

City of Houston, Texas, Ordinance No. 2008- 1052

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF HOUSTON, TEXAS, BY ADDING A NEW ARTICLE VI TO CHAPTER 9 RELATING TO AIRPORT LAND USE REGULATIONS; ESTABLISHING AIRPORT LAND USE REGULATIONS, COMPATIBLE LAND USE ENVELOPES AND TIER BOUNDARIES FOR PROPERTIES IN THE VICINITY OF GEORGE BUSH INTERCONTINENTAL AIRPORT/HOUSTON, WILLIAM P. HOBBY AIRPORT, AND ELLINGTON FIELD; ADOPTING OFFICIAL AIRPORT LAND USE MAPS FOR LAND WITHIN THE COMPATIBLE LAND USE ENVELOPE OF EACH AIRPORT; PROVIDING FOR ADMINISTRATION AND ENFORCEMENT; PROVIDING FOR AIRPORT LAND USE PERMITS AND RELATED MATTERS; MAKING FINDINGS AND CONTAINING OTHER PROVISIONS RELATING TO THE FOREGOING SUBJECT; PROVIDING FOR AN EFFECTIVE DATE; PROVIDING FOR SEVERABILITY; 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 Field (the "Airports"); and

**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 appropriate action be taken to restrict the use of land next to or near the Airports to uses that are compatible with normal airport operations; and

**WHEREAS**, by letter dated September 27, 2006, 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 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

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

**WHEREAS**, on June 25, 2008, the City Council approved Ordinance No. 2008-609, which created the Houston Airport Commission 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 compatible land use regulations for areas in the vicinity of each of the Airports; and

**WHEREAS**, on July 17, 2008, the Airport Commission held a meeting and adopted its preliminary report on the proposed regulations and maps for compatible airport land use regulations and called for proper notice of a public hearing to be given; and

**WHEREAS**, on August 29, 2008, and September 29, 2008, the Airport Commission held two properly noticed public hearings on the proposed regulations and maps; and

**WHEREAS**, on October 16, 2008, the Airport Commission considered the proposed regulations and maps and adopted its final report thereon; and

**WHEREAS**, on November 19, 2008, the City Council held a properly noticed public hearing on the proposed regulations and maps; 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 controlling future development in the vicinity of the Airports; and
- (3) Provide protection for existing neighborhoods while complying with obligations mandated by the FAA; and

**WHEREAS**, the City Council finds that all procedural requirements necessary for the adoption of regulations and maps regulating compatible land use 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 VI, which shall read as follows:

## ARTICLE VI. AIRPORT LAND USE REGULATIONS

### DIVISION 1. MATTERS OF GENERAL APPLICABILITY

#### *Subdivision A. In General*

##### **Sec. 9-351. Applicability.**

This article shall apply to all present or future development within an airport land use envelope, as that term is defined herein, which is either within the city limits or the city's extraterritorial jurisdiction, or is the subject of an interlocal agreement with a governmental entity whose jurisdiction extends to land within such airport land use envelope. No land, body of water, or structure shall be used or permitted to be used and no structures shall be hereafter erected, constructed, moved or reconstructed, structurally altered or maintained for any purpose in the identified airport land use envelopes except in compliance with the restrictions, limitations and prohibitions contained in this article.

##### **Sec. 9-352. 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 any airport owned or operated by the city, including all lands, buildings and other improvements owned, controlled, leased, or operated and maintained by the city appurtenant thereto, as described by any current or future plans of the Houston Airport System (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 land use envelope* means the area of land subject to the terms of this article, being generally described as a box established no farther than 1.5 miles either side of a runway center line and no more than five miles from each runway end, as shown on the official airport land use map for each airport, and which is also a controlled compatible land use area as described in Chapter 241.

*Airport land use tier* means a division of an airport land use envelope into one of three tiers for regulatory purposes, described as tier one, tier two, or tier three, and shown on the official airport land use map for each airport.

*Airport land use permit or permit* means a permit required by this article for construction on or development of land within an airport land use tier.

*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.

*Casualty* means destruction by accidental or natural causes.

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

*Compatible land use* means a use of land that does not endanger the health, safety, or welfare of the owners, occupants, or users of the land, and that is compatible with airport operations, according to the standards and criteria for the designated airport land use tier where the use or activity is, or is proposed to be, located.

*Conforming use* means any use of land or a structure that complies with the provisions of this article and is not a nonconforming use.

*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.

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

*Livable area* means a space in a structure for living, sleeping, eating or cooking, including bathrooms, toilet rooms, closets and halls. Storage or utility areas that do not open directly into a livable area and unfinished attic space are not considered livable area.

*Nonconforming use* means any use of land or a structure that is inconsistent with the provisions of this article and that legally exists as of February 1, 2009

*Nonresidential or nonresidential use(s)* means any use that is not a residential or a sensitive land use, as those terms are hereinafter defined.

*Official airport land use map or OM* means the map depicting the airport land use envelope and the airport land use tiers for each airport.

*Public assembly use* means an institution of higher education, religious institution, community recreational facility, public recreational facility, or other similar use where individuals assemble for a common purpose.

*Residential* means the use or proposed use of land for premises that contain habitable rooms for nontransient occupancy, designed primarily for living, sleeping, cooking and eating, unless it is actually occupied and used exclusively for other purposes. This definition may be modified in an interlocal agreement in the case of land located outside of the city.

*School* means a public or private school used for primary or secondary education, in which any regular kindergarten or grades one through twelve are taught.

*Sensitive land use* means a childcare facility, nursing home, assisted living center, boarding house, school, place of public assembly or hospital or medical facility.

*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.

**Sec. 9-353. 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.

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<sup>1</sup> Editor to insert the effective date of this Ordinance.

**Sec. 9-354. Other jurisdictions' regulations; interlocal agreements.**

(a) Each municipality, county, and other jurisdiction with regulatory authority within the airport land use envelopes defined in this article may coordinate with the city to adopt an ordinance, order, or appropriate regulation consistent with this article, including airport land use regulations and provisions regarding the enforcement and administration thereof, or otherwise enter into an interlocal agreement with the city pursuant to Chapter 791, Texas Government Code.

(b) If a municipality, county, or other governmental entity so provides in an interlocal agreement with the city, or in an ordinance, order, or regulation, the provisions of this article shall apply within any other governmental entity's boundaries except to the extent modified in such interlocal agreement.

**Sec. 9-355. 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 applicants and owners of developments that are not required to obtain a permit pursuant to this article are nevertheless required to obtain any other permits, licenses, and authorizations required by law. In the event of any conflict between any other city ordinance and this article, the provisions of this article shall control.

(b) For land located outside the city's jurisdictional boundaries, the provisions of this article are cumulative of the requirements imposed by ordinances of any other political entity pursuant to interlocal agreement and the city code or other laws and regulations of that political entity.

**Sec. 9-356. Penalty.**

It shall be unlawful to violate any provision of this article. The penalty for violation shall be up to \$500 for each day of violation.

**Sec. 9-357. Tier boundaries.**

The director shall determine the location or meaning of an airport land use tier boundary or other feature on an OM in the event of any question or dispute with respect thereto.



**Sec. 9-358. Airport land use maps.**

The city council has adopted an official airport land use map for each airport, which shall be used to implement this article. An OM may be amended in accordance with Chapter 241. The OM for each airport shall be maintained on file in the office of the city secretary, with a copy available at the department.

**Sec. 9-359. 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 land use envelope shall include on its face the following statement:

**NOTICE:** Individual lots or parcels within this subdivision may be located in an airport land use tier and may be subject to use restrictions or increased noise or hazard levels associated with air traffic operations.

(b) *For construction on land not requiring subdivision plat.* Prior to the issuance of a city building permit for construction of a residential structure or use on 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 affidavit shall be recorded by the city in the real property records in the county in which the property is located.

**Sec. 9-360. Land use restrictions.**

Divisions 2, 3, and 4 of this article set forth permitted residential and nonresidential uses by airport land use tiers within the airport land use envelope at each airport. Divisions 2, 3, and 4 of this article also set forth restrictions, limitations, and prohibitions on the use of land and structures located within each airport land use tier. Notwithstanding any other provisions of this article to the contrary, the following uses shall be prohibited within any airport land use envelope where they may adversely impact airport operations or safety:

- (1) Uses that produce steam, smoke, or other vision-obscuring emissions;

- (2) Uses that emit glaring light or employ highly reflective surfaces;
- (3) Uses that have the potential to attract birds;
- (4) Uses that create electrical or electromagnetic interference;  
or
- (5) Any other use deemed by the director to adversely impact airport operations.

**Sec. 9-361. Continuation or expansion of nonconforming use.**

A nonconforming use may be continued or, if it meets the requirements of this article, may be enlarged.

**Sec. 9-362. Abandonment of nonconforming use.**

A nonconforming use that ceases for a period of twelve months or more shall be presumed to be abandoned. Any future use of the property shall be a conforming use. Upon evidence of hardship, the board of adjustment shall have the power to approve a variance to the above time limit by a period not to exceed six months. The absence of electric or water and wastewater utility services shall be prima facie evidence of abandonment.

**Sec. 9-363. Change, reversion or resumption of nonconforming use.**

(a) A nonconforming use may not be changed in whole or in part to another nonconforming use.

(b) A nonconforming use that is changed to a conforming use may not thereafter revert to a nonconforming use.

(c) A nonconforming use, when discontinued for any reason, shall not be resumed.

**Sec. 9-364. Restoration of partially destroyed structure.**

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

**Secs. 9-365--9-370. Reserved.**

*Subdivision B. Administration*

**Sec. 9-371. Airport commission.**

(a) An airport commission has been established by City of Houston Ordinance Number 2008-609. 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 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. 9-372. 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 airport land use 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 airport land use permit.

**Sec. 9-373. 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 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. Members holding positions 1 through 4 shall be appointed by the mayor and confirmed by the city council and shall be residents of the city.

- (1) In all matters involving HOU, position 5 shall be appointed by the mayor and confirmed by the city council and shall be a resident of the city.
- (2) In all matters involving IAH, position 5 shall be appointed by the mayor and confirmed by the city council until the City of Humble, pursuant to an interlocal agreement, appoints a member to position 5. The Humble appointee is not required to be a resident of the city.
- (3) In all matters involving EFD, position 5 shall be appointed by the mayor and confirmed by the city council until the City of Pasadena, pursuant to an interlocal agreement, appoints a member to position 5. The Pasadena appointee is not required to be a resident of the city.
- (4) The mayor shall appoint a chair from among the members.

- (5) The director shall be a non-voting, ex officio member of the board and shall serve as secretary to the board.
- (6) An alternate member may be appointed for each position by the entity entitled to appoint the member. An alternate member may serve in the absence of the member in that position.

(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 Humble or Pasadena members 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, any other jurisdiction located within the airport land use envelope, and the area of extraterritorial jurisdiction. 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, the area of extraterritorial jurisdiction, and any other jurisdiction located within the airport land use envelope. 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
- (3) To hear and decide specific variances from this article.

(d) *Compensation.* Members of the board, in the performance of their duties as such, shall serve without compensation.

**Secs. 9-374--9-380. Reserved.**

*Subdivision C. Airport Land Use Permits*

**Sec. 9-381. Airport land use permit required.**

(a) An airport land use permit is required for the following on any land within an airport land use tier one or tier two:

- (1) An application for subdivision plat or development plat, including modification of a subdivision plat or general plan;
- (2) New construction, replacement after demolition, or rebuilding of any structure; or
- (3) The enlargement of an existing structure by an addition of livable area outside of the structure's original exterior dimensions, vertically or horizontally, the value of which is 51 percent or more of the appraised market value of the existing structure.

(b) A current valid airport land use permit as required by this section is a condition for the approval of a subdivision plat or development plat, the issuance of a building permit, and the issuance of a water or wastewater capacity reservation.

**Sec. 9-382. Concurrent variance application.**

An application for a variance may be filed before or concurrently with the application for an airport land use permit. Filing of an application or approval by the board of a variance shall not confer any authorization to begin work on the proposed project without the issuance of an airport land use permit.

**Sec. 9-383. Airport land use permit application.**

(a) Each application for a permit shall be in the form prescribed by the director and shall contain sufficient information to allow the director to determine whether the proposed use or project would conform to the regulations herein prescribed.

(b) An affidavit, if required by section 9-359 of this Code, shall accompany the permit application. 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 occupancy 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. 9-384. Permit review, approval, denial.**

(a) No permit application shall be deemed complete and accepted by the director unless it is accompanied by all required documents and information, including all applicable permit fees.

(b) 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 permit application is submitted. The determination of completeness shall:

- (1) Indicate that the permit application is complete; or
- (2) Indicate that the permit 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 letter.

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

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

**Sec. 9-385. Exceptions.**

No airport land use permit shall be required for any activity on property owned or leased by the city, its tenants, or the federal government.

**Sec. 9-386. Expiration.**

An airport land use permit shall expire if development has not commenced within two years of issuance or upon completion of the project for which it is granted, whichever occurs first.

**Sec. 9-387. 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 a 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 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 has 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 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 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 a 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 therefore with the city secretary within ten days from the date the written order is signed by the hearing officer. Filing of an appeal shall not operate to suspend the hearing officer's order thereon.

**Secs. 9-388--9-390. Reserved.**

*Subdivision D. Appeals, Variances and Special Exceptions*

**Sec. 9-391. Appeals.**

Except for actions brought under section 9-387 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 an appeal with the board.

- (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 9-395 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.

**Sec. 9-392. Special exceptions.**

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

**Sec. 9-393. Variances.**

The board shall hear and decide specific variances to the regulations in this article.

- (1) A person who desires to use property 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; and
  - 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.
- (3) The board may impose any reasonable conditions on the variance that it considers necessary to accomplish the purposes of this article and Chapter 241.
- (4) 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 9-395 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.

**Sec. 9-394. Time for submittal.**

(a) Complete applications that require action by the board and that are submitted to the department by 11:00 a.m. on the Monday of the week before the next regularly scheduled meeting of the board shall be placed on the agenda for consideration by the board at that meeting. If the Monday of the week preceding a regularly scheduled board meeting is a city holiday, complete applications that are submitted to the department on the first city business day following the Monday holiday shall be placed on the agenda for consideration by the board at that meeting.

(b) Complete applications shall be reviewed and approved, where appropriate, or referred to the board by the director not later than ten days from the date the complete application was submitted. Applications referred to the board under this subsection shall be placed on the board agenda for the next meeting for which proper notice can be given.

(c) Applications that require notice to property owners pursuant to section 9-395 of this Code shall be placed on the board agenda for the next meeting for which proper notice can be given.

**Sec. 9-395. 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 plat 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. 9-396--9-400. Reserved.**

**DIVISION 2. GEORGE H. BUSH INTERCONTINENTAL AIRPORT (IAH)  
COMPATIBLE LAND USE REGULATIONS**

**Sec. 9-401. Regulated area.**

The area subject to the regulations contained within this division is shown in the IAH official airport land use map.

**Sec. 9-402. General provisions.**

Land uses not specifically allowed shall not be permitted.

**Sec. 9-403. Land uses in IAH tier one.**

(a) *Nonresidential uses.* Nonresidential uses are permitted in tier one 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.

- 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.

(2) Hotels and motel lodging uses.

- a. A new hotel or motel use shall be permitted provided that the structure meets a 45 dBA interior sound level where central HVAC is used. For hotels and motels wishing to utilize through wall systems, all other sound insulation requirements will apply.
- b. An existing hotel or motel 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 where central HVAC is used. For hotels and motels wishing to utilize through wall systems, all other sound insulation requirements will apply.

(3) Commercial and employment uses. All uses shall be permitted unless otherwise proscribed above.

(b) *Residential uses.* An existing, unmodified residential use shall be allowed to continue. Enlargement, replacement, or reconstruction of an existing residential use shall not increase the density or the intensity of the use. A residential use in tier one is further allowed as follows:

- (1) An existing single family use will be permitted to renovate the livable area of an existing structure in which it is located if the renovation is entirely contained within the existing livable area of the structure, provided the use will not involve the subdivision of the property on which the existing single family use is located.

- (2) An existing single family use will be permitted to enlarge the livable area of an existing structure in which it is located under the following conditions:
  - a. The use is located on a residential lot within an existing platted subdivision, or valid deed restrictions prohibit the use of the property for other than residential use;
  - b. The use will not involve the subdivision of the lot on which the existing single family use is located; and
  - c. The newly constructed livable area shall meet a 45 dBA interior sound level.
- (3) An existing single family use will be permitted to convert existing non-livable area located wholly within an existing structure provided the use will not involve the subdivision of the lot on which the existing single family use is located.
- (4) An existing single family use will be permitted to be replaced after a casualty under the following conditions:
  - a. The livable area shall meet a 45 dBA interior sound level.
  - b. The use will not involve the subdivision of the property on which the existing single family use is located.
- (5) A new single family residential use shall be permitted under the following conditions:
  - a. The use is located on a residential lot within an existing platted subdivision, or valid deed restrictions prohibit the use of the property for other than residential use;
  - b. The construction shall meet a 45 dBA interior sound level; and
  - c. The use will not involve the subdivision of the lot on which the existing single family use is located.
- (6) An existing multifamily use will be permitted to renovate an existing structure provided the use will not increase the

density of development as shown by a filed subdivision plat or development plat, measured in dwelling units per acre. The applicant shall be required to demonstrate to the satisfaction of the director the density prior to the application for the residential building permit.

- (7) An existing multifamily use will be permitted to enlarge an existing structure under the following conditions:
  - a. The use will not increase the density of development as shown by a filed subdivision plat or development plat, measured in dwelling units per acre. The applicant shall be required to demonstrate to the satisfaction of the director the density prior to the application for the residential building permit; and
  - b. The enlargement shall meet or shall be located in a structure that meets a 45 dBA interior sound level.
- (8) An existing multifamily use will be permitted to be replaced after a casualty under the following conditions:
  - a. The livable area shall meet a 45 dBA interior sound level;
  - b. The use will not involve the subdivision of the lot on which the existing multifamily use is located; and
  - c. The use will not increase the density of development as shown by a filed subdivision plat or development plat, measured in dwelling units per acre. The applicant shall be required to demonstrate to the satisfaction of the director the density prior to the application for the residential building permit.
- (9) A new multifamily residential use shall not be permitted.
- (10) No new mobile or manufactured home parks or subdivisions shall be permitted.

**Sec. 9-404. Land uses in IAH tier two.**

(a) *Nonresidential uses.* Nonresidential uses are permitted in tier two as follows:



- (1) Public assembly uses or sensitive land uses.
  - a. A new public assembly use or sensitive land use shall be permitted provided the new use shall be located in a structure that meets a 45 dBA interior sound level.
  - 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.

- (2) Hotels and motel lodging uses.
  - a. A new hotel or motel use shall be permitted provided that the structure meets a 45 dBA interior sound level where central HVAC is used. For hotels and motels wishing to utilize through wall systems, all other sound insulation requirements will apply.
  - b. An existing hotel or motel 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 where central HVAC is used. For hotels and motels wishing to utilize through wall systems, all other sound insulation requirements will apply.

- (3) Commercial and employment uses. All uses shall be permitted unless otherwise proscribed above.

(b) *Residential uses.* An existing, unmodified residential use shall be allowed to continue. Enlargement, replacement, or reconstruction of an existing residential use shall not increase the density or the intensity of the use. Residential uses in tier two are further allowed as follows:

- (1) An existing single family use will be permitted to renovate or convert non-livable area within the existing structure in which it is located, provided the use will not involve the subdivision of the property on which the existing single family use is located.
- (2) An existing single family use will be permitted to enlarge the existing structure in which it is located, provided the use will

not involve the subdivision of the property on which the existing single family use is located.

- (3) An existing single family use will be permitted to be replaced after a casualty under the following conditions:
  - a. The construction shall meet a 45 dBA interior sound level; and
  - b. The use will not involve the subdivision of the property on which the existing single family use is located.
- (4) A new single family use shall be permitted under the following conditions:
  - a. The use is located on a residential lot within an existing platted subdivision, or valid deed restrictions prohibit the use of the property for other than residential use;
  - b. The construction shall meet a 45 dBA interior sound level; and
  - c. The use will not involve the subdivision of any lot.
- (5) An existing multifamily use will be permitted to renovate an existing structure provided the use will not increase the density of development as shown by a filed subdivision plat or development plat, measured in dwelling units per acre. The applicant shall be required to demonstrate to the satisfaction of the director the density prior to the application for the residential building permit.
- (6) An existing multifamily use will be permitted to enlarge an existing structure under the following conditions:
  - a. The use will not increase the density of development as shown by a filed subdivision plat or development plat, measured in dwelling units per acre. The applicant shall be required to demonstrate to the satisfaction of the director the density prior to the application for the residential building permit; and
  - b. An enlargement shall meet or shall be located in a structure that meets a 45 dBA interior sound level.

- (7) An existing multifamily use will be permitted to be replaced after a casualty under the following conditions:
  - a. The livable area shall meet a 45 dBA interior sound level;
  - b. The use will not involve the subdivision of the lot on which the existing multifamily use is located; and
  - c. The use will not increase the density of development as shown by a filed subdivision plat or development plat, measured in dwelling units per acre. The applicant shall be required to demonstrate to the satisfaction of the director the density prior to the application for the residential building permit.
- (8) A new multifamily residential use shall be permitted only on the condition that the construction shall meet or exceed a 45 dBA interior sound level.
- (9) No new mobile or manufactured home parks or subdivisions shall be permitted.

**Sec. 9-405. Land uses in IAH tier three.**

(a) *Nonresidential uses.* A new nonresidential use or enlargement of a nonresidential use is permitted in IAH tier three subject to a determination upon application for a building or development permit that it is proposed on property located in tier three and is therefore not subject to additional restrictions set forth in this section for tiers one and two.

(b) *Residential uses.* A new residential use or enlargement of a residential use is permitted in tier three subject to a determination at application for a building or development permit that such use/structure is proposed on property located in tier three and is therefore not subject to additional restrictions set forth in this section for tiers one and two.

**Secs. 9-406--9-500. Reserved.**

DIVISION 3. HOUSTON HOBBY AIRPORT (HOU)  
COMPATIBLE LAND USE REGULATIONS

**Sec. 9-501. Regulated area.**

The area subject to the regulations contained within this division is shown in the HOU official airport land use map.

**Sec. 9-502. General provisions.**

Land uses not specifically allowed shall not be permitted. Notwithstanding any other provision of this article, no new residential use or structure shall be permitted within the present or any future 70 DNL or higher noise contour formally approved by the FAA for HOU.

**Sec. 9-503. Land uses in HOU tier one.**

(a) *Nonresidential uses.* Nonresidential uses are permitted in tier one as follows:

- (1) Public assembly and sensitive land uses.
  - a. No permit shall be issued for the establishment of a new public assembly or sensitive land use.
  - 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 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.
- (2) Hotels and motel lodging uses.
  - a. A new hotel or motel use shall be permitted provided that the structure meets a 45 dBA interior sound level where central HVAC is used. For hotels and motels wishing to utilize through wall systems, all other sound insulation requirements will apply.

b. An existing hotel or motel 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 where central HVAC is used. For hotels and motels wishing to utilize through wall systems, all other sound insulation requirements will apply.

(3) Commercial and employment uses. All uses shall be permitted unless otherwise proscribed above.

(b) *Residential uses.* An existing, unmodified residential use shall be allowed to continue. Enlargement, replacement, or reconstruction of an existing residential use shall not increase the density or the intensity of the use. A residential use in tier one is further allowed as follows:

(1) An existing single family use will be permitted to renovate the livable area of an existing structure in which it is located if the renovation is entirely contained within the existing livable area of the structure, provided the use will not involve the subdivision of the property on which the existing single family use is located.

(2) An existing single family use will be permitted to enlarge the livable area of an existing structure in which it is located under the following conditions:

a. The use is located on a residential lot within an existing platted subdivision, or valid deed restrictions prohibit the use of the property for other than residential use;

b. The use will not involve the subdivision of the lot on which the existing single family use is located; and

c. The newly constructed livable area shall meet a 45 dBA interior sound level.

(3) An existing single family use will be permitted to convert existing non-livable area located wholly within an existing structure provided the use will not involve the subdivision of the lot on which the existing single family use is located.

(4) An existing single family use will be permitted to be replaced after a casualty under the following conditions:

- a. The livable area shall meet a 45 dBA interior sound level.
  - b. The use will not involve the subdivision of the property on which the existing single family use is located.
- (5) A new single family residential use shall be permitted under the following conditions:
  - a. The use is located on a residential lot within an existing platted subdivision, or valid deed restrictions prohibit the use of the property for other than residential use;
  - b. The construction shall meet a 45 dBA interior sound level; and
  - c. The use will not involve the subdivision of the lot on which the existing single family use is located.
- (6) An existing multifamily use will be permitted to renovate an existing structure provided the use will not increase the density of development as shown by a filed subdivision plat or development plat, measured in dwelling units per acre. The applicant shall be required to demonstrate to the satisfaction of the director the density prior to the application for the residential building permit.
- (7) An existing multifamily use will be permitted to enlarge an existing structure under the following conditions:
  - a. The use will not increase the density of development as shown by a filed subdivision plat or development plat, measured in dwelling units per acre. The applicant shall be required to demonstrate to the satisfaction of the director the density prior to the application for the residential building permit; and
  - b. An enlargement shall meet or shall be located in a structure that meets a 45 dBA interior sound level.
- (8) An existing multifamily use will be permitted to be replaced after a casualty under the following conditions:

- a. The livable area shall meet a 45 dBA interior sound level;
  - b. The use will not involve the subdivision of the lot on which the existing multifamily use is located; and
  - c. The use will not increase the density of development as shown by a filed subdivision plat or development plat, measured in dwelling units per acre. The applicant shall be required to demonstrate to the satisfaction of the director the density prior to the application for the residential building permit.
- (9) A new multifamily residential use shall not be permitted.
  - (10) No new mobile or manufactured home parks or subdivisions shall be permitted.

**Sec. 9-504. Land uses in HOU tier two.**

(a) *Nonresidential uses.* Nonresidential uses are permitted in tier two as follows:

- (1) Public assembly uses and sensitive land uses.
  - a. A new public assembly use or sensitive land use shall be permitted provided the new use shall be located in a structure that meets a 45 dBA interior sound level.
  - 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.
- (2) Hotels and motel lodging uses.
  - a. A new hotel or motel use shall be permitted provided that the structure meets a 45 dBA interior sound level where central HVAC is used. For hotels and motels wishing to utilize through wall systems, all other sound insulation requirements will apply.
  - b. An existing hotel or motel 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 where central HVAC is used. For hotels and motels wishing to utilize through wall systems, all other sound insulation requirements will apply.

- (3) Commercial and employment uses. All uses shall be permitted unless otherwise proscribed above.

(b) *Residential uses.* An existing, unmodified residential use shall be allowed to continue. Enlargement, replacement, or reconstruction of an existing residential use shall not increase the density or the intensity of the use. Residential uses in tier two are further allowed as follows:

- (1) An existing single family use will be permitted to renovate or convert non-livable area within the existing structure in which it is located, provided the use will not involve the subdivision of the property on which the existing single family use is located.
- (2) An existing single family use will be permitted to enlarge the existing structure in which it is located, provided the use will not involve the subdivision of the property on which the existing single family use is located.
- (3) An existing single family use will be permitted to be replaced after a casualty under the following conditions:
  - a. The construction shall meet a 45 dBA interior sound level; and
  - b. The use will not involve the subdivision of the property on which the existing single family use is located.
- (4) A new single family use shall be permitted under the following conditions:
  - a. The use is located on a residential lot within an existing platted subdivision, or valid deed restrictions prohibit the use of the property for other than residential use;
  - b. The construction shall meet a 45 dBA interior sound level; and



- c. The use will not involve the subdivision of any lot.
- (5) An existing multifamily use will be permitted to renovate an existing structure provided the use will not increase the density of development as shown by a filed subdivision plat or development plat, measured in dwelling units per acre. The applicant shall be required to demonstrate to the satisfaction of the director the density prior to the application for the residential building permit.
- (6) An existing multifamily use will be permitted to enlarge an existing structure under the following conditions:
- a. The use will not increase the density of development as shown by a filed subdivision plat or development plat, measured in dwelling units per acre. The applicant shall be required to demonstrate to the satisfaction of the director the density prior to the application for the residential building permit; and
  - b. An enlargement shall meet or shall be located in a structure that meets a 45 dBA interior sound level.
- (7) An existing multifamily use will be permitted to be replaced after a casualty under the following conditions:
- a. The livable area shall meet a 45 dBA interior sound level;
  - b. The use will not involve the subdivision of the lot on which the existing multifamily use is located; and
  - c. The use will not increase the density of development as shown by a filed subdivision plat or development plat, measured in dwelling units per acre. The applicant shall be required to demonstrate to the satisfaction of the director the density prior to the application for the residential building permit.
- (8) A new multifamily residential use shall be permitted only on the condition that the construction shall meet or exceed a 45 dBA interior sound level.
- (9) No new mobile or manufactured home parks or subdivisions shall be permitted.

**Sec. 9-505. Land uses in HOU tier three.**

(a) *Nonresidential uses.* A new nonresidential use or enlargement of a nonresidential use is permitted in HOU tier three subject to a determination upon application for a building or development permit that it is proposed on property located in tier three and is therefore not subject to additional restrictions set forth in this section for tiers one and two.

(b) *Residential uses.* A new residential use or enlargement of a residential use is permitted in tier three subject to a determination at application for a building or development permit that such use/structure is proposed on property located in tier three and is therefore not subject to additional restrictions set forth in this section for tiers one and two.

**Secs. 9-506--9-600. Reserved.**

DIVISION 3. ELLINGTON FIELD (EFD)  
COMPATIBLE LAND USE REGULATIONS

**Sec. 9-601. Regulated area.**

The area subject to the regulations contained within this division is shown in the EFD official airport land use map.

**Sec. 9-602. General provisions.**

Land uses not specifically allowed shall not be permitted. Notwithstanding any other provision of this article, no new residential use or structure shall be permitted within the present or any future 70 DNL or higher noise contour formally approved by the FAA for EFD.

**Sec. 9-603. Land uses in EFD tier one.**

(a) *Nonresidential uses.* Nonresidential uses are permitted in tier one as follows:

- (1) Public assembly uses or sensitive uses.
  - a. No permit shall be issued for the establishment of a new public assembly uses or sensitive land use.
  - b. An existing public assembly uses 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 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.

(2) Hotels and motel lodging uses.

- a. A new hotel or motel use shall be permitted provided that the structure meets a 45 dBA interior sound level where central HVAC is used. For hotels and motels wishing to utilize through wall systems, all other sound insulation requirements will apply.
- b. An existing hotel or motel 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 where central HVAC is used. For hotels and motels wishing to utilize through wall systems, all other sound insulation requirements will apply.

(3) Commercial and employment uses. All uses shall be permitted unless otherwise proscribed above.

(b) *Residential uses.* An existing, unmodified residential use shall be allowed to continue. Enlargement, replacement, or reconstruction of an existing residential use shall not increase the density or the intensity of the use. A residential use in tier one is further allowed as follows:

- (1) An existing single family use will be permitted to renovate the livable area of an existing structure in which it is located if the renovation is entirely contained within the existing livable area of the structure, provided the use will not involve the subdivision of the property on which the existing single family use is located.
- (2) An existing single family use will be permitted to enlarge the livable area of an existing structure in which it is located under the following conditions:

- a. The use is located on a residential lot within an existing platted subdivision, or valid deed restrictions prohibit the use of the property for other than residential use;
  - b. The use will not involve the subdivision of the lot on which the existing single family use is located; and
  - c. The newly constructed livable area shall meet a 45 dBA interior sound level.
- (3) An existing single family use will be permitted to convert existing non-livable area located wholly within an existing structure provided the use will not involve the subdivision of the lot on which the existing single family use is located.
- (4) An existing single family use will be permitted to be replaced after a casualty under the following conditions:
- a. The livable area shall meet a 45 dBA interior sound level.
  - b. The use will not involve the subdivision of the property on which the existing single family use is located.
- (5) A new single family residential use shall be permitted under the following conditions:
- a. The use is located on a residential lot within an existing platted subdivision, or valid deed restrictions prohibit the use of the property for other than residential use;
  - b. The construction shall meet a 45 dBA interior sound level; and
  - c. The use will not involve the subdivision of the lot on which the existing single family use is located.
- (6) An existing multifamily use will be permitted to renovate an existing structure provided the use will not increase the density of development as shown by a filed subdivision plat or development plat, measured in dwelling units per acre. The applicant shall be required to demonstrate to the

satisfaction of the director the density prior to the application for the residential building permit.

- (7) An existing multifamily use will be permitted to enlarge an existing structure under the following conditions:
  - a. The use will not increase the density of development as shown by a filed subdivision plat or development plat, measured in dwelling units per acre. The applicant shall be required to demonstrate to the satisfaction of the director the density prior to the application for the residential building permit; and
  - b. An enlargement shall meet or shall be located in a structure that meets a 45 dBA interior sound level.
- (8) An existing multifamily use will be permitted to be replaced after a casualty under the following conditions:
  - a. The livable area shall meet a 45 dBA interior sound level;
  - b. The use will not involve the subdivision of the lot on which the existing multifamily use is located; and
  - c. The use will not increase the density of development as shown by a filed subdivision plat or development plat, measured in dwelling units per acre. The applicant shall be required to demonstrate to the satisfaction of the director the density prior to the application for the residential building permit.
- (9) A new multifamily residential use shall not be permitted.
- (10) No new mobile or manufactured home parks or subdivisions shall be permitted.

**Sec. 9-604. Land uses in EFD tier two.**

(a) *Nonresidential uses.* Nonresidential uses are allowed in tier two as follows:

- (1) Public assembly uses and sensitive land uses.

- a. A new public assembly use or sensitive land use shall be permitted provided the new use shall be located in a structure that meets a 45 dBA interior sound level.
  - 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.
- (2) Hotels and motel lodging uses.
- a. A new hotel or motel use shall be permitted provided that the structure meets a 45 dBA interior sound level where central HVAC is used. For hotels and motels wishing to utilize through wall systems, all other sound insulation requirements will apply.
  - b. An existing hotel or motel 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 where central HVAC is used. For hotels and motels wishing to utilize through wall systems, all other sound insulation requirements will apply.
- (3) Commercial and employment uses. All uses shall be permitted unless otherwise proscribed above.

(b) *Residential uses.* An existing, unmodified residential use shall be allowed to continue. Enlargement, replacement, or reconstruction of an existing residential use shall not increase the density or the intensity of the use. Residential uses in tier two are further allowed as follows:

- (1) An existing single family use will be permitted to renovate or convert non-livable area within the existing structure in which it is located, provided the use will not involve the subdivision of the property on which the existing single family use is located.
- (2) An existing single family use will be permitted to enlarge the existing structure in which it is located, provided the use will not involve the subdivision of the property on which the existing single family use is located.

- (3) An existing single family use will be permitted to be replaced after a casualty under the following conditions:
  - a. The construction shall meet a 45 dBA interior sound level; and
  - b. The use will not involve the subdivision of the property on which the existing single family use is located.
- (4) A new single family use shall be permitted under the following conditions:
  - a. The use is located on a residential lot within an existing platted subdivision, or valid deed restrictions prohibit the use of the property for other than residential use;
  - b. The construction shall meet a 45 dBA interior sound level; and
  - c. The use will not involve the subdivision of any lot.
- (5) An existing multifamily use will be permitted to renovate an existing structure provided the use will not increase the density of development as shown by a filed subdivision plat or development plat, measured in dwelling units per acre. The applicant shall be required to demonstrate to the satisfaction of the director the density prior to the application for the residential building permit.
- (6) An existing multifamily use will be permitted to enlarge an existing structure under the following conditions:
  - a. The use will not increase the density of development as shown by a filed subdivision plat or development plat, measured in dwelling units per acre. The applicant shall be required to demonstrate to the satisfaction of the director the density prior to the application for the residential building permit; and
  - b. An enlargement shall meet or shall be located in a structure that meets a 45 dBA interior sound level.
- (7) An existing multifamily use will be permitted to be replaced after a casualty under the following conditions:

- a. The livable area shall meet a 45 dBA interior sound level;
  - b. The use will not involve the subdivision of the lot on which the existing multifamily use is located; and
  - c. The use will not increase the density of development as shown by a filed subdivision plat or development plat, measured in dwelling units per acre. The applicant shall be required to demonstrate to the satisfaction of the director the density prior to the application for the residential building permit.
- (8) A new multifamily residential use shall be permitted only on the condition that the construction shall meet or exceed a 45 dBA interior sound level.
- (9) No new mobile or manufactured home parks or subdivisions shall be permitted.

**Sec. 9-605. Land uses in EFD tier three.**

(a) *Nonresidential uses.* A new nonresidential use or enlargement of a nonresidential use is permitted in EFD tier three subject to a determination upon application for a building or development permit that it is proposed on property located in tier three and is therefore not subject to additional restrictions set forth in this section for tiers one and two.

(b) *Residential uses.* A new residential use or enlargement of a residential use is permitted in tier three subject to a determination at application for a building or development permit that such use/structure is proposed on property located in tier three and is therefore not subject to additional restrictions set forth in this section for tiers one and two."

**Section 3.** That the City Council hereby establishes Airport Land Use Envelopes and Airport Land Use Tiers One, Two and Three for each airport and hereby adopts and approves the Official Airport Land Use Maps depicting the same for George Bush Intercontinental Airport/Houston, William P. Hobby Airport, and Ellington Field,



that are designated as Exhibits A, B, and C, respectively and that are on file in the Office of the City Secretary.

**Section 4.** That the City Secretary is hereby directed to maintain the Official Airport Land Use Maps for the Airports 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 County, Texas, to give notice of the City's adoption of compatible land use 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.** 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 10.** 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 1<sup>st</sup> day of February, 2009.

PASSED AND APPROVED this 3rd day of December, 2008.

  
\_\_\_\_\_  
Mayor of the City of Houston

(Prepared by Legal Dep't) Richard M. Vacar  
(DFM:dfm December 2, 2008) Senior Assistant City Attorney  
(Requested by Richard M. Vacar, Director, Houston Airport System)  
(L.D. File No. 0040400188001)  
G:\LAND\AIRPORT\2008\final adopting ord(4).doc

NOTION PUBLISHED IN DAILY COURT  
REVIEW  
DATE: DEC 09 2008

AYE	NO	
✓		MAYOR WHITE
••••	••••	COUNCIL MEMBERS
✓		LAWRENCE
✓		JOHNSON
✓		CLUTTERBUCK
✓		ADAMS
✓		SULLIVAN
		ABSENT-OUT OF CITY CITY BUSINESS
✓		KHAN
		HOLM
		ABSENT-OUT OF CITY CITY BUSINESS
✓		GARCIA
✓		RODRIGUEZ
✓		BROWN
✓		LOVELL
✓		NORIEGA
✓		GREEN
✓		JONES
CAPTION	ADOPTED	

EXHIBIT A

CITY OF HOUSTON  
OFFICIAL AIRPORT LAND USE MAP  
GEORGE BUSH INTERCONTINENTAL AIRPORT/HOUSTON

DATED DECEMBER 3, 2008

Map of 1" to 500' Scale on File in the Office of the City Secretary

EXHIBIT B

CITY OF HOUSTON  
OFFICIAL AIRPORT LAND USE MAP  
WILLIAM P. HOBBY AIRPORT

DATED DECEMBER 3, 2008

Map of 1" to 500' Scale on File in the Office of the City Secretary

EXHIBIT C

CITY OF HOUSTON  
OFFICIAL AIRPORT LAND USE MAP  
ELLINGTON FIELD

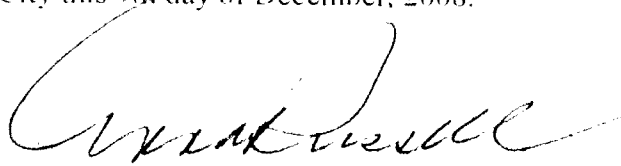
DATED DECEMBER 3, 2008

Map of 1" to 500' Scale on File in the Office of the City Secretary

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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. 2008-1052, passed and approved by the City Council of said City on the 3rd day of December, 2008, as the same appears in the records in my office.

WITNESS my hand and the Seal of said City this 9th day of December, 2008.



City Secretary of the City of Houston  
Anna Russell

*10/1  
no 2008*



IN WITNESS WHEREOF, I have hereunto set my hand and the Seal of said City this 9th day of December, 2008.

DEC 15 2008



*Bonny B. Johnson*  
City Secretary

PLEASE RETURN TO:  
↓

Mohdudul Huq  
Planning & Development Department  
P. O. Box 1562  
Houston, Texas 77251-1562

2008 DEC 15 AM 9:34

FILED