

City of Houston, Texas, Ordinance No. 2009- 1301

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AN ORDINANCE AMENDING THE CODE OF ORDINANCES BY ADDING A NEW ARTICLE VII TO CHAPTER 9 RELATING TO AIRPORT HAZARD AREA REGULATIONS; ESTABLISHING AIRPORT HAZARD AREAS AND REGULATIONS IN THE VICINITY OF GEORGE BUSH INTERCONTINENTAL AIRPORT/HOUSTON, WILLIAM P. HOBBY AIRPORT, ELLINGTON AIRPORT, AND WITHIN THE CITY LIMITS; ADOPTING OFFICIAL AIRPORT HAZARD AREA MAPS FOR LAND WITHIN THE AIRPORT HAZARD AREAS; PROVIDING FOR ADMINISTRATION AND ENFORCEMENT; PROVIDING FOR AIRPORT HAZARD AREA PERMITS AND RELATED MATTERS; MAKING FINDINGS AND CONTAINING OTHER PROVISIONS RELATING TO THE FOREGOING SUBJECT; PROVIDING FOR AN EFFECTIVE DATE; PROVIDING FOR SEVERABILITY; CONTAINING A REPEALER; AND DECLARING AN EMERGENCY.

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WHEREAS, the City of Houston, Texas (the "City"), owns and operates George Bush Intercontinental Airport/Houston, William P. Hobby Airport, and Ellington Airport (the "Airports"); and

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WHEREAS, the Airports are used in the interest of the public to the benefit of the City; and

WHEREAS, pursuant to authority granted to the Secretary of Transportation under 49 U.S.C. § 47104, the Federal Aviation Administration (the "FAA") may make federal funds available to the City for improvement projects at the Airports; and

WHEREAS, in order to receive such federal funds, the City, pursuant to 49 U.S.C. § 47107, must make certain written assurances to the FAA; and

WHEREAS, one such assurance requires that the City take appropriate action to assure that such terminal airspace as is required to protect instrument and visual operations to the airport, including established minimum flight

altitudes, will be adequately cleared and protected by preventing the establishment or creation of future airport hazards, and mitigating or eliminating existing hazards; and

WHEREAS, by letter dated August 7, 2009, the FAA advised the City it was not in compliance with the aforementioned assurance; and

WHEREAS, continued noncompliance may result in the City's having to repay past federal funding, cancellation of current federal funding, and forfeiture of future funding; and

WHEREAS, the Airports are a regional economic generator, are responsible for more than 151,000 jobs, and comprise the 4th largest multi-airport system in the United States; and

WHEREAS, any such loss of federal funding would hamper the City's ability to improve the Airports and thus reduce the economic vitality of the region; and

WHEREAS, the City of Houston is a municipal corporation and home rule city organized under the Constitution and the general and special laws of the State of Texas, and thereby exercises powers granted by the City's Charter and the provisions of Article XI, Section 5 of the Texas Constitution; and

WHEREAS, in the exercise of its lawful authority, the City may enact police power ordinances to promote and protect the health, safety and welfare of the public; and

WHEREAS, the City may, under the provisions of Chapter 241 of the Texas Local Government Code ("Chapter 241") and its police power, establish by

ordinance regulations to administer and enforce airport hazard area regulations, in order to promote the health, safety, morals or general welfare of the City, and to promote the safe, orderly and healthful development of the City if an airport is used in the interest of the public to the benefit of the City; and

WHEREAS, the City Council, consistent with Chapter 241, finds that:

- (1) An airport hazard endangers the lives and property of users of the Airports and of occupants of land in the vicinity of the Airports;
- (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 Airports and the public investment in the Airports;
- (3) The creation of an airport hazard is a public nuisance and an injury to the community served by the Airports 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; and
- (6) The prevention of the creation of an airport hazard and the elimination, the removal, the alteration, the mitigation, or the marking and lighting of an airport hazard are public purposes for which a political subdivision may raise and spend public funds and acquire land or interests in land; and

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WHEREAS, the City may implement, under the provisions of Chapter 241, in connection with airport hazard area regulations, any federal law or rules controlling the establishment or creation of airport hazards located adjacent to or in the immediate vicinity of the airport; and

WHEREAS, the City may define, under the provisions of Chapter 241, airport hazard areas, which are areas of land and water on which an airport hazard could exist; and

WHEREAS, the City Council finds that each of George Bush Intercontinental Airport/ Houston, William P. Hobby Airport, and Ellington Airport, is used in the interest of the public to the benefit of the City and independently fulfills an essential community purpose; and

WHEREAS, the FAA is responsible for aviation safety and aircraft operations, and has established certain zones and surfaces at each airport designed to protect the operation of aircraft and the electronic systems which guide aircraft in flight; and

WHEREAS, the FAA has identified certain "notice surfaces", under which a proposed structure or object of natural growth that may penetrate such surfaces must be reviewed by the FAA; and

WHEREAS, the FAA further mandates procedures to permit the safe operation of aircraft in the event of a loss of engine power on takeoff, including approved air spaces designated for that purpose; and

WHEREAS, on October 7, 2009, the City Council approved Ordinance No. 2009-954 which authorized the Airport Commission to review possible regulation

of airport hazard areas, and which requested that body to do all those things required to be done to permit the eventual consideration and adoption by the City Council of appropriate airport hazard regulations for areas in the vicinity of each of the Airports; and

WHEREAS, on October 15, 2009, the Airport Commission held a meeting and adopted its preliminary report on the proposed regulations and maps for airport hazard area regulations and called for proper notice of a public hearing to be given; and

WHEREAS, on November 12, 2009, and November 19, 2009, the Airport Commission held two properly noticed public hearings on the proposed regulations and maps; and

WHEREAS, on November 19, 2009, the Airport Commission considered the proposed regulations and maps and adopted its final report thereon; and

WHEREAS, on December 9, 2009, the City Council held a properly noticed public hearing on the proposed regulations and maps; and

WHEREAS, the City Council, in its evaluation of the proposed regulations and maps, has considered, among other things:

- (1) The character of the flying operations expected to be conducted at the Airports;
- (2) The nature of the terrain within the airport hazard areas;
- (3) The character of the neighborhoods; and
- (4) The current and possible uses of the property to be regulated; and

WHEREAS, the City Council finds that, in order to promote the public health, safety, morals and general welfare of the City, and to meet federal requirements, it is desirable to adopt this Ordinance in order to:

- (1) Fulfill the City's obligation to meet federal grant assurance requirements mandated by federal law;
- (2) Protect the investments made to date in the Airports by assuring no hazards to air navigation will be established or created, and existing hazards will be mitigated or eventually eliminated, within the federally defined airspaces; and
- (3) Protect the safety, capacity and continued utility and viability of the airports; and

WHEREAS, the City Council finds that the airport hazard areas described in the airport hazard area regulations and maps are areas on which an airport hazard could exist; and

WHEREAS, the City Council finds that the airport hazard area regulations adopted by this Ordinance are reasonable and are reasonably necessary to achieve the purposes of Chapter 241; and

WHEREAS, the City Council finds that all procedural requirements necessary for the adoption of regulations and maps regulating airport hazard areas in the vicinity of the Airports have been complied with and satisfied; **NOW, THEREFORE,**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:

Section 1. That the findings and recitals contained in the preamble of this Ordinance are declared to be true and correct and are hereby adopted and made a part of this Ordinance.

Section 2. That Chapter 9 of the Code of Ordinances is amended by adding a new Article VII, which shall read as follows:

"ARTICLE VII. AIRPORT HAZARD AREA REGULATIONS

DIVISION 1. IN GENERAL

Sec. 9-701. Applicability.

The provisions of this article shall apply within an airport hazard area, whether located within or outside the city. No land, body of water, structure or object of natural growth shall be used or permitted to be used, no structure or object of natural growth shall be erected, constructed, moved, reconstructed, structurally altered or maintained, nor shall any electronic emissions, visual effect, or other objects or activities which could adversely affect the operation of aircraft be permitted, for any purpose except in compliance with the terms of this article.

Sec. 9-702. Definitions.

As used in this article, these words and phrases shall have the meanings ascribed to them in this section, unless the context clearly indicates a different meaning. All words and phrases not defined shall have their common meaning.

Airport means George Bush Intercontinental Airport/Houston (IAH), William P. Hobby Airport (HOU) or Ellington Airport (EFD), as described by any current or future plans of HAS.

Airport commission means the airport zoning commission described in Chapter 241 that is charged with making recommendations to the city council on regulations and boundaries, and performing other tasks delegated to it in accordance with state law in the implementation of this article.

Airport hazard means any permanent or temporary structure or proposed structure; any addition to or alteration of an existing structure; any object of natural growth; or any electronic emission or visual effect, that obstructs or limits, or has the potential to obstruct or limit, the operation of aircraft to, from or in the vicinity of, any airport, including, but not limited to:

- (1) Anything that obstructs the air space required for the taking off, landing or maneuvering of aircraft;
- (2) Anything that interferes with visual, radar, radio or other systems for tracking, acquiring data relating to, monitoring or controlling aircraft;
- (3) Anything tending to destroy or impair the utility of any airport;
- (4) Anything constituting an obstruction to air navigation, as defined in section 77.21 *et seq.* of Part 77; or
- (5) Anything that is found to be a hazard to air navigation or a presumed hazard to air navigation as a result of an aeronautical study conducted by the FAA pursuant to section 77.31 *et seq.* of Part 77.

Airport hazard area means the areas described in section 9-706 of this Code.

Airport hazard area permit or AHA permit means a permit issued by the department for regulated activities within an airport hazard area.

Airport hazard notification surface means any of the following surfaces:

- (1) *Primary notification surface*, which is a slope of 100 feet horizontal to one foot vertical for a distance of 20,000 feet from the nearest point of each runway at each airport, or any TERPS surface that is lower at any point than this slope;

- (2) *Secondary notification surface*, which is a surface that would be penetrated by a structure or an object of natural growth that is 200 feet above ground level at any given location within the city or in an air hazard area;
- (3) *Special one engine inoperative surface*, which is a one-engine inoperative surface at any airport that is lower at any point than any other surface established by or pursuant to FAA regulation.

Board of adjustment or *board* means the board charged with hearing requests to reverse an order, requirement, decision, or determination of the director and deciding matters that are delegated to the board pursuant to this article.

Chapter 241 means Chapter 241 of the Texas Local Government Code, as it may be amended from time to time.

Composite perimeter means a perimeter line delineating the outer boundary of the combined TERPS surface, Part 77 surface, one engine inoperative surface and airport hazard notification surface at IAH, and at HOU/EFD combined, as those surfaces exist as of Dec. 16, 2009¹ or may hereafter be established, and as shown on the official airport hazard area maps.

Development plat has the meaning ascribed in section 42-1 of this Code or as provided in an interlocal agreement for land located outside the city.

Form 7460-1 means the form identified in section 77.17 of Part 77.

Nonconformity means any airport hazard that penetrates any airport hazard notification surface and that legally exists as of March 1, 2010.

One engine inoperative surface means any surface established at each airport in accordance with FAA requirements to permit the safe operation of air carrier aircraft in the event of loss of engine power on takeoff.

¹ Editor to insert date of passage and approval of this ordinance.

Part 77 means Part 77 of the FAA regulations in Title 14, Code of Federal Regulations as it now exists or may hereafter be amended.

Part 77 surfaces means those surfaces identified in section 77.25 of Part 77.

Structure means anything that is built, constructed or erected, whether temporary or permanent, including, but not limited to, cranes and drilling rigs.

Subdivision plat has the meaning ascribed in section 42-1 of this Code, or as provided in an interlocal agreement for land located outside the city.

TERPS means one or more terminal instrument procedures surfaces established by FAA orders to protect aircraft on approach to and departure from, or operations in the vicinity of each airport.

Sec. 9-703. Essential community purpose.

The airports are used in the interest of the public to the benefit of the city and fulfill an essential community purpose.

Sec. 9-704. Other jurisdictions' regulations; interlocal agreements.

(a) Each municipality or county whose jurisdiction includes land within an airport hazard area may coordinate with the city to adopt an ordinance, order, or appropriate regulation consistent with this article, including airport hazard area regulations and maps, and provisions regarding the enforcement and administration thereof, or may enter into an interlocal agreement with the city pursuant to Chapter 791, Texas Government Code.

(b) If a municipality or county whose jurisdiction includes land within an airport hazard area does not enter into an interlocal agreement with the city, or adopt an ordinance, order or regulation consistent with this article, the city reserves its rights to enforce the terms of this article, as well as all rights granted to the city under Chapter 241 in the airport hazard area within that jurisdiction.

Sec. 9-705. Cumulative effect.

(a) The provisions of this article are cumulative of all other requirements of this Code and other laws and regulations of the city, including, without limitation, *the Construction Code, the Fire Code and the Department of Public Works and Engineering Infrastructure Design Manual*, as well as all applicable state and federal laws and regulations. Compliance with this article does not excuse compliance with any other law or regulation, and persons who are not required to obtain a permit pursuant to this article shall nevertheless obtain any other permits, licenses, and authorizations required by law.

(b) For land located outside the city, the provisions of this article are cumulative of the requirements imposed by ordinances or other laws and regulations of a municipality or county whose jurisdiction extends to land within an airport hazard area.

(c) If a conflict exists between this article and any other city ordinance or regulation, or an ordinance or regulation of another municipality or county whose jurisdiction extends to land within an airport hazard area, the provisions of this article shall control.

Sec. 9-706. Airport hazard areas.

(a) The following airport hazard areas are hereby established:

- (1) The land area within the IAH composite perimeter;
- (2) The land area within the HOU/EFD combined composite perimeter;
- (3) Airspace at or above 200 feet above ground level within the city; and
- (4) Any area within the city on which an object or activity described in section 9-709 of this Code exists or is proposed.

(b) The director shall determine the location or character of an airport hazard area or other feature on an airport hazard area map in the event of any question or dispute with respect thereto.

Sec. 9-707. Airport hazard area maps.

The city council has adopted an official airport hazard area map for IAH and an official airport hazard area map for HOU/EFD combined, which shall be used to implement this article. The maps may be amended in accordance with Chapter 241. The official airport hazard area maps shall be maintained on file in the office of the city secretary, with a copy available at the department.

Sec. 9-708. Notice on plats; affidavit when no subdivision plat required.

(a) *Subdivisions requiring subdivision plat.* The recorded subdivision plat of any land located wholly or partially within an airport hazard area shall include on its face the following statement:

NOTICE: Individual lots or parcels within this subdivision may be located in an airport hazard area and may be subject to height or use restrictions.

(b) *For construction on land not requiring subdivision plat.* Prior to the issuance of a permit for construction on or development of property located within any airport hazard area that has been platted prior to the effective date of this article, or that is not otherwise required to be platted, an affidavit in the form prescribed by the planning director shall be executed by the owners of the property setting forth, at a minimum, the notice language set forth in section 9-708(a) of this Code. The department shall record the affidavit in the real property records in the county in which the property is located, at the expense of the affiant.

(c) Prior to the use of any affidavit form, the city attorney or his designee shall review and approve the affidavit form for legal sufficiency. The affidavit form shall be attached to the permit application as a part thereof, shall include but not be limited to a description of the type of structure or activity for which the permit application is being made and any exhibits referred to therein, and shall be properly sworn to and subscribed before a notary public.

Sec. 9-709. Objects or activities that could adversely affect the operation of aircraft.

It shall be unlawful to create or maintain any electronic emission, visual effect or other object or activity in an airport hazard area that adversely affects the operation of aircraft. Upon receipt of a written notice of violation of this section from the director, the

owner of the source of the electronic emission, visual effect or other object or activity shall immediately cease the emission, alter or remove the visual effect or other object or cease the activity.

Sec. 9-710. Objects of natural growth.

It shall be unlawful to plant or permit to grow any object of natural growth whose typical height at maturity will penetrate any airport hazard notification surface. The owner of any object of natural growth shall immediately remove the object of natural growth upon receipt of a written notice of violation of this section from the director. It shall be an affirmative defense to prosecution under this article that the object of natural growth does not penetrate an airport hazard notification surface.

Sec. 9-711. Continuation of nonconformity.

A nonconformity may be continued as it existed on March 1, 2010, but may not be enlarged or expanded unless in compliance with this article and other city requirements.

Sec. 9-712. Restoration of partially destroyed structure.

Nothing in this article shall prevent the repair or restoration, and continued occupancy or use, of any nonconforming structure destroyed to the extent of not more than 51 percent of its appraised market value, by fire, explosion or other casualty, natural disaster or other act of God or the public enemy. For purposes of this section, appraisal district records shall constitute prima facie proof of appraised market value.

Sec. 9-713. Mitigation of nonconformity.

(a) The owner of a nonconformity shall allow the installation, maintenance and operation of markers and lights, in accordance with FAA standards, deemed necessary by the department or the FAA to identify airport hazards.

(b) The owner of a tree or other object of natural growth that penetrates an airport hazard notification surface shall allow the department to lower or remove the tree or other object of natural growth to bring it into conformity with the requirements of this article.

Secs. 9-714 – 9-730. Reserved.

DIVISION 2. ADMINISTRATION

Sec. 9-731. Airport commission.

(a) An airport commission for airport hazard areas has been established by City of Houston Ordinance No. 2009-954. The members of the airport commission shall be the members of the city planning commission, as established pursuant to chapter 33 of this Code, and such other members as provided by this section.

(b) The airport commission may include a member appointed by the City of Humble and a member appointed by the City of Pasadena. The airport commission may also include members appointed by other units of local government whose jurisdiction extends to land within an airport hazard area upon entering into an interlocal agreement with the city, which members are not required to be residents of the city.

(c) A quorum of the airport commission shall be as provided in section 33-19 of this Code, regardless of whether the membership has been enlarged pursuant to this section. All meetings of the airport commission shall be held in accordance with the Texas Open Meetings Act, be recorded, and have minutes made and kept in accordance with all regulations governing the city planning commission.

(d) The airport commission may adopt such rules and regulations for the conduct of public hearings and meetings as are in compliance with federal and Texas law and city ordinances. Except as herein provided, all provisions of chapter 33 of this Code shall apply to the airport commission.

(e) The director shall be a non-voting, ex officio member and shall serve as secretary to the commission.

Sec. 9-732. Department; director.

The department is hereby designated the agency responsible for administering and enforcing this article. The director or his designee is hereby designated as the administrator of this article. The duties of the director shall include:

- (1) To promulgate rules and forms as necessary to administer and enforce the provisions of this article;

- (2) To review and approve or disapprove applications for AHA permits in accordance with the provisions and timelines of this article and Chapter 241; and
- (3) To charge and collect applicable fees, as set by the city council, for processing each AHA permit.

Sec. 9-733. Board of adjustment.

(a) *Establishment of board of adjustment and board powers.* A board of adjustment is hereby created pursuant to Chapter 241 and shall have the following powers:

- (1) To hear and decide appeals, as provided by Chapter 241, or pursuant to this article, from an order, requirement, decision, or determination made by the director in the enforcement of this article;
- (2) To hear and decide special exceptions to the terms of this article; and
- (3) To grant variances from these regulations.

(b) *Board composition.* The board shall be composed of five members appointed by position to two-year terms. The mayor may appoint an individual board member to serve in matters involving only IAH, matters involving only HOU and matters involving only EFD, which members shall serve individually in position 5(IAH), position 5(HOU), and position 5(EFD), respectively. Members, including alternate members, shall be appointed by the mayor and confirmed by the city council and shall be residents of the city, except as provided in subsection (4), below.

- (1) The mayor shall appoint a chair from among the members.
- (2) The director shall be a non-voting, ex officio member of the board and shall serve as secretary to the board.
- (3) An alternate member may be appointed for each position. An alternate member may serve in the absence of the member in that position.
- (4) In the event another governmental entity whose jurisdiction includes land within an airport hazard area enters into an interlocal agreement with the city for

enforcement of the terms of this article, the agreement may contain provisions for the appointment to the board of a resident of that governmental entity for matters affecting property within that entity's jurisdiction only. Any member so appointed does not need to be a resident of the city.

- (5) The board may be composed of the same members appointed to the Board of Adjustment for Airport Land Use regulations in article VI of this chapter.

(c) *Board procedures.* The board shall adopt rules and procedures for its governance consistent with the provisions of this article, including how members shall rotate to allow members appointed under section 9-733 (b)(4) of this Code to participate as required. A board member may be removed by the appointing authority for cause on a written charge after a public hearing. A vacancy in any position shall be filled for the remainder of the unexpired term, giving first consideration to any current alternate members. The board shall adopt a regular meeting schedule and shall give public notice of the meeting schedule by publication for three consecutive days in a daily newspaper of general circulation within the city and any other jurisdiction located within the airport hazard area. The board may change this meeting schedule by the adoption of a new schedule, the effective date of which shall not be less than ten days after publication of the new schedule for three consecutive days in a daily newspaper having general circulation within the city and any other jurisdiction located within the airport hazard area. The board may meet in panels to consider each airport individually. The chair, or the acting chair, may administer oaths and compel the attendance of witnesses. All hearings of the board of adjustment shall be public. The board shall keep minutes of its proceedings showing the vote of each member upon each question, and if any member is absent or fails 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 board of adjustment and are public records. Four members of the board shall constitute a quorum. The concurring vote of four members of the board shall be necessary to:

- (1) Reverse an order, requirement, decision, or determination of the director;
- (2) Decide in favor of an applicant on a matter on which the board is required to pass under this article; or

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Sec. 9-753. AHA permit procedures—FAA submission.

To obtain an AHA permit, the proponent of a proposed structure shall first submit a Form 7460-1 for the structure to the FAA in accordance with the requirements of section 77.17 of Part 77 and obtain a determination from the FAA as provided in section 77.35 of Part 77.

Sec. 9-754. AHA permit application.

(a) Upon receipt of a notice of determination by the FAA, the proponent of a proposed structure shall submit to the department an AHA permit application in the form prescribed by the director, which shall include:

- (1) The name of the applicant;
- (2) The address of the proposed structure;
- (3) The maximum height above ground level of the proposed structure including all appurtenances that extend above roof level;
- (4) A copy of the Form 7460-1 previously filed with the FAA;
- (5) The FAA notice of determination for the proposed structure; and
- (6) Any additional information that the director may reasonably require.

(b) No AHA permit application shall be accepted by the director unless it is complete, accompanied by all required documents and information, including all applicable permit fees, and the affidavit required by section 9-708 of this Code, if applicable.

(c) The director shall make a determination of completeness in writing to the applicant no later than the tenth business day after the date that the AHA permit application is filed. The determination of completeness shall:

- (1) Indicate that the application is complete; or

(2) Indicate that the application is not complete and specify the documents or other information necessary to complete the application and shall state the date the permit application will expire, which shall be on or after 45 days from the date of the director's determination.

(d) If the required additional information is not timely submitted, the AHA permit application shall be deemed to have expired, and a new permit application shall be required.

(e) The director shall review each complete AHA permit application, and if in compliance with this article, an AHA permit shall be issued; if not in compliance with this article, the application shall be denied, with a notation of the reasons for denial.

Sec. 9-755. AHA permit review, approval, denial.

(a) The director shall review each complete AHA permit application to determine whether an AHA permit can be approved pursuant to this section.

(b) The director shall approve an AHA permit application for a proposed structure that penetrates a primary or secondary notification surface only if the final FAA determination for the proposed structure is a "No Hazard to Air Navigation", a "Does Not Exceed", or an "Exceeds But Okay" determination. In all other cases, the director shall deny the AHA permit application.

(c) The director shall deny an AHA permit application for a proposed structure that he confirms will penetrate a special one engine inoperative surface.

Sec. 9-756. Expiration.

An AHA permit shall expire if construction has not commenced within two years of the approval of an AHA permit or upon completion of the structure for which it is approved, whichever occurs first.

Sec. 9-757. Revocation of permit; appeal process.

(a) In addition to any enforcement remedies allowed by law, whenever the director finds that there are grounds for revocation of an AHA permit, he shall give written notice to the permittee by personal service or by certified mail, return receipt requested,

addressed to the applicant at the address set forth in the AHA permit application. The notice shall include:

- (1) The specific grounds upon which the permit in question may be revoked;
- (2) The fact that there will be a hearing in which the city will seek the revocation of the permit;
- (3) The date, time and place of the hearing;
- (4) The fact that the permittee may appear in person or be represented by an attorney; and
- (5) Any notice required by other city ordinance.

(b) All hearings shall be held by a hearing officer appointed by the director.

(c) All hearings shall be conducted under rules consistent with the nature of the proceedings; provided however, that the following specific rules shall also apply:

- (1) All parties shall have the right to representation by a licensed attorney, though an attorney is not required.
- (2) Each party may present witnesses in its own behalf.
- (3) Each party shall have the right to cross-examine all witnesses.
- (4) Only evidence presented before the hearing officer at the hearing may be considered in rendering the final order.

(d) If the permittee fails to appear at the hearing on the date and time specified, the city shall introduce evidence to establish a prima facie case on behalf of the city showing that grounds exist for revocation of the AHA permit.

(e) After completion of the presentation of evidence by all parties appearing, the hearing officer shall make written findings and render a written order as to whether or not grounds exist for the revocation of the AHA permit. If grounds exist, the hearing officer shall revoke the permit; provided that he may, in the interest of justice, take such other lesser actions as deemed appropriate

including, but not limited to, the temporary suspension of the permit, the revision of the permit, or the addition of permit conditions. A true and accurate copy of the order shall be personally delivered or mailed by certified mail, return receipt requested, to the permittee.

(f) In the event an AHA permit is revoked, suspended, or revised, the city shall not be liable to any person for any refund of any part of any permit fees.

(g) An action under this section may be appealed to the city council pursuant to Rule 12 of the city council rules of procedure, upon the filing of a written application therefor with the city secretary within ten days from the date the written order is signed by the hearing officer. Filing of an appeal under this section shall not operate to suspend the hearing officer's order thereon.

Sec. 9-758. Fees.

The director shall, from time to time, prepare and submit for approval by motion of the city council a schedule of fees that shall be paid by an applicant for an AHA permit, appeals and variances. Payment of any applicable fees when due is a condition of the processing of any application under this article.

Secs. 9-759 – 9-780. Reserved.

DIVISION 4. APPEALS, VARIANCES AND SPECIAL EXCEPTIONS

Sec. 9-781. Appeals.

Except for actions brought under section 9-757 of this Code, the board shall hear and decide an appeal from an order, requirement, decision, or determination made by the director in the application or enforcement of this article in accordance with such reasonable rules as the board may establish.

- (1) *Who may appeal.* Any person aggrieved by an order, decision, or determination of the director, any taxpayer affected by a decision or determination of the director made in the administration of this article, or the governing body if the governing body believes the order, decision or determination is an improper application of this article may file and appeal under this article.

- (2) *Commencement of appeals.* All appeals hereunder must be taken within seven business days of the director's decision or prior to commencement of construction, whichever occurs first, by filing a notice of appeal with the board and the department specifying the grounds for the appeal. The department shall transmit to the board all papers constituting the record upon which the action appealed was taken.
- (3) *Stay of proceedings.* An appeal shall stay all proceedings in furtherance of the action appealed unless the director certifies in writing to the board that by reason of the facts stated in the certificate, a stay would, in the opinion of the director, cause imminent peril to life or property. In such case, proceedings shall not be stayed except by order of the board on notice to the director and on due cause shown.
- (4) *Appeal procedures.* The board shall set a reasonable time for an appeal hearing, and public notice of the hearing and due notice to the parties in interest shall be given as provided in section 9-785 of this Code. The board shall decide an appeal within a reasonable time. At the hearing, any party may appear in person, by agent, or by attorney.
- (5) *Decision.* The board may reverse or affirm, in whole or in part, or modify the director's order, requirement, decision, or determination from which an appeal is taken and make the correct order, requirement, decision, or determination, and for this purpose the board of adjustment has the same authority as the department. The board, however, may not issue a decision that would result in the issuance of an AHA permit that would allow the creation of an airport hazard.

Sec. 9-782. Variances.

- (a) The board shall hear and decide specific variances to the regulations in this article.
 - (1) A person who desires to place, construct, erect, or alter a structure or object of natural growth in a

manner inconsistent with this article may apply to the board of adjustment for a variance from the regulations.

(2) The board shall allow a variance from these regulations if:

- a. A literal application or enforcement of the regulation would result in practical difficulty or unnecessary hardship;
- b. The granting of the relief would:
 - [1] Result in substantial justice being done;
 - [2] Not be contrary to the public interest; and
 - [3] Be in accordance with the spirit of these regulations and Chapter 241;
- c. The variance is the minimum variance that will make possible the reasonable use of the land, structure, or object of natural growth; and
- d. The variance would not result in the issuance of an AHA permit that would allow the creation of an airport hazard.

(3) In determining whether the standards set forth in subitems (2)c and d above have been met, the board shall consider the following factors:

- a. The FAA's determination as to whether the proposed structure would constitute a hazard to air navigation;
- b. The director's determination as to whether the proposed structure would penetrate a special one engine inoperative surface;
- c. The nature of the terrain and height of existing structures;
- c. Public and private interest and investments;

- d. The character of aircraft operations and planned future development of the airport;
 - e. Federal airways as designated by the FAA;
 - f. Technological advances;
 - g. The safety of persons on the ground and in the air;
 - h. Land use density; and
 - i. Safe and efficient use of navigable airspace.
- (4) The board may impose any reasonable conditions on a variance that it considers necessary to accomplish the purposes of this article and Chapter 241.
 - (5) A request for a variance shall be made by filing with the director a complete application in the form prescribed by the director, and payment of the fee established by city council. The director shall set a reasonable time for a hearing date and shall give public notice of the hearing and due notice to the parties in interest as required by section 9-785 of this Code. The board shall conduct a public hearing on the application and shall make its decision within a reasonable time, not to exceed 30 days from the date of the close of the hearing. In each case, the board shall make written findings that all conditions for the particular variance sought have been met or not met, and the board may impose such additional conditions or safeguards it deems necessary to protect the public interest.
- (b) Exclusions from board authority.
 - (1) Applications for variance when the FAA has ruled that the placement, construction, or alteration of the structure or object of natural growth would constitute a hazard to air navigation.
 - (2) Enlargement of any nonconformity. A request for action by the board regarding a nonconforming structure or object of natural growth may be considered only to determine that a structure or object

of natural growth is, or is not, in whole or in part, a legal nonconformity.

Sec. 9-783. Special exceptions.

The board shall be entitled to hear and grant special exceptions to the terms of this article as provided in this section.

Sec. 9-784. Time for submittal.

Complete applications shall be reviewed and referred to the board by the director for the next meeting for which proper notice pursuant to section 9-785 of this Code can be given.

Sec. 9-785. Notification of application before the board.

(a) The director shall give public notice of a hearing before the board on an appeal of the director's decision, a special exception, or a variance by:

(1) Either:

a. Mailing a letter, first class mail, postage paid, to the owner of the property that is the subject of the matter presented to the board, and to the owners of all lots or tracts that are within 250 feet of the boundary of the property, as shown on the most recently approved *ad valorem* tax rolls of the city not less than the seventh day before the first meeting at which the board will first consider the application; or

b. By causing the information to be readily available to the public in an electronic format; and

(2) By letter mailed first class mail, postage paid, or by electronic mail message to each neighborhood association with defined boundaries registered with the department in whose area the property is located as soon as reasonably possible before the first meeting at which the board will consider the application.

(b) The applicant shall give notice of an application before the board by posting at least one sign on the property that is the subject of a proposed variance or special exception before the

tenth business day before the date of the meeting at which the board will first consider the application. A sign shall face each public right-of-way bordering the site, provided, however, that if more than four signs would be required to be posted, the applicant may request the director to approve an alternative number and location of signs. The director shall approve an alternative to the number and location of signs required by this subsection in excess of four upon determining that the alternative will provide maximum visibility and obtain the objectives of this section without unduly burdening the applicant. Each sign shall be a minimum of four by eight feet in size and shall be posted no more than 15 feet from the public right-of-way. The lettering on the sign shall be legible from the public right-of-way. The applicant shall use reasonable efforts to maintain each required sign on the site until the close of the meeting at which the board acts on the application. The sign shall provide the following information:

- (1) The application number of the request and the fact that a variance or special exception is being requested;
- (2) The date, time, and place of the meeting at which the board will first consider the application;
- (3) A telephone number of the applicant to call for additional information; and
- (4) A department telephone number to call for additional information.

Secs. 9-786 – 9-800. Reserved.

DIVISION 5. ENFORCEMENT; PENALTY

Sec. 9-801. Actions authorized to enforce article.

(a) The city, acting through the city attorney or any other attorney representing the city, is hereby authorized to file an action in a court of competent jurisdiction to:

- (1) Enjoin any person from violating the terms, conditions and restrictions of an AHA permit issued under this article;
- (2) Enjoin or abate the violation of the provisions of this article;

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- (3) Recover civil penalties for violation of the terms, conditions and restrictions of an AHA permit issued under this article;
 - (4) Recover civil penalties for violation for the provisions of this article; or
 - (5) Recover damages from the owner of property in an amount adequate for the city to undertake any construction or other activity necessary to bring about compliance with this article on the property.

(b) The city, acting through the city attorney or any other attorney representing the city, is hereby authorized to enter into agreements in lieu of litigation to achieve compliance with the terms, conditions and restrictions of any AHA permit issued under this article or the provisions of this article.

(c) The director is authorized to:

- (1) Whenever any work authorized by an AHA permit is being performed contrary to the provisions of this article, or other pertinent laws or ordinances implemented through the enforcement of this article, order the work (other than work to cure a violation) stopped by notice in writing served on any persons performing the work or causing the work to be performed. Any such persons shall forthwith stop the work until authorized by the director to proceed with the work.
- (2) At the time a stop order is issued, the person performing the work and the permit holder shall be given notice of a right to a hearing on the matter pursuant to Section 9-757 of this article. Any stop order that has been issued shall remain in effect pending any hearing that has been requested unless the stop order is withdrawn by the director.

Sec. 9-802. Penalty.

It shall be unlawful to violate any provision of this article. The penalty for violation shall be up to \$2000 for each day of violation."

Section 3. That the City Council hereby establishes airport hazard areas at George Bush Intercontinental Airport/Houston, William P. Hobby Airport and Ellington Airport combined, airspace 200 feet above ground level within the city limits, and any area within the city on which any electronic emission, visual effect or other object or activity that adversely affects the operation of aircraft is located or proposed or to be located, and hereby adopts and approves the Airport Hazard Area Maps depicting the airport hazard areas for George Bush Intercontinental Airport/Houston, and for William P. Hobby Airport and Ellington Airport, that are designated as Exhibits "A" and "B," respectively, and that are on file with the City Secretary.

Section 4. That the City Secretary is hereby directed to maintain the Official Airport Hazard Area Maps at her office at City Hall.

Section 5. That any permit issued by the City of Houston, or for which a complete application was filed prior to the effective date of this Ordinance, under any other requirement of the City Code and other laws and regulations of the City, including without limitation, the Construction Code, the Fire Code, and the Department of Public Works and Engineering Infrastructure Design Manual, is hereby recognized as continuing to be valid, and compliance with Chapter 9 of the Code of Ordinances, Houston, Texas, as amended by this Ordinance shall not be required.

Section 6. That the Director of the Houston Airport System shall cause a copy of this Ordinance to be filed in the real property records of Harris,

Brazoria, Fort Bend, Galveston and Montgomery Counties, Texas, to give notice of the City's adoption of airport hazard area regulations.

Section 7. That if any provision, section, subsection, sentence, clause or phrase of this Ordinance, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this Ordinance or their applicability to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council in adopting this Ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

Section 8. That all other provisions in the Code of Ordinances of the City of Houston remain in full force and effect.

Section 9. That the following ordinances are hereby repealed in their entirety: Ordinance Number 57-1213, passed and approved on October 9, 1957; Ordinance Number 63-2026, passed and approved on December 20, 1963; Ordinance Number 70-346, passed and approved on March 4, 1970; Ordinance Number 80-752, passed and approved on April 15, 1980; Ordinance Number 83-861, passed and approved on June 7, 1983; and Ordinance Number 87-1521, passed and adopted on September 2, 1987.

Section 10. The City Council officially finds, determines, recites and declares that a sufficient written notice of the date, hour, place and subject of this meeting of the City Council was posted at a place convenient to the public at the

920-52-0265

City Hall of the City for the time required by law preceding this meeting, as required by the Open Meetings Law, Chapter 551, Texas Government Code Annotated; and that this meeting has been open to the public as required by law at all times during which this ordinance and the subject matter thereof has been discussed, considered and formally acted upon. The City Council further ratifies, approves and confirms such written notice and the contents and posting thereof.

Section 11. That there exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on that date and shall take effect at 12:01 a.m. on the 1st day of March, 2010.

PASSED AND APPROVED this day of December 16, 2009.

B. D. White
Mayor of the City of Houston

(Prepared by Legal Dep't) D. P. F. A. L. A. S. E.
(DFM:dfm December 14, 2009) Senior Assistant City Attorney
(Requested by Eric R. Potts, Interim Director, Houston Airport System)
(L.D. File No. 0040800086004)
G:\LAND\AIRPORT\2009\Height\Hazard Area Adopting Ordinance (12-14-09 Alice).docx

CAPTION PUBLISHED IN DAILY COURT
REVIEW
DATE: DEC 22 2009

RP 070-25-0267

AYE	NO	
✓		MAYOR WHITE
....	COUNCIL MEMBERS
✓		LAWRENCE
✓		JOHNSON
✓		CLUTTERBUCK
✓		ADAMS
	ABSENT	SULLIVAN
✓		KHAN
✓		HOLM
✓		GONZALEZ
✓		RODRIGUEZ
✓		BROWN
✓		LOVELL
✓		NORIEGA
✓		GREEN
✓		JONES
CAPTION	ADOPTED	

EXHIBIT A

CITY OF HOUSTON
OFFICIAL AIRPORT HAZARD AREA MAP
GEORGE BUSH INTERCONTINENTAL AIRPORT/HOUSTON

EFFECTIVE DATE MARCH 1, 2010

Map of 1" to 800' Scale on File in the Office of the City Secretary

RP 070-25-0268

EXHIBIT B

CITY OF HOUSTON
OFFICIAL AIRPORT HAZARD AREA MAP
WILLIAM P. HOBBY AIRPORT AND ELLINGTON AIRPORT

EFFECTIVE DATE MARCH 1, 2010

Map of 1" to 800' Scale on File in the Office of the City Secretary

RP 070-25-0269

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS VOID AND UNENFORCEABLE UNDER FEDERAL LAW. THE STATE OF TEXAS
COUNTY OF HARRIS
I hereby certify that this instrument was FILED in the number Sequence on the date and at the stamped herein by me, and was duly RECORDED. In the Official Public Records of Real Property of Harris County Texas on

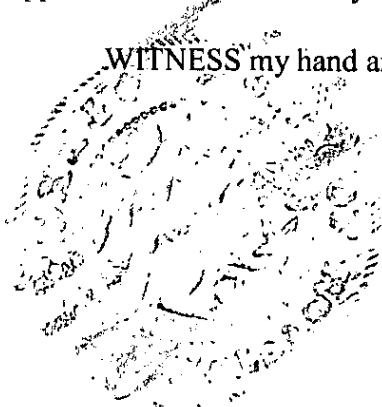
FEB - 5 2010



Beverly L. Kuyperman
COUNTY CLERK
HARRIS COUNTY, TEXAS

I, ANNA RUSSELL, City Secretary of the City of Houston, Texas, do hereby certify that the within and foregoing is a true and correct copy Ordinance No. 2009-1301, passed and approved by the City Council of said City on the 16th day December, 2009, as the same appears in the records in my office.

WITNESS my hand and the Seal of said City this 22nd day of January, 2010.



Anna Russell
Anna Russell
City Secretary of the City of Houston

Ret ✓ ✓

William D. Zriolka
16930 John F. Kennedy Blvd.
Houston, TX 77032

RECORDER'S MEMORANDUM:
At the time of recordation, this instrument was found to be inadequate for the best photographic reproduction because of illegibility, carbon or photo copy, discolored paper, etc. All blackouts, additions and changes were present at the time the instrument was filed and recorded.

Beverly L. Kuyperman
COUNTY CLERK
HARRIS COUNTY, TEXAS

2010 FEB - 5 AM 8:46

FILED

0020-52-000
RP 070-25-0270