

ORDINANCE NO. 24-2008

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ABILENE REPEALING ORDINANCE NO. 462, IN ITS ENTIRETY; REPLACING SECTION 23-319 OF THE ZONING ORDINANCE, AS SET FORTH BELOW; PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY; AND CALLING FOR A PUBLIC HEARING.

WHEREAS, there is a need to protect the health, safety, and welfare of the citizens of the City of Abilene; and

WHEREAS, an airport hazard endangers the lives and property of users of the airport and of occupants of the land in the vicinity of the airport; and

WHEREAS, 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 airport and the public investment in the airport; and

WHEREAS, the creation of an airport hazard is a public nuisance and an injury to the community served by the airport affected by the hazard; and

WHEREAS, it is necessary in the interest of the public health, public safety, and general welfare to prevent the creation of an airport hazard; and

WHEREAS, the creation of an airport hazard should be prevented, to the extent legally possible, by the exercise of the police power, without compensation; and

WHEREAS, 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

WHEREAS, Chapter 241 of the Texas Local Government Code (the "Airport Zoning Act") authorizes the City of Abilene to adopt, administer, and enforce, under its police power, airport hazard area zoning regulations;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS:

PART 1: That Ordinance No. 462, adopted on or about January 8, 1970, on file in the Office of the City Secretary, is hereby repealed in its entirety.

- PART 2:** That Section 23-319 of the Zoning Ordinance of the City of Abilene, Texas, is hereby replaced as set forth in Exhibit A, attached hereto and made a part of this ordinance for all purposes.
- PART 2:** That if the provisions of any section, subsection, paragraph, subdivision or clause of this ordinance shall be adjudged invalid by a court of competent jurisdiction, such judgment shall not effect or invalidate the remainder of any section, subsection, paragraph, subdivision, or clause of this ordinance.
- PART 3:** That any person, firm, or corporation violating the provisions of this Ordinance shall be deemed to have committed a misdemeanor, and upon conviction thereof shall be fined in accordance with Chapter 1 (Section 1-9) of this Code.
- PART 4:** Each day such violation shall continue, or be permitted to continue, shall be deemed a separate offense. Said ordinance, being a penal ordinance, becomes effective ten (10) days after its publication in the newspaper, as provided by Section 19 of the Charter of the City of Abilene.

PASSED ON FIRST READING this 8th day of May, 2008.

A notice of the time and place, where and when said ordinance would be given a public hearing and considered for final passage was published in the Abilene Reporter-News, a daily newspaper of general circulation in the City of Abilene, said publication being on 30th day of April, 2008, the same being more than 24 hours prior to a public hearing being held in the Council Chamber of City Hall in Abilene, Texas, at 8:30 a.m. on the 15th day of May, 2008, to permit the public to be heard. Said Ordinance, being a penal ordinance, becomes effective ten (10) days after its publication in the newspaper, as provided by Section 19 of the Charter of the City of Abilene.

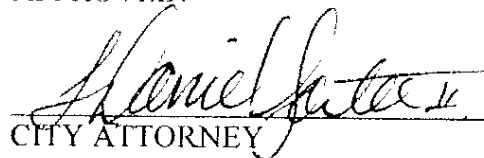
PASSED ON SECOND AND FINAL READING this 15th day of May, 2008.

ATTEST:


CITY SECRETARY


MAYOR

APPROVED:


CITY ATTORNEY

ORDINANCE NO. _____

Replace CHAPTER 23, ARTICLE III, SECTION 23-319 "AIRPORT ZONING" in its entirety with the following:

Sections:

Sec. 319.1 Purpose

Sec. 319.2 Applicability

Sec. 319.3 Definitions

Sec. 319.4. Surfaces; zones; height limitations; and noise zones

Sec. 319.5. Use Restrictions; Interference

Sec. 319.6. Non-conforming Uses and Structures; Abandonment; Replacement

Sec. 319.7. Permits

Sec. 319.8. Enforcement

Sec. 319.9. Board of Adjustment

Sec. 319.10. Violations and Penalties

Sec. 319.1. Purpose.

It is the purpose of this Section to protect the health, safety, and general welfare of the public, where it is recognized that obstructions, aircraft accidents, and excessive noise have the potential for endangering or harming the lives and/or property of users or occupants of land in the vicinity of the Abilene Regional Airport and Dyess Air Force Base. It is further the purpose of this Section to regulate airport zoning hazard areas and compatible land use surrounding airports in the City of Abilene, pursuant to Chapter 241 of the Texas Local Government Code, as amended.

Sec. 319.2. Applicability.

All airport zoning regulations shall be in accordance with Local Government Code § 241.001, *et seq.*, as amended, and shall apply within the corporate limits and unincorporated areas within the extra-territorial jurisdiction of the City of Abilene, as well as the Airport Hazard Areas in and surrounding Abilene Regional Airport and Dyess Air Force Base. The use of all land and any Natural Growth, structures, or any other potential obstructions located upon the land, and the height, construction, reconstruction, alteration, expansion, or relocation of any Natural Growth, structures, or any other potential obstructions upon the land, shall conform to all regulations contained in and applicable to this Section. No land, Natural Growth, structure, or other potential obstruction shall be erected, constructed, used, replaced, altered, and/or maintained for any purpose or in any manner other than permitted in this Section.

Sec. 319.3. Definitions.

The following words and phrases, whenever used in this Section, shall be defined as follows:

- A. "Accident Potential Zone" ("APZ") means a land use control area beyond the clear zones of a military runway that possesses a significant potential for accidents;
- B. "AICUZ" means Air Installation Compatible Use Zone Study for Dyess AFB as amended, a true and correct copy of which is on file in the City of Abilene Planning Department;
- C. "Airport" means the Abilene Regional Airport and/or Dyess Air Force Base;
- D. "Airport Elevation" means the established elevation of the highest point on the usable landing area;
- E. "Airport Hazard" means any Natural Growth, structure, any other potential obstruction, or use of land which obstructs the airspace required for, or is otherwise potentially hazardous to, the flight of aircraft in landing or taking off at an airport or that interferes with visual, radar, radio, or other systems for tracking, acquiring data relating to, monitoring, or controlling aircraft;
- F. "Airport Hazard Area" means an area of land or water on which an airport hazard could exist;
- G. "Airport Zoning Board" means the City of Abilene Planning and Zoning Commission, as created by the Charter of the City of Abilene and defined in Chapter 23 of the Code of the City of Abilene and by state law;
- H. "Board of Adjustment" means the City of Abilene Board of Adjustment, as created and defined in Chapter 23 of the Code of the City of Abilene and by State law;
- I. "Centerline" means a line extending through the midpoint of each end of a runway;
- J. "Compatible Land Use" means a use of land adjacent to or in the vicinity of an airport that does not endanger the health, safety, or welfare of the owners, occupants, or users of the land because of levels of noise or vibrations or the risk of personal injury or property damage created by the operations of the airport including the taking off and landing of aircraft;

- K. “Day Night Average Noise Level” (“DNL”) means a 24-hour time-averaged sound exposure level, adjusted for average-day sound source operations. In the case of aircraft noise, a single operation is equivalent to a single aircraft departure, approach;
- L. “FAA” means the Federal Aviation Administration;
- M. “Hazard to Air Navigation” means an obstruction determined to have an adverse effect on the safe and efficient utilization of the navigable airspace;
- N. “Height” is determined by mean sea level elevation, unless otherwise specified;
- O. “Imaginary Surfaces Map” refers to the current map for the Abilene Regional Airport, as amended, created pursuant to 14 Code of Federal Regulations (C.F.R) Part 77, a true and correct copy of which is maintained at the Abilene Regional Airport Administrative Office and the City of Abilene Planning Department;
- P. “Instrument Runway” means a runway equipped or to be equipped with electronic or visual air navigation aids adequate to permit the landing of aircraft under restricted visibility conditions. It also means a runway for which a precision approach system is planned, as so indicated on an approved airport layout plan or any other airport planning document or map;
- Q. “Landing Area” means the area of the airport used for the landing, take off, or taxiing of aircraft;
- R. “Landing Zone” (“LZ”) means a landing zone consisting of a runway, a runway and taxiway, or other aircraft operational surfaces (e.g., aprons, turnarounds). An LZ is a prepared or semi-prepared (unpaved) airfield used to conduct military operations in an airfield environment similar to forward operating locations. LZ runways are typically shorter and narrower than standard runways;
- S. “Larger than Utility Runway” means a runway that is constructed for and intended to be used by propeller-driven aircraft of greater than 12,500 pounds maximum gross weight and jet-powered aircraft.
- T. “Mean Sea Level (MSL)” means the average height of water in the sea used as the datum plane to measure land elevation;
- U. “Military Imaginary Surfaces Map” refers to the most recent map indicating zones in and surrounding Dyess Air Force Base, a true and correct copy of which is maintained in the City of Abilene Planning Department;
- V. “Natural Growth” means any tree, shrub, grass, or other item found in nature that is flora;

- W. “Noise Contour” means a geographical representation of DNL noise levels;
- X. “Noise Contours Map” refers to the most recent map and attachments, as amended, developed by the FAA pursuant to 14 C.F.R. Part 150, indicating estimated noise levels and compatible land uses for zones surrounding the Abilene Regional Airport, a true and correct copy of which is maintained at the Abilene Regional Airport Administrative Office and the City of Abilene Planning Department;
- Y. “Noise Level Reduction” means the incorporation of sound attenuation measures (outdoor to indoor) into the design and construction of a Structure;
- Z. “Non-conforming Structure” means any Structure, existing on land which does not conform to the regulations, relative to its size, height, or location, within the district in which it is located. Non-conforming Structures may not be improved or enlarged, except as provided for in this Section, or pursuant to a Variance or Special Exception granted by the Board of Adjustment;
- AA. “Non-conforming Use” means any activity or use of land which was lawful prior to the enactment of this Section, but does not conform to the regulations of the district in which it is located pursuant to this Section. Any non-conforming use existing at the time of the enactment of this Section may be continued, except as provided in this Chapter;
- BB. “Planning Department” means the City of Abilene department responsible for the City’s planning and zoning activities, currently referred to as the Planning and Development Services Department.
- CC. “Planning Director” means the City of Abilene Director of Planning and Development Services or designee;
- DD. “Precision Instrument Runway” means a runway having an existing instrument approach procedure utilizing an Instrument Landing System (ILS) or a Precision Approach Radar (PAR). It also means a runway for which a precision approach system is planned and is so indicated on an approved airport layout plan or any other planning document;
- EE. “Primary Surface” means a surface longitudinally centered on a runway. When the runway has a specifically prepared hard surface, the primary surface extends 200 feet beyond each end of that runway; for military runways or when the runway has no specifically prepared hard surface, the primary surface ends at each end of that runway. The width of the primary surfaces for Abilene Regional Airport and Dyess Air Force Base are more particularly described in subsection 319.4;

- FF. "Runway" means a defined area on an airport prepared for landing and take-off of aircraft along its length;
- GG. "Structure" means any object, including a mobile object, constructed or installed by man, including without limitation, any building, physical improvement, tower, smokestack, earth formation, and overhead transmission lines;
- HH. "Utility Runway" means a runway that is constructed for and intended to be used by propeller-driven aircraft of 12,500 pounds maximum gross weight and less;
- II. "Visual Runway" means a runway intended solely for the operation of aircraft using visual approach procedures;

Sec. 319.4. Surfaces; zones; height limitations; and noise zones.

A. Abilene Regional Airport.

1. Surfaces.

There are hereby established and designated certain surfaces, as shown on the Imaginary Surfaces Map. The surfaces are more particularly described and defined as follows:

- a. "Approach Surface" means a surface longitudinally centered on the extended runway centerline, extending outward and upward from the end of the primary surface and at the same slope as the approach zone height limitation slope, as described in this Section. The perimeter of the approach surface coincides with the perimeter of the approach zone;
- b. "Conical Surface" means a surface extending outward and upward from the periphery of the horizontal surface at a slope of 20 to 1 for a horizontal distance of 4,000 feet;
- c. "Horizontal Surface" means a horizontal plane 150 feet above the established airport elevation, the perimeter of which is constructed by swinging arcs of specified radii from the center of each end of the primary surface of each runway of the airport and connecting the adjacent arcs by lines tangent to those arcs. For all visual runways designated as utility or visual, the radius of each arc is 5,000 feet; for all other runways, the radius of each arc is 10,000 feet. The radius of the arc specified for each end of a runway will have the same arithmetical value. That value will be the highest determined for either end of the runway. When a 5,000 foot arc is encompassed by tangents connecting two adjacent 10,000 foot arcs, the 5,000 foot arc shall be disregarded on the construction of the perimeter of the horizontal surface.

d. "Transitional Surfaces" means the surfaces extending outward at 90-degree angles to the runway centerline and the runway centerline extended at a slope of 7 feet horizontally for each foot vertically from the sides of the primary and approach surfaces to where they intersect the horizontal and conical surfaces. Transitional surfaces, for those portions of the precision approach surfaces which project through and beyond the limits of the conical surfaces, extend a distance of 5,000 feet, measured horizontally from the edge of the approach surface and at 90-degree angles to the extended runway centerline.

2. Height Limitations; Zones.

There are hereby created and established certain zones which include all of the land lying beneath the approach surfaces, transitional surfaces, horizontal surfaces, and conical surfaces as they apply to Abilene Regional Airport. Such zones are shown on the Imaginary Surfaces Map, and more particularly described as follows. Except as otherwise provided in this Section, no structure, Natural Growth, or other obstruction shall be erected, altered, allowed to grow, or maintained in any zone contained in this Section to a height level above the applicable surfaces on the outer or upper edge of the below-described zones. An area located in more than one of the following zones is considered to be only in the zone with the more restrictive height limitation.

a. **Utility Runway Visual Approach Zone:** The inner edge of this approach zone coincides with the width of the primary surface and is 250 feet wide. The approach zone expands outward uniformly to a width of 1,250 feet at a horizontal distance of 5,000 feet from the primary surface. Its centerline is the continuation of the centerline of the runway.

b. **Runway Larger than Utility With a Visibility Minimum as Low as $\frac{3}{4}$ Mile Non-Precision Instrument Approach Zone:** the inner edge of this approach zone coincides with the width of the primary surface and is 1,000 feet wide. The approach zone expands outward uniformly to a width of 4,000 feet at a horizontal distance of 10,000 feet from the primary surface. Its centerline is the continuation of the centerline of the runway.

c. **Precision Instrument Runway Approach Zone:** The inner edge of this approach zone coincides with the width of the primary surface and is 1,000 feet wide. The approach zone expands outward uniformly to a width of 16,000 feet at a horizontal distance of 50,000 feet from the primary surface. Its centerline is the continuation of the centerline of the runway.

d. **Transitional Zones:** The transitional zones are the areas beneath the transitional surfaces.

e. **Horizontal Zone:** A horizontal zone is hereby established by swinging arcs of 5,000 feet radii for all runways designated utility or visual and 10,000 feet for all others from the center of each end of the primary surface of each runway

and connecting the adjacent arcs by drawing lines tangent to those arcs. The horizontal zone does not include the approach and transitional zones.

f. **Conical Zone:** A Conical Zone is hereby established as the area that commences at the periphery of the Horizontal Zone and extends outward therefrom a horizontal distance of 4,000 feet. The Conical Zone does not include the Approach Zones and Horizontal Zones.

3. Noise Zones.

For the purpose of regulating the development of areas which possess a noise hazard to certain land uses, so as to promote compatibility between the airport and the surrounding land uses, protect the airport from incompatible encroachment, and promote and protect the health, safety, and general welfare of property users, noise zones are hereby established within and surrounding the areas of the Abilene Regional Airport, as follows:

- a. **Zone boundaries.** The boundaries of said zones are established as shown on the most recent Noise Contours Map, as amended.
- b. **Compatible land uses.** Compatible land uses within the noise zones are established as shown on the most recent Noise Contours Map, as amended.
- c. A copy of the most recent Noise Contours Map, as amended, is on file in the Administrative Office of the Abilene Regional Airport and the City of Abilene Planning Department.

B. Dyess Air Force Base

1. Surfaces.

There are hereby established and designated certain surfaces, as shown in the most recent Military Imaginary Surfaces Map. These surfaces are documented in the AICUZ study. The surfaces are described and defined as follows:

- a. **“Approach Clearance Surface”** means an inclined plane, symmetrical about the runway centerline extended, beginning 200 feet beyond each end of the primary surface at the centerline elevation of the runway end and extending for 50,000 feet. The slope of the Approach Clearance Surface is 50 to 1 along the runway centerline extended until it reaches an elevation of 500 feet above the established airport elevation, which is 1789 feet above mean sea level for Dyess AFB. It then continues horizontally at this elevation to a point 50,000 feet from the point of beginning. The width of this surface at the runway end is the same as the primary surface, it flares uniformly, and the width at 50,000 feet is 16,000 feet.

- b. "Conical Surface" means a surface extending outward and upward from the periphery of the inner horizontal surface at a slope of 20 to 1 for a horizontal distance of 7,000 feet to a height of 500 feet above the established airfield elevation.
- c. "Inner Horizontal Surface" means a plane that is oval in shape at a height of 150 feet above the established airfield elevation. The plane is constructed by scribing an arc with a radius of 7,500 feet about the centerline at the end of each runway and interconnecting these arcs with tangents.
- d. "LZ Approach–Departure Clearance Surface" means an imaginary surface that is an inclined plane arranged symmetrically about the runway centerline extended, beginning at the end of the clear zone, 500 feet beyond each end of the runway threshold, and extending 10,500 feet. The slope of the surface is 35 to 1 along the runway centerline extended until it reaches an elevation of 300 feet above the runway end elevation. The width of this surface at the clear zone end is 500 feet flaring uniformly until it reaches a width of 2,500 feet at 10,500 feet.
- e. "Outer Horizontal Surface" means a plane, located 500 feet above the established airfield elevation, extending outward from the outer periphery of the conical surface for a horizontal distance of 30,000 feet.
- f. "Primary Surface" means a surface located on the ground or water longitudinally centered on each runway with the same length as the runway. The width of the primary surface for runways is 2,000 feet.
- g. "Transitional Surfaces" means the surfaces that connect the primary surfaces, the first 200 feet of the clear zone surfaces, and the approach clearance surfaces to the inner horizontal surface, conical surface, outer horizontal surface or other transitional surfaces. The slope of the transitional surface is 7 to 1 outward and upward at right angles to the runway centerline.

2. Height Limitations; Zones.

There are hereby created and established certain zones which include all of the land lying beneath the approach surfaces, transitional surfaces, horizontal surfaces, and conical surfaces as they apply to Dyess AFB. Such zones are shown in the AICUZ study, as amended. Except as otherwise provided in this Section, no structure, Natural Growth, or other obstruction shall be erected, altered, allowed to grow, or maintained in any zone contained in this Section to a height level above the surfaces established and described in subsection (1) above. An area located in more than one of these zones is considered to be only in the zone with the more restrictive height limitation.

3. Clear Zones:

Clear Zones are areas on the ground, located at the ends of each runway. They possess a high potential for accidents and their use is restricted to be compatible with aircraft operations in accordance with the land use guidelines documented in the AICUZ study, as amended. Clear Zones are 3000 feet long measured along the extended runway centerline beginning at the runway end. They are 3000 feet wide centered on and measured at right angles to the extended runway centerline.

4. Accident Potential Zones (APZs):

APZs are areas on the ground located beyond the Clear Zone of each runway. They possess a potential for accidents and their use is restricted in accordance with the land use guidelines documented in the AICUZ Study, as amended.

a. APZ I: APZ I begins at the end of the Clear Zone, and is centered and measured on the extended centerline. It is 3000 feet wide and 5000 feet long.

b. APZ II: APZ II begins at the end of APZ I, and is centered and measured on the extended runway centerline. It is 3000 feet wide and 7000 feet long.

c. LZ APZs: LZ APZs begin at the end of the LZ Clear Zone, and are centered and measured on the extended runway centerline. They are 500 feet wide and 2,500 feet long.

5. Noise Zones.

For the purpose of regulating the development of areas which possess a noise hazard to certain land uses, so as to promote compatibility between Dyess Air Force Base and the surrounding land uses, protect Dyess Air Force Base from incompatible encroachment, and promote and protect the health, safety, and general welfare of property users, noise zones are hereby established within and surrounding the areas of Dyess Air Force Base through the AICUZ Study. The AICUZ Study presents noise contours using aircraft operational and maintenance data. The noise zones represent noise contours for DNLs of 65, 70, 75 and 80-plus decibels.

a. Zone boundaries. The boundaries of said zones are established as shown on the most recent AICUZ Study, as amended.

b. Compatible land uses. Compatible land uses within the noise zones are established as shown on the most recent AICUZ Study, as amended.

Sec. 319.5. Use Restrictions; Interference.

A. Notwithstanding any other provision of this Section, no use may be made of land within any zone established by this Section in such manner as to create electrical interference with navigational signals or radio communication between the airports and

aircraft, make it difficult for flyers to distinguish between airport lights and others, result in glare in the eyes of flyers using the airport, impair visibility in the vicinity of the airports, create bird strike hazards, or otherwise in any way endanger or interfere with the landing, taking off, or maneuvering of aircraft intending to use the airport.

B. No structure, Natural Growth, or other obstruction shall be placed, erected, or allowed to grow to a height that would penetrate a 100 to one slope from any point on a runway to the outer limits of the extraterritorial jurisdiction and/or Airport Hazard Area, without a determination as to the impact of such use. The City, and Dyess Air Force Base shall be responsible for evaluating the impacts of the structure, Natural Growth or other obstruction, and findings shall be reported to the Planning Director for evaluation and determination of the potential impact. The Board of Adjustment shall be responsible for approving, conditionally approving, or denying the placement of a structure, Natural Growth, or other obstruction exceeding this slope.

Sec. 319.6. Non-conforming Uses and Structures; Abandonment; Replacement.

A. Regulation not retroactive. The regulations prescribed in this Section shall not be construed to require the removal, lowering, or other changes or alteration of any structure, Natural Growth, or other obstruction not conforming to the regulations as of the effective date of this Section, or otherwise interfere with the continuance of any non-conforming use. Nothing herein contained shall require any change in the construction, alteration, or intended use of any Structure, if the construction, alteration, or use began prior to the effective date of this Section and is diligently prosecuted or completed.

B. Non-conforming Use. Any non-conforming use under this Section is subject to the conditions and procedures set forth in Section 23-361 of this Chapter.

C. Replacement of Non-conforming Objects of Natural Growth. A person may not replace a non-conforming object of Natural Growth that has been removed or destroyed.

D. A person may repair, renovate, or maintain a non-conforming Structure. The portion of a Structure that is repaired, renovated, or maintained must comply with the noise regulations contained herein.

E. A renovated or repaired Structure must not exceed the parameters or external measurements of the original non-conforming Structure.

F. Marking and Lighting. Notwithstanding the preceding provisions in this Section, the owner of any existing non-conforming structure, Natural Growth, or other obstruction is hereby required to permit the installation, operation, and maintenance thereon of such markers and lights as shall be deemed necessary by the Planning Director to indicate to the operators of aircraft in the vicinity of the airport the presence of such airport obstruction. Such markers and lights shall be installed, operated, and maintained at the expense of the City of Abilene.

Sec. 319.7. Permits.

A. In general.

1. Airport Zone Development Permit. Any development, construction, reconstruction, modification, repair, remodeling, or change in use within an area regulated by this Section shall require an Airport Zone Development Permit.
2. This Section shall not be interpreted to allow any permit that would:
 - a. establish an airport hazard;
 - b. establish a non-conforming use;
 - c. allow a non-conforming structure, object of Natural Growth, or other obstruction to become higher than it was on the date this Section was adopted;
 - d. allow a non-conforming structure, object of Natural Growth, other obstruction, or use to become a greater hazard to air navigation than it was on the date this Section was adopted.
3. No permit shall be granted to construct, modify, reconstruct, remodel, or repair any Structure or other obstruction to a height of 150 feet or greater, unless an FAA Determination of No Hazard to Air Navigation has been obtained and provided to the Planning Director.

B. Except as provided in subsection (A) above, an application for permit shall be granted.

C. New Construction. No material change shall be made in the use of land and no structure, Natural Growth, or other obstruction shall be erected, altered, planted, or otherwise established in any zone hereby created, unless an Airport Zone Development Permit therefore shall have been applied for and granted. Each application for a permit shall indicate the purpose for which the permit is desired with sufficient particularity to permit a determination as to whether the resulting use, structure, Natural Growth, or other obstruction, would conform to the regulations herein prescribed.

In addition, all permit applications shall be accompanied by a Determination of No Hazard to Air Navigation, if required by 14 CFR Part 77. Construction must comply with all applicable limitations and/or requirements contained herein and FAA guidelines.

D. New Use. No material change shall be made in the use of a structure or property, unless an Airport Zone Development Permit therefore shall have been applied for and granted. Each application for a permit shall indicate the purpose for which the permit is

desired with sufficient particularity to permit a determination as to whether the resulting use would conform to the regulations herein prescribed.

E. Noise. Noise regulations are hereby established for new construction and rehabilitation, rebuilding, remodeling, or repair of existing construction, as follows:

1. Abilene Regional Airport. In the area within 65 DNL or greater noise contour, as shown in the latest Noise Contours Map for the Abilene Regional Airport, as amended, a permit shall be required for any use or structure as identified by the FAA as requiring Noise Level Reduction (NLR). Such permits shall be issued when the Planning Director has approved noise attenuation measures consistent with FAA requirements and approval is obtained from the FAA.

2. Dyess Air Force Base. In the area within 65 DNL or greater noise contour, as shown in the AICUZ study, as amended, a permit shall be required for any use or structure as identified by the AICUZ Study as requiring NLR.

3. Certificate of Occupancy or Final Building Approval. For those properties identified by the Noise Contours Map or the AICUZ Study as requiring NLR measures within the incorporated city limits of the City of Abilene, no Certificate of Occupancy or Final Building Approval shall be issued, until the appropriate general contractor or subcontractor of a property provides a copy of either the FAA or AICUZ Study requirements for NLR and verifies that such noise attenuation measures have been properly taken with regard to the property.

4. Airport Zone Development Permit. For those properties identified by the Noise Contours Map or the AICUZ Study, as amended, as requiring NLR measures within the extraterritorial jurisdiction of the City of Abilene, an Airport Zone Development Permit is required prior to the construction of a structure. No Airport Zone Development Permit shall be issued until the appropriate general or subcontractor of a property provides a copy of either the FAA or AICUZ Study requirements for NLR and verifies that such noise attenuation measures will be taken with regard to the property.

5. Routine maintenance of a non-conforming structure does not invoke the requirements of this subsection.

F. Non-conforming Uses Abandoned or Destroyed. Whenever the Planning Director determines that a non-conforming structure or Natural Growth has been abandoned or more than 50 percent torn down, damaged, destroyed, physically deteriorated, or decayed, no permit shall be granted that would allow such structure or Natural Growth to exceed the application height limit or otherwise deviate from the regulations contained in this Section or this Chapter.

G. Variances. Any person desiring to erect or increase the height of any structure or permit the growth of any Natural Growth or use his property in any manner inconsistent with the regulations prescribed in this Section may apply to the Board of Adjustment for a variance from such regulation(s). Procedural rules regarding variances contained in Chapter 23 of the Code of the City of Abilene apply to this Section.

For all zones established in this Section, the application for variance shall be accompanied by a determination from the Federal Aviation Administration (FAA) as to the effect of the proposal on the operation of air navigation facilities and the safe, efficient use of navigable airspace. Such variances may be allowed. In reaching its decision to grant a variance, the Board of Adjustment shall determine that all of the following conditions are present: a literal application or enforcement of the regulations in this Section will result in unnecessary hardship, and relief, if granted, will not be contrary to the public interest, will not create a hazard to air navigation, will do substantial justice, and will be in accordance with the spirit of this Section.

In addition, no application for a variance to the requirements of this Section may be considered by the Board of Adjustment unless a copy of the application has been furnished to the Airport Development Board (regarding Abilene Regional Airport Zones) or the Dyess Base Civil Engineer (regarding Dyess Air Force Base Zones) for a recommendation as to the aeronautical effects of the requested variance, as more particularly set forth in subsection 319.9.

H. Special Exceptions. Any person desiring to erect, rebuild, repair, or remodel any structure within a noise zone may apply to the Board of Adjustment for a Special Exception, for a determination as to what noise abatement measures must be included in such construction or remodeling. Procedural rules and standards for granting or denying Special Exceptions contained in Chapter 23 of the Code of the City of Abilene apply to this Section. In addition, no application for a special exception to the requirements of this Section may be considered by the Board of Adjustment unless a copy of the application has been furnished to the Airport Development Board (regarding Abilene Regional Airport Zones) or the Dyess Base Civil Engineer (regarding Dyess Air Force Base Zones) for a recommendation as to the aeronautical or sound effects of the requested variance.

I. Hazard marking and lighting. Any permit or variance granted may, if such action is deemed advisable to effectuate the purpose of this Section and be reasonable under the circumstances, be so conditioned as to require the owner of the structure, Natural Growth, or other obstruction in question, at his own expense, to install, operate, and maintain thereon, such markers and lights as may be necessary to indicate to flyers the presence of a potential airport hazard.

J. Other Conditions. The Board of Adjustment may place reasonable conditions upon the granting of any variance or special exception.

Sec. 319.8. Enforcement.

It shall be the duty of the Planning Director to administer and enforce the regulations prescribed herein. Applications for permits and variances shall be made to the Planning Director upon a form furnished by the Planning Department. Applications required by this Section to be submitted to the Planning Director shall be promptly considered and granted or denied by said Planning Director. Applications for action by the Board of Adjustment shall be forthwith transmitted by the Planning Director.

Sec. 319.9. Board of Adjustment.

A. The Board of Adjustment is hereby granted the authority, in addition to its other duties and powers, to have and exercise the following powers:

1. to hear and decide appeals from any order, requirement, decision, or determination made by the Planning Director, in the enforcement of this Section;
2. to hear and decide special exceptions to the terms of this Section;
3. to hear and decide requests for variances of the requirements of this Section.

B. Chapter 23 of the Code of the City of Abilene shall apply to decisions made by the Board of Adjustment, appeals, and judicial review related to this Section.

C. Recommendation to the Board.

1. Abilene Regional Airport.

The Abilene Regional Airport Development Board may make a recommendation, in writing or by representative, to the Board of Adjustment, regarding any matter before the Board that may have an effect on the Abilene Regional Airport. The Planning Director shall promptly forward any application for a variance or special exception, including any relevant material, to the Airport Development Board for consideration at its next available regular meeting. The Airport Development Board shall thereafter notify the Planning Director of its determination regarding the matter, at any time after the regular meeting, and no later than the date necessary to include the matter on the agenda for the next available regular Board of Adjustment meeting.

2. Dyess Air Force Base.

The Dyess Base Civil Engineer may make a recommendation, in writing or by representative, to the Board of Adjustment, regarding any matter before the Board that may have an effect on Dyess Air Force Base. The Planning Director shall promptly forward any application for a variance or special exception, including any relevant material, to the Dyess Base Civil Engineer for consideration. A representative of the Dyess Base Civil Engineer shall thereafter promptly notify the Planning Director of its

determination regarding the matter, at any time after receiving the application from the City of Abilene, and not later than 15 days after receipt. Promptly and within a reasonable time after the 15 days has elapsed or a response has been received from the Dyess Base Civil Engineer (whichever is earlier), the Planning Director shall include the matter on the agenda for the next available regular Board of Adjustment meeting.

Sec. 319.10. Violations and Penalties.

- A. It shall be unlawful for any person to violate any regulation, order, or ruling promulgated under this Section.
- B. Each day a violation occurs shall constitute a separate offense.
- C. Any person who violates any provision of this Section shall be guilty of a misdemeanor, punishable by a fine as set forth in Sec. 1-9 of the Code of the City of Abilene.

Sec. 319.11. Civil Remedies.

- A. The City Attorney may enforce this Section by injunction, declaratory relief, or other action at law or in equity.
- B. Any structure erected or used, or any work done, contrary to any of the provisions of this Section or to any of the details contained in the final site plan or Airport Development Zone permit approved by the City is hereby declared to be unlawful and shall constitute a violation of this Section. The Council may direct the City Attorney to initiate injunction, mandamus, abatement, or any other action available in law or equity to prevent, enjoin, abate, correct or remove the unlawful structure, use or work.
- C. In addition to any other remedies which may be available at law or in equity, the City may sue in the appropriate district court for an injunction to prohibit the violation of, or to enforce compliance with, any regulation contained in this Section.

Sec. 319-12—319-99. Reserved.