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City of Houston, Texas, Ordinance No. 2011-221

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ORDINANCE AMENDING ARTICLE VI OF CHAPTER 9 OF THE CODE OF ORDINANCES, HOUSTON, TEXAS, RELATING TO AIRPORT COMPATIBLE LAND USE REGULATIONS; MAKING FINDINGS AND CONTAINING OTHER PROVISIONS RELATING TO THE FOREGOING SUBJECT; PROVIDING FOR AN EFFECTIVE DATE; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.

* * * * *

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

WHEREAS, the Airports are used in the interest of the public to the benefit of the City; 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 compatible land use regulations for the controlled compatible land use area of an airport, in order to promote the health, safety, morals or general welfare of the City, and to promote the safe, orderly and healthful

6606-20-240 RP 077-02-3038

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 may implement, under the provisions of Chapter 241, in connection with airport compatible land use regulations, any federal law or rules controlling the use of land located adjacent to or in the immediate vicinity of the airport; and

WHEREAS, the City Council approved Ordinance No. 2008-1052 on December 3, 2008, establishing regulations relating to compatible airport land uses around the Airports codified in Article VI of Chapter 9 of the Code of Ordinances, Houston, Texas ("Article VI"); and

WHEREAS, Article VI as adopted provides that no new public assembly and sensitive land uses, as those terms are defined in Article VI, will be allowed in the areas identified by that Article as Tier One; and

WHEREAS, new single family residential uses are allowed in Tier One if the use is to be located on a lot that is restricted to residential use by restrictive covenant or plat and the new construction will meet certain sound attenuation requirements; and

WHEREAS, the City Council, upon recommendation of the Airport Commission, desires to amend Article VI to permit construction of certain new public assembly and sensitive land uses in Tier One provided the new construction meets certain sound attenuation requirements set forth herein and consistent with guidance from the Federal Aviation Administration; and

WHEREAS, on January 6, 2011, the Airport Commission held a meeting and adopted its preliminary report on the proposed amendments to Article VI and called for proper notice of a public hearing to be given; and

WHEREAS, on February 3, 2011, and February 10, 2011, the Airport Commission held two properly noticed public hearings on the proposed amendments to Article VI; and

WHEREAS, on February 10, 2011, the Airport Commission considered the proposed amendments to Article VI and adopted its final report thereon; and

WHEREAS, on March 9, 2011, the City Council held a properly noticed public hearing on the proposed amendments to Article VI; and

WHEREAS, the City Council finds that, in order to promote the public health, safety, morals and general welfare of the City, it is desirable to amend Article VI; and

WHEREAS, the City Council finds that all procedural requirements necessary for the adoption of this Ordinance and the amendments to Article VI 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 Section 9-352 of the Code of Ordinances, Houston, Texas, is hereby amended by amending the definition of "*sensitive use*" to read as follows:

"Sensitive land use means a childcare facility, nursing home, assisted living center, boarding house, school or hospital or medical facility."

Section 3. That Item (1) of Subsection (a) of each of Sections 9-403, 9-503, and 9-603 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

"(1) *Public assembly uses and sensitive land uses.*

- a. No permit shall be issued for the establishment of a new public assembly use or sensitive land use except as provided in paragraph d. of this item.
- b. An existing public assembly use or sensitive land use shall be permitted to enlarge within or renovate an existing structure where it is located, provided that any physical expansion of the structure meets a 45 dBA interior sound level.
- c. An existing public assembly use or sensitive land use shall be permitted to construct new structures within the land area of a master plan for the entity, provided that any new structure meets a 45 dBA interior sound level.
- d. A new public assembly use or sensitive land use shall be permitted under the following conditions:
 - [1] The new use shall be located in a structure that meets a 45 dBA interior sound level; and
 - [2] The owner grants the city an avigation easement and release over the affected property."

Section 4. That Section 9-394 of the Code of Ordinances, Houston, Texas, is hereby amended in its entirety to read as follows:

"Sec. 9-394. 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 9-395 of this Code can be given."

Section 5. That Section 9-359 of the Code of Ordinances, Houston, Texas, is hereby amended to amend Subsection (b) and to add a new Subsection (c), which shall read as follows:

"(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 land use tier one or tier two 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 (a) of this section. 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."

Section 6. 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 7. 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 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 8. 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 immediately upon its passage and approval by the Mayor.

PASSED AND APPROVED this 23rd day of March, 2011.


Mayor of the City of Houston

(Prepared by Legal Dep't) 
(DFM:dfm March 3, 2011) Senior Assistant City Attorney
(Requested by Mario C. Diaz, Director, Houston Airport System)
(L.D. File No. 0040400188001)G:\LAND\AIRPORT\Land Use Regulations\2011Amendment(3).doc

CAPTION PUBLISHED IN DAILY COURIER

REVIEW

DATE:

MAR 29 2011

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AYE	NO	
✓		MAYOR PARKER
....	COUNCIL MEMBERS
✓		STARDIG
✓		JOHNSON
✓		CLUTTERBUCK
✓		ADAMS
✓		SULLIVAN
✓		HOANG
✓		PENNINGTON
✓		GONZALEZ
✓		RODRIGUEZ
✓		COSTELLO
✓		LOVELL
✓		NORIEGA
✓		BRADFORD
✓		JONES
CAPTION	ADOPTED	

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 of Ordinance No. 2011-221, passed and approved by the City Council on the 23rd day of March, 2011, as the same appears in the records in my office.

WITNESS my hand and the Seal of said City this 15th day of April, 2011.



A handwritten signature in cursive script, reading "Anna Russell".

Anna Russell
City Secretary of the City of Houston

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW.
THE STATE OF TEXAS
COUNTY OF HARRIS

I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped herein by me, and was duly RECORDED in the Official Public Records of Real Property of Harris County, Texas.

APR 26 2011



Stan Stewart
COUNTY CLERK
HARRIS COUNTY, TEXAS

After recording, please return to:

City of Houston, Legal Dept.
900 Bagby, 3rd Floor
Houston, TX 77002
Attn: Robert Johnson

Stan Stewart
COUNTY CLERK
HARRIS COUNTY, TEXAS

2011 APR 26 PM 12:36

FILED

RECORDER'S MEMORANDUM:

At the time of recording, this instrument was found to be a true and correct copy of the original photostatic reproduction of the original instrument, carbon or photocopy, or other proper copy. All blockouts, additions and changes were present at the time the instrument was filed and recorded.