or any taxpayer affected, by any decision of the City Manager of the City of Mesquite, Texas or his designated representative made in the administration of this ordinance, if of the opinion that a decision of the City Manager of the City of Mesquite, Texas or his designated representative is an improper application of these regulations, may appeal to the Airport Board of Adjustment.

(b) All appeals hereunder must be taken within a reasonable time as provided by the rules of the Airport Board of Adjustment, by filing with the City Planner of the City of Mesquite, Texas or his designated representative a notice of appeal specifying the grounds thereof. The City Planner of the City of Mesquite, Texas or his designated

representative shall forthwith transmit to the Airport Board of Adjustment all the papers constituting the record upon which the action appealed from was taken.

(c) An appeal shall stay all proceedings in furtherance of the action appealed from, unless the City Manager of the City of Mesquite, Texas or his designated representative certifies to the Airport 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 City Manager of the City of Mesquite, Texas or his designated representative, cause imminent peril to life or property. In such case, proceedings shall not be stayed except by order of the Airport Board of Adjustment on notice to the City Manager of the City of Mesquite, Texas or his designated representative and on due cause shown.

(d) The Airport 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.

(e) The Airport 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.

J. Judicial Review.

Any person aggrieved, or any taxpayer affected, by any decision of the Airport Board of Adjustment, may appeal to a court of competent jurisdiction, as provided by the Airport Zoning Act, Tex. Local Gov't. Code Ann., §241.041 (Vernon 1988).

K. 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, Tex. Local Gov't. Code Ann., §241.044 (Vernon 1988).

L. 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

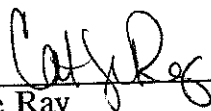
prevail as provided by the Airport Zoning Act, Texas Local Gov't. Code Ann., §241.901 (Vernon 1988).

SECTION 2. 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 applications 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 3. That any person, firm, or corporation violating any of the provisions or terms of this ordinance shall be deemed to be guilty of a Class C Misdemeanor and upon conviction in the Municipal Court shall be punished by a fine not to exceed Five Hundred (\$500.00) Dollars for each offense.

SECTION 4. 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 City Council of the City of Mesquite and publication and posting as required by law.


DULY PASSED AND APPROVED by the City Council of the City of Mesquite, Texas this the 6th day of December, 1993.




Cathye Ray
Mayor

ATTEST:

APPROVED:



Lynn Prugel
City Secretary



B.J. Smith
City Attorney