

ORDINANCE NO. 61-2024

AN ORDINANCE OF THE CITY OF ABILENE, TEXAS, AMENDING CHAPTER 2 (ZONING REGULATIONS) OF THE LAND DEVELOPMENT CODE (LDC) SPECIFICALLY TO REPEAL SECTION 2.3.5.1, "AIRPORT ZONING" AND TO REPLACE SAID SECTION WITH SECTION 2.3.5.1 "AIRPORT ZONING", AS REVISED, TO IMPLEMENT LAND DEVELOPMENT RECOMMENDATIONS OF THE JOINT LAND USE STUDY (JLUS); CALLING A PUBLIC HEARING; PROVIDING A PENALTY AND AN EFFECTIVE DATE.

WHEREAS, the City Council desires to continue to protect 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 Abilene Regional Airport and Dyess Air Force Base (AFB); and

WHEREAS, the City Council desires to continue to regulate airport zoning hazard areas and compatible land uses surrounding Dyess AFB and Abilene Regional Airport pursuant to Chapter 241 of the Texas Local Government Code, as amended; and

WHEREAS, the City Council desires to ensure that new residential development will not be located in areas that could diminish the ability of Dyess AFB and Abilene Regional Airport from accomplishing their respective purposes and place residences in proximity to "Accident Potential Zones" and "Noise Zones"; and

WHEREAS, the City Council desires to protect the property rights of owners surrounding Dyess AFB or Abilene Regional Airport; and

WHEREAS, the City Council sponsored the Joint Land Use Study (JLUS) to assess the relationship between the development of vacant properties surrounding Dyess AFB and Abilene Regional Airport with ability of each to accomplish their purposes and missions; and

WHEREAS, the City Council recognizes that the JLUS report was completed in a cooperative and inclusive manner with the stakeholders of the City of Abilene, City of Tye, Taylor County, representatives from the View and Caps communities, and area land owners and that the final JLUS report was unanimously approved by the stakeholders; and

WHEREAS, the City Council wishes to implement those recommendations of the JLUS report that pertain to the development of property by revising Section 2.3.5.1 of the Land Development Code.

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

PART 1: That Chapter 2 (Zoning Regulations), Section 2.3.5.1 "Airport Zoning", is hereby repealed and replaced by Section 2.3.5.1 "Airport Zoning", as set out in Exhibit A, attached hereto and made a part of this ordinance for all purposes. —

PART 2: That any person, firm or corporation violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than Two Thousand Dollars (\$2,000.00). Each day such violation shall continue or be permitted to continue, shall be deemed a separate offense.

PART 3: Each provision of the ordinance shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of the ordinance shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of the ordinance or the remaining.

PASSED ON FIRST READING the 21st day of November, 2024.

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 the 18th day of October 2024, the same being more than fifteen (15) days prior to a public hearing held in the Council Chamber of the City Hall in Abilene, Texas, at 8:30 a.m. on the 5th day of December 2024, to permit the public to be heard prior to final consideration of this ordinance. 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 FINAL READING THIS 5th day of December 2024.

ATTEST:


CITY SECRETARY


MAYOR

APPROVED.

CITY ATTORNEY



City of Abilene
Division 5 - Airport Zoning

Section 2.3.5.1 Airport Zoning

- (a) Purpose. It is the purpose of this Section to protect 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 Abilene Regional Airport and Dyess Air Force Base (Dyess AFB). It is further the purpose of this Section to regulate airport zoning hazard areas and compatible land uses surrounding airports in the City of Abilene, pursuant to Chapter 241 of the Texas Local [Government] Code, as amended, and to preserve and maintain existing and future operational capabilities of Abilene Regional Airport and Dyess AFB.
- (b) Applicability. This Section establishes regulations applicable to all land located within the boundary of the Airport Zoning for operational areas around Abilene Regional Airport and Dyess AFB, as adopted and depicted on the official Zoning Map for the City of Abilene. 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 extraterritorial jurisdiction of the City of Abilene, as well as the Airport Hazard Areas in and surrounding Abilene Regional Airport and Dyess AFB. The use of all land and any natural growth, structures, or any other obstructions upon the land, and the height, construction, reconstruction, alteration, expansion, or relocation of any natural growth, structures, or any other obstructions upon the land, shall conform to all regulations contained in and applicable to this Section. No land, natural growth, structure, or other obstruction shall be erected, constructed, used, replaced, altered, and/or maintained for any purpose or in any manner other than permitted by this section.
- (c) Background. The Dyess AFB Joint Land Use Study (JLUS) was completed in January 2018. The JLUS was developed through a collaborative process among the City of Abilene, the City of Tye, Taylor County, property owners and residents including within the View/Caps Community, the Abilene Chamber of Commerce, and Dyess AFB. Through the JLUS process, stakeholders collaborated to identify and assess existing, perceived, and potential compatible and incompatible/not recommended activities between Dyess AFB and the surrounding communities. The outcome of the JLUS was a series of recommendations to assist in promoting and guiding sustainable growth for Dyess AFB and the surrounding community. Among the recommendations were several to amend the existing Abilene Airport Zoning regulations, without limiting property owner and development rights related to safety concerns and noise generated by activities at Dyess AFB.

It is important to note that throughout the Dyess AFB JLUS process, property owners in the unincorporated View/Caps Community to the south and west of Dyess AFB were very involved and invested in the JLUS process and development of the study. As property owners in the areas affected by safety (clear zones and accident potential zones) and noise generated by aircraft operating at Dyess AFB, these citizens were influential in the assessment of the JLUS compatibility issues, particularly regarding safety and noise. While it is part of the JLUS process to identify and assess existing conditions (e.g., safety and noise zones from aircraft operations that goes outside of the boundaries of Dyess AFB), many of the current View/Caps property owners have publicly stated that they do not have any concerns with safety or noise, and they accept the levels of safety concerns and noise generated by aircraft at Dyess AFB. These property owners are proud to have Dyess AFB as their neighbor and have voiced their continued support for Dyess AFB's missions.

The development and establishment of the Airport Zoning ordinance was a collaborative process involving the City of Abilene, City of Tye, Taylor County, Dyess AFB, and property owners within the affected area. While the Dyess AFB Air Installation Compatible Use Zone Study (AICUZ) Study recommendations were used as a starting point in the process, the ultimate decisions made by the City of Abilene took some of the AICUZ recommendations into consideration, but intentionally does not contain all of them. These decisions were made to accommodate local preferences, quality of life, and desired lifestyle of the community. Land use regulations are also established by the ordinance, which are similar to the recommendations outlined in the AICUZ; however, there are some differences which were agreed upon by all parties that participated in the development of the ordinance. Noise regulations within the Dyess AFB noise contours were considered for inclusion in the Airport Zoning ordinance, but were omitted through a public process in which many of the property owners within the noise contours publicly stated that they accept the risks and potential impacts associated with noise generated by Dyess AFB aircraft operations and requested that noise regulations be removed from the ordinance, which it was.

In lieu of regulating land use and development within the Dyess AFB noise contours through this Airport Zoning ordinance, the City of Abilene and other JLUS stakeholders agreed to utilize educational materials such as brochures and maps to inform existing and future property owners about the boundaries of the noise contours and potential implications of developing within them.

- (d) Definitions. The following words and phrases, whenever used in this Section, shall be defined as follows:
- (1) "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;
 - (2) "Air Installation Compatible Use Zone (AICUZ) Study" means a study developed by Dyess AFB to provide information about aircraft operations at Dyess AFB that cause noise and safety hazards and to provide recommendations for local communities to inform land use planning around Dyess AFB;
 - (3) "Air Operations Area" means any area of an airport used or intended to be used for landing, takeoff, or surface maneuvering of aircraft. An air operations area includes such paved areas or unpaved areas that are used or intended to be used for the unobstructed movement of aircraft in addition to its associated runway, taxiways, or apron;
 - (4) "Airport" means the Abilene Regional Airport and/or Dyess AFB;
 - (5) "Airport Elevation" means the established elevation of the highest point on the usable landing area;
 - (6) "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;
 - (7) "Airport Hazard Area" means an area of land or water on which an airport hazard could exist;
 - (8) "Bird / Wildlife Aircraft Strike Hazard (BASH)" means the likely occurrence for a collision between an airborne animal or an animal on the ground and an aircraft on or near a runway. The BASH Relevancy Area is a five-statute mile area around Airports where risk is highly associated with BASH;
 - (9) "Board of Adjustment" means the City of Abilene Board of Adjustment, as created by the City's Charter and defined in this Code of the City of Abilene and by State law;

- (10) "Centerline" means a line extending through the midpoint of each end of a runway;
- (11) "Compatible Land Use" means a use of land adjacent to or in the vicinity of an airport that does not have the potential to 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;
- (12) "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;
- (13) "Decibel (dB)" means a unit of measure based on a logarithmic scale. A 10 dB increase in noise level corresponds to a 100 percent increase (doubling) in perceived loudness;
- (14) "FAA" means the Federal Aviation Administration;
- (15) "Hazard to Air Navigation" means an obstruction determined to have an adverse effect on the safe and efficient utilization of the navigable airspace;
- (16) "Height" is determined by mean sea level elevation, unless otherwise specified;
- (17) "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;
- (18) "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;
- (19) "Joint Land Use Study (JLUS)" means a planning tool developed through the collaborative efforts of a comprehensive set of stakeholders in a defined study area in order to identify compatibility / recommended land use guidelines within, and adjacent to, active military installations.
- (20) "Landing Area" means the area of the airport used for the landing, take off, or taxiing of aircraft;
- (21) "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;
- (22) "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.
- (23) "Mean Sea Level (MSL)" means the average height of water in the sea used as the datum plane to measure land elevation;
- (24) "Military Imaginary Surfaces Map" refers to the most recent map indicating zones in and surrounding Dyess AFB, a true and correct copy of which is maintained in the City of Abilene Planning Department;
- (25) "Natural Growth" means any tree, shrub, grass, or other item found in nature that is flora;

- (26) "Noise Contour" means a geographical representation of DNL noise levels;
- (27) "Noise Contours Map" refers to the most recent map and attachments, as amended, developed by Abilene Regional Airport and Dyess AFB, respectively, pursuant to 14 C.F.R. Part 150, indicating estimated noise levels and compatible land uses for zones surrounding the Abilene Regional Airport and Dyess AFB, a true and correct copy of which is maintained at the Abilene Regional Airport Administrative Office and the City of Abilene Planning Department, and Dyess, respectively, as well as online at www.abilenetx.gov (<https://storymaps.arcgis.com/stories/83da8ff08d4c4528ab046cb50368cf2c>);
- (28) "Noise Level Reduction" means the voluntary incorporation of sound attenuation measures (outdoor to indoor) into the design and construction of a Structure;
- (29) "Nonconforming/Not recommended 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. Nonconforming/Not recommended 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;
- (30) "Nonconforming/Not recommended Use" means any activity or use of land which was approved 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 or is not recommended for use. Any nonconforming/not recommended use existing at the time of the enactment of this Section may be continued, except as provided in this Section;
- (31) "Obstruction" means any structure, tree, plant, or other object of natural growth that penetrates an imaginary surface or is determined by the Federal Aviation Administration to interfere with the established aviation traffic pattern;
- (32) "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.
- (33) "Planning Director" means the City of Abilene Director of Planning and Development Services or designee;
- (34) "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;
- (35) "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 AFB are more particularly described in subsection (e);
- (36) "Runway" means a defined area on an airport prepared for landing and take-off of aircraft along its length;
- (37) "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;
- (38) "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;

(39) "Visual Runway" means a runway intended solely for the operation of aircraft using visual approach procedures;

(e) Surfaces; Zones; Height Limitations; and Noise Zones.

(1) Abilene Regional Airport.

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

1. "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;
2. "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;
3. "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.
4. "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.

b. 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.

1. 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.

2. Runway Larger than Utility With a Visibility Minimum as Low as 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.
 3. 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 runway.
 4. Transitional Zones: The transitional zones are the areas beneath the transitional surfaces.
 5. 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.
 6. Conical Zone: A Conical Zone is hereby established as the area that commences at the periphery of the Horizontal Zone and extends outward there from a horizontal distance of 4,000 feet. The Conical Zone does not include the Approach Zones and Horizontal Zones.
- c. Noise Zones. For the purpose of regulating the development areas which possess a noise hazard for certain land uses, so as to promote compatibility between the airport and the surrounding land uses, protect the airport from incompatible/not recommended use 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:
1. Zone Boundaries. The boundaries of said zones are established as shown on the most recent Noise Contours Map, as amended.
 2. Compatible Land Uses. Compatible land uses within the noise zones are established as shown on the most recent Noise Contours Map, as amended.
 3. 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.

(2) Dyess Air Force Base.

- a. Imaginary Surfaces. There are hereby established and designated certain surfaces, as shown on the Military Imaginary Surfaces Map. The surfaces are described as follows:
 1. "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.

2. "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.
 3. "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.
 4. "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.
 5. "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.
 6. "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.
 7. "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.
- b. Height Limitations: Zones. There are hereby created and established certain zones which include all of the land beneath the Approach Clearance Surface, Conical Surface, Inner Horizontal Surface, LZ Approach-Departure Clearance Surface, Outer Horizontal Surface, Primary Surface, and Transitional Surface as they apply to Dyess AFB. Such zones are shown on the Military Imaginary Surfaces Map, and more particularly described in subsection a above. 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 (2) 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. A property owner wishing to erect or maintain a structure or natural growth that exceeds the height limitations of this subsection may apply for a variance, as described in Section 2.3.5.1 (j) (7).
- c. Clear Zones. Clear Zones are areas on the ground, located at the end of each runway. They possess a high potential for accidents and their use is restricted to be compatible with aircraft operations in accordance with Table 1 below. Clear Zones are 3,000 feet long measured along the extended runway centerline beginning at the runway end. They are 3,000 feet wide centered on and measured at right angles to the extended runway centerline.
- d. 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 Table 1.

1. APZ I. APZ I begins at the end of the Clear Zone, and is centered and measured on the extended centerline. It is 3,000 feet wide and 5,000 feet long.
2. APZ II. APZ II begins at the end of APZ I, and is centered and measured on the extended runway centerline. It is 3,000 feet wide and 7,000 feet long.
3. 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.

e. Land Use Restrictions.

1. An individual single-family residential structure, including manufactured housing, shall be permitted on a lot of 1 acre or larger, except within the Clear Zone associated with Dyess AFB. This does not eliminate the need for an Airport Zone Development Permit.
2. An individual single-family residential structure, including manufactured housing or allowable accessory structure, meaning any object, including a mobile object, constructed or installed by man, including without limitation, any building or structure, physical improvement, tower, smokestack, earth formation, overhead transmission lines, garages, carports, shops, barns, storage buildings, etc. or similar uses used in conjunction or not in conjunction with residential or similar uses, shall be permitted on an existing legally platted lot, or a lot subdivided prior to 1984, even if the area of the lot is less than 1 acre, except within the Clear Zone associated with Dyess AFB. This does not preclude the acceptance of utility services water, electrical, sewer, or any other utility.
3. An individual single-family residential structure, including manufactured housing and any other type of building/structure, shall not exceed a height greater than thirty-five (35) feet if the structure penetrates an established Military Imaginary Surface.
4. Future development within the APZ I and APZ II shall conform to Table 1 Dyess Air Force Base Land Use Restrictions. A property owner wishing to erect a structure in APZs I or II that is not allowed in Table 1 may apply for a Special Exception as described in Section 2.3.5.1 (j) (8).
5. Except as otherwise stated in this ordinance, previously approved nonconforming/not recommended uses in the APZs I and II that do not conform to Table 1 Dyess Air Force Base Land Use Restrictions may be replaced, but not expanded in square footage unless a Special Exception is approved. Such replacement may not expand square footage or increase the density and intensity of the original nonconforming/not recommended use unless a Special Exception is approved.

Table 1
Dyess Air Force Base
Land Use Restrictions

Land Use	APZ I	APZ II
RESIDENTIAL USES¹		
Bed & Breakfast	No	Yes ²
Dwelling - Duplex	No	Yes ²
Dwelling - Industrialized Housing	Yes ²	Yes ²
Dwelling - Institutional	No	No
Dwelling - Manufactured Home (HUD-Code)	No	Yes ²
Dwelling - Mobile Home	No ¹	Yes ^{1,2}
Dwelling - Multiple-Family	No	No
Dwelling - Patio Home	Yes ^{1,2}	Yes ^{1,2}
Dwelling - Single Family Detached	Yes ^{1,2}	Yes ^{1,2}
Dwelling - Townhome	No	No
Group Home	No	No
Hotel/Motel	No	No
Travel Trailer/ Recreational Vehicle	No ¹	Yes ^{1,2}
Vacation Travel Trailer Park	No	No
ACCESSORY & INCIDENTAL USE		
Accessory Structure	Yes ¹	Yes ¹
Animal Lot	Yes ³	Yes ³
Antenna, Non-Commercial/ Amateur	Yes	Yes
ATMs, Self-Serve Kiosks, and Similar Facilities	Yes	Yes
Day Care Operation - Home-Based	No	No
Dwelling - Accessory	Yes ^{1,2}	Yes ^{1,2}
Drive-Thru Facility	No	Yes
Field Office or Construction Office (temporary)	Yes	Yes
Freight Container	Yes	Yes
Fuel Sales	No	No
Garage Sale	Yes	Yes
Home Occupation	Yes ^{1,2}	Yes ^{1,2}
Itinerant Business	No	Yes
Manufacturing	SE ⁴	SE ⁴
Mobile Home (permanent security residence)	No	Yes
Mobile Home (temporary security residence)	No	Yes
Mobile Home or Temporary Building (office for sales and service)	No	Yes
Recreation Building, Multipurpose	Yes ⁵	Yes ⁵
Recycling Collection Point	Yes	Yes
Subdivision Sales Office (temporary)	No	Yes
Swimming Pool, Private (accessory to residential use)	Yes	Yes
Tennis Court, Private (accessory to residential use)	Yes	Yes
Travel Trailers (accessory to hospitals)	No	Yes
CULTURAL & RECREATION USE		
Adult Entertainment Enterprise	No	No
Civic, Social, and Fraternal Organization	No	No
Cultural Facilities	No	No
Drive-in Theater	No	No
Fairgrounds/Rodeo	No	No
Motorized Racing	No	No
Recreation - Outdoors (active and passive)	Yes ⁵	Yes ⁵
Recreation and Commercial Entertainment	No	No
Zoo	No	No
GOVERNMENT, HEALTH, SAFETY, AND WELFARE USES		

Ambulance Service	No	SE
Community Home	No	No
Correction, Detention, or Penal Facilities	No	No
Fire/Police Station	No	SE
Homeless/Emergency Shelter	No	No
Hospital	No	No
Medical/Dental Laboratory	No	No
Military and Armed Forces Reserve Center	No	No
Military Base and Reservation	No	No
Personal Care Facility	No	No
Post Office	No	SE
Rehabilitation Facility	No	No
Sanitary Landfill	No	No
Social Service Facility	No	No
EDUCATIONAL & RELIGIOUS USES		
Arts School	No	No
Cemetery, Crematorium, and Mausoleum	Yes ⁶	Yes ⁶
Church or Place of Worship	No	No
Day-Care Operation - Center-Based	No	No
Educational and Scientific Research	No	No
School: Public/Private	No	No
Trade/Business School	No	No
University/College	No	No
SERVICE		
Automobile Wash	Yes	Yes
Cabinet Making; Carpentry and Wood Flooring Services	SE ⁴	Yes ⁴
Contractor Services	Yes	Yes
Delivery Services	SE	Yes
Drilling-Rig Repair (sand and water blasting)	SE ⁴	Yes ⁴
Electrical Motor Repair	SE	Yes
Equipment Repair, Services, and Sales	SE	Yes
Exterminating and Fumigating Services	SE ⁴	Yes ⁴
Farm Equipment Repair, Services, and Sales	SE	Yes
Funeral Home/Mortuary/Morgue	No	No
Heating, Ventilation, Air-Conditioning Services	SE ⁴	Yes ⁴
House Wrecking and Demolition	SE ⁴	Yes ⁴
Kennel (With Outdoor Pens)	Yes	Yes
Kennel (Without Outdoor Pens)	Yes	Yes
Landscaping Services	SE	Yes
Laundry, Dry Cleaning, Dyeing, and Linen Service (no retail customers)	No	Yes
Laundry/Dry Cleaning Services & Facilities	No	Yes
Machine Shops	SE ⁴	Yes ⁴
Masonry, Concrete, Stonework, Tile Setting, and Plastering Services	SE ⁴	Yes ⁴
Office (general, professional, financial)	No	Yes
Oilfield Service	SE ⁴	Yes ⁴
Oil Well Drilling Contractors	SE ⁴	Yes ⁴
Paint and Body Repairs, Services, and Sales	SE	Yes
Personal Services	No	Yes
Pet Services and Sales	SE	Yes
Pipe Cleaning and Testing (sand and water blasting)	SE ⁴	Yes ⁴
Plumbing Services	SE	Yes
Printing, Copying, Reproduction, Publishing	No	Yes
Recycling Collection and Processing Center	Yes	Yes
Refrigerated Warehousing	SE ⁴	Yes ⁴
Repair and Maintenance Services - Automobile/Small Truck (major)	Yes	Yes
Repair and Maintenance Services - Automobile/Small Truck (minor)	Yes	Yes
Repair and Maintenance Services (indoor)	Yes	Yes
Repair and Maintenance Services (outdoors)	Yes	Yes

Repair and Maintenance Services (truck and other large vehicles)	Yes	Yes
Roofing and Sheet Metal Services	SE	Yes
Scales (public)	Yes	Yes
Storage - Self-Service Units	Yes	Yes
Storage and Warehousing (general)	SE ⁴	Yes ⁴
Tattoo Parlor	No	Yes
Taxidermist	No	Yes
Veterinary Service (all size animals)	No	No
Veterinary Service (small animals)	No	No
Water Well Drilling Services	SE ⁴	Yes ⁴
Welding and Cutting Services and Sales	SE ⁴	Yes ⁴
Wrecker/Towing	Yes	Yes
TRADE - RETAIL USES		
Aircraft and Accessories	Yes	Yes
ATMs, Self-Serve Kiosks, and Similar Facilities	Yes	Yes
Convenience Store	No	Yes
Fuel Sales	No	No
Liquor Store (Off Premises Consumption)	No	Yes
Liquor Store (On Premises Consumption)	No	No
Restaurant, Fast Food	No	No
Restaurant, Standard	No	No
Retail Sales/Rental (automobile/small truck)	Yes	Yes
Retail Sales/Rental (indoor)	No	Yes
Retail Sales/Rental (outdoors, non-vehicle)	No	Yes
Retail Sales/Rental (trucks and other large vehicles and equipment)	Yes	Yes
Scrap and Waste Material	Yes	Yes
TRADE - WHOLESALE USES		
Liquor, Wholesale/Distribution	Yes	Yes
Livestock - Wholesale only (no auction)	Yes ³	Yes ³
Wholesaling and Storage (indoor) ⁷	Yes	Yes
Wholesaling and Storage (outdoors) ⁷	Yes	Yes
TRANSPORTATION, COMMUNICATION, & UTILITIES		
Airport, Heliport and Flying Field Terminals - Commercial (passenger and freight)	No	No
Antenna Tower - Commercial	Yes ⁸	Yes
Automobile Parking Lot or Structure - Commercial	Yes ⁸	Yes
Broadcast Studio	No	No
Passenger Ground Transportation Terminal	No	Yes
Pressure Control Station	Yes ⁸	Yes
Public Utility Facility	Yes ⁸	Yes
Railroad Switching and Marshalling Yard	Yes ⁸	Yes
Utility Generation, Production, Treatment	Yes ⁸	Yes
RESOURCE PRODUCTION & EXTRACTION		
Farming, Ranching & Livestock, Hatchery	Yes ³	Yes ³
Feedlot, Commercial	Yes ³	Yes ³
Mining	Yes ⁹	Yes ⁹
Petroleum or Gas Well	No	No
Liquor	Yes	Yes
Manufacturing (light)	SE ⁴	SE ⁴
Manufacturing (heavy)	SE ⁴	SE ⁴

Notes:

- Any nonconforming/not recommended use approved prior to or at the time of the enactment of this Airport Zoning regulation may be continued.
- Any land use not listed in Table 1 will be evaluated based on a similar use from the table. If such similar use is allowed within APZ I or APZ II, the not-listed use will be allowed without the need for a Special Exception approved by the Board of Adjustment.
- Yes = The use is allowed.
- Yes (with superscript number) = The use is allowed, but may have stipulations.
- No = The use is not allowed; however, any proposed use identified as "No" may be submitted through a Special Exception

process for consideration for approval by the Board of Adjustment after being reviewed by Dyess AFB.

- SE = A Special Exception approved by the Board of Adjustment after being reviewed by Dyess AFB is required.
- ¹ - Existing lots of less than 1 acre that were legally platted, or that were subdivided prior to 1984, are allowed one residence.
- ² - The maximum density is one (1) dwelling unit per acre.
- ³ - Activities that attract concentrations of birds creating a hazard to aircraft operations should be excluded.
- ⁴ - Except for chemicals and allied products; precision equipment; apparel and other finished products; products made from fabrics, leather and similar materials; petroleum refining and related industries; Rubber and miscellaneous plastic products; professional, scientific, and controlling instruments; photographic and optical goods; watches and clocks; or other hazardous or noise/vibration-sensitive uses. No activity which produces smoke, glare, or involves explosives.
- ⁵ - Facilities such as playgrounds, club houses, meeting places, auditoriums, large classes, etc., are not permitted.
- ⁶ - No chapels or houses of worship are allowed within APZ I or APZ II.
- ⁷ - Big box home improvement stores are not included as part of this category.
- ⁸ - No above ground passenger terminals and no above ground power transmission or distribution lines at a height greater than 50 feet above Dyess AFB airport elevation. Prohibited power lines include high-voltage transmission lines and distribution lines that provide power to cities, towns, or regional power for unincorporated areas.
- ⁹ - Surface mining operations that could create retention ponds that may attract waterfowl and present bird/wildlife aircraft strike hazards (BASH), or operations that produce dust or light emissions that could affect pilot vision are not compatible. No activity which produces smoke, glare, or involves explosives.

In addition to the above listed restrictions, no use shall have hazardous materials stored on-site other than minimal, incidental storage of small quantities.

f. Noise Zones.

Residential developments and other land uses within Noise Zones may be recommended to consider sound attenuation measures to reduce potential interior noise impacts and achieve a maximum interior noise level of 45 dB DNL. While regulated sound attenuation measures may not be necessary in the Noise Zones due to personal preferences of property owners, the City of Abilene maintains educational materials for interested property owners or developers who want to learn more information about how to reduce interior noise levels inside their residential or other structure. This will alert buyers on the potential for noise impacts in areas close to Dyess AFB. The materials would be educational and not mandatory requirements.

For the purpose of guiding the development of areas which possess a noise hazard to certain land uses, so as to promote compatibility between Dyess AFB and the surrounding land uses and protect the airport from incompatible/not recommended encroachment, noise zones are hereby established within and surrounding the areas of Dyess AFB as follows.

1. Noise Zone Boundaries. The boundaries of said noise zones are established as shown on the most recent Dyess AFB Noise Contours Map, as amended.
2. 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 and online at www.abilenetx.gov
<https://storymaps.arcgis.com/stories/83da8ff08d4c4528ab046cb50368cf2c>.
3. New development within the Noise Zones is subject to the following regulations.
 - i. No new mobile and/or manufactured home parks or zones shall be established within any Noise Zone.

(f) Bird /Wildlife Aircraft Strike Hazard (BASH).

All development within a five (5) statute mile radius of the Air Operations Area at Abilene Regional Airport or Dyess AFB shall adhere to the following use standards.

- (1) **Solid Waste Landfills.** New solid waste landfills are prohibited. Solid waste landfills are defined as any discrete area of land or an excavation that receives household waste, and that is not a

land application unit, surface impoundment, injection well, or waste pile.

(2) Solid Waste Landfill Transfer Stations. All new landfill transfer stations shall meet the following criteria.

- a. Shall be fully-enclosed and receive garbage behind closed doors;
- b. Process received garbage via compaction, incineration, or similar manner; and
- c. Remove all residue by enclosed vehicles.
- d. Solid Waste Landfill Transfer Stations are prohibited if they:
 1. Handle or store putrescible waste outside or in a partially enclosed structure accessible to wildlife.
 2. Are open on one or more sides.
 3. Store uncovered quantities of municipal solid waste outside, even if only for a short time.
 4. Use semi-trailers that leak or have trash clinging to the outside.
 5. Do not control odors by ventilation and filtration systems (odor masking is not acceptable).

(3) Water Management Facilities. Water management facilities include drinking water intake and treatment facilities, storm water and wastewater treatment facilities, associated retention and settling ponds, and ponds that result from mining activities. For the purpose of this section, ponds refer to stagnant bodies of water that may be natural or constructed and exclude residential and public swimming pools and other constructed facilities where water is circulated for filtration and chemical treatment. All new water management facilities shall meet the following criteria.

- a. Designed and operated so as not to create above-ground standing water.
- b. Stormwater detention ponds shall be designed, engineered, constructed, and maintained for a maximum 48-hour detention period after the design storm and remain completely dry between storms. To facilitate the control of hazardous wildlife, steep-sided, rip-rap lined, narrow, linearly shaped water detention basins shall be used.
- c. The following Water Management Facilities are prohibited:
 1. New wastewater management facilities or associated settling ponds.
 2. Artificial marshes.

(4) Aquaculture. All new aquaculture activities shall be within fully enclosed buildings. Aquaculture activities outside fully enclosed buildings are prohibited.

(g) Solar Energy Development and Solar Panels.

The requirements of this Section shall apply to any application for municipal approval for the erection and maintenance of solar energy development or solar panels within five statute miles around Abilene Regional Airport or Dyess AFB, or as otherwise described below, excluding solar panels for use on a private residence or business to be used exclusively for that residence or business.

- (1) Applications for solar energy development projects within five miles of Dyess AFB only shall include a mission compatibility evaluation from the DoD Military Aviation and Installation Assurance Siting Clearinghouse, if deemed necessary by consultation with Dyess AFB.
- (2) Applications for solar energy development projects shall include details related to the siting of facilities and distance from Abilene Regional Airport or Dyess AFB, energy capacity output, height of structures and facilities, and construction technology.
- (3) Applications for solar energy development projects shall include a glare analysis that satisfies the requirements of the 2013 FAA Interim Policy 78 FR 63276 regarding yellow glare, glare at Air Traffic Control Towers and analysis and observer characteristics.

(h) Use Restrictions; Interference.

- (1) 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, and aircraft, make it difficult for flyers to distinguish between airport lights and others, result in glare in the eyes of pilots or air traffic controllers 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.
- (2) No structure, natural growth, or other obstruction, except for those allowed as identified in Section 2.3.5.1 (e) (2) e., 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 AFB 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, except as stated in Section 2.3.5.1 (j) (1) a.

(i) Nonconforming/Not Recommended Uses and Structures; Abandonment; Replacement.

- (1) 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 nonconforming/not recommended 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.
- (2) Nonconforming/Not Recommended Use. Any nonconforming/not recommended use under this Section is subject to the conditions and procedures set forth in this Code.
- (3) Replacement of Nonconforming/Not Recommended Objects of natural growth. A person may not replace a nonconforming/not recommended object of natural growth that has been removed or destroyed.
- (4) A person may renovate a nonconforming/not recommended Structure. The portion of a structure that is renovated must comply with the regulations contained herein, where applicable.
- (5) Replacement/Expansion of Nonconforming/Not Recommended Single-Family Residential

Structure. An existing nonconforming/not recommended single-family residential structure, including manufactured housing, may be replaced and/or enlarged even if not otherwise allowed. There shall be no size restrictions other than required by zoning, where applicable.

- (6) Replacement of a Structure on the Site of a Nonconforming/Not Recommended Nonresidential Use. An existing structure on the site of a nonconforming/not recommended nonresidential use that has been damaged or destroyed may be replaced or restored even if not otherwise allowed. However, the replaced or restored structure shall not exceed the size of the damaged or destroyed structure and shall not exceed any height limitations imposed by this ordinance. A property owner replacing a damaged or destroyed nonconforming/not recommended structure who wishes to exceed the size of the damaged or destroyed structure or exceed height limitations imposed by this ordinance may submit a request for a Special Exception. In addition, no such structure shall be permitted if deemed a hazard by the FAA. This provision does not waive the requirement for obtaining an Airport Zone Development Permit, where applicable.
- (7) Any legal, nonconforming/not recommended industrial uses in the APZ I or APZ II area of Dyess AFB may be expanded to the limits of their property as of the effective date of this ordinance, with no limitation on number of employees, but maintaining restrictions on manufacturing or storage of chemical and hazardous materials.
- (8) Marking and Lighting. Notwithstanding the preceding provisions in this Section, the owner of any existing nonconforming/not recommended 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.

(j) Permits.

(1) In General.

- a. Airport Zone Development Permit. Any development, construction, modification, remodeling, or change in use within an area regulated by this Section shall require an Airport Zone Development Permit, with the following exception associated with Dyess AFB.

Any allowable home or other primary structure, addition to an existing home or other primary structure, allowable accessory structure, natural growth, or other object less than 50 feet in height in the APZ I and less than 150 feet in height in the APZ II and beyond shall be exempt from obtaining an Airport Zone Development Permit. This exception does not apply within the Clear Zone associated with Dyess AFB.

- b. This section shall not be interpreted to allow any permit that would:

1. establish an airport hazard, except as otherwise stated in this ordinance as allowed;
2. establish a nonconforming/not recommended use, except as otherwise stated in this ordinance as allowed;
3. allow a nonconforming/not recommended structure, object of natural growth, or other obstruction to become higher than it was on the date this Section was adopted, except as otherwise stated in this ordinance as allowed;
4. allow a nonconforming/not recommended 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, except as otherwise stated in this ordinance as allowed.

- c. No permit shall be granted to construct, modify, reconstruct, or remodel 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. Construction must comply with all applicable limitations and/or requirements contained herein and FAA guidelines.
 - d. A permit issued for a particular land use on a site is intended to allow multiple and recurring activities identified in the permit without the need for a separate permit for each.
 - e. There shall be no separate permit fee for an Airport Zone Development Permit.
- (2) Except as provided in subsection (j)(1)b. above, an application for permit shall be granted.
- (3) New Construction. No material change shall be made in the use of land and no structure, natural growth, or other obstruction, unless exempted above, shall be erected, altered, planted, or otherwise established in any zone hereby created, unless an Airport Zone Development Permit therefor shall have been applied for and granted. Each application for a permit shall indicate the purpose for which the permit is desired with sufficient particularity to permit a determination as to whether the resulting use, structure, natural growth, or other obstruction, would conform to the regulations herein prescribed.
- (4) New Use. No material change shall be made in the use of a structure or property, unless an Airport Zone Development Permit therefor shall have been applied for and granted. Each application for a permit shall indicate the purpose for which the permit is desired with sufficient particularity to permit a determination as to whether the resulting use would conform to the regulations herein prescribed.
- (5) Noise. Noise regulations are hereby established for new construction and rehabilitation, rebuilding, or remodeling, of existing construction within Abilene Regional Airport Noise Zones, as follows:
- a. 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.
 - b. Certificate of Occupancy or Final Building Approval. For those properties identified by the Noise Contours Map 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 the FAA requirements for NLR and verifies that such noise attenuation measures have been properly taken with regard to the property.
 - c. Airport Zone Development Permit. For those properties identified by the Noise Contours Map, 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 [contractor] or subcontractor of a property provides a copy of the FAA requirements for NLR and verifies that such noise attenuation measures will be taken with regard to the property.

d. Routine maintenance of a nonconforming/not recommended structure does not invoke the requirements of this subsection.

- (6) Nonconforming/Not Recommended Uses Abandoned or Destroyed. Whenever the Planning Director determines that a nonconforming/not recommended 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 height limit for that zone or otherwise deviate from the regulations contained in this Section or this Chapter.
- (7) Variances. Any person desiring to erect or increase the height of any structure or permit the growth of any natural growth or use his/her 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 Code of the City of Abilene apply to this Section.

For all zones established in this Section, the application for variance may be required to 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 AFB Base Civil Engineer (regarding Dyess AFB Zones) for a recommendation as to the aeronautical effects of the requested variance, as more particularly set forth in subsection (l).

- (8) Special Exceptions. Any person desiring to erect, rebuild, or remodel any structure within an Abilene Regional Airport 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 this 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) for a recommendation as to the aeronautical or sound effects of the requested variance.

Unless otherwise exempted within this ordinance, any person desiring to erect, rebuild, or remodel any structure, or change land use in a non-recommended manner within a Dyess AFB accident potential zone, as defined in this ordinance, may apply to the Board of Adjustment for a Special Exception of density or intensity stipulations. Procedural rules and standards for granting or denying Special Exceptions contained in this 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 Dyess AFB Base Civil Engineer for review of density/intensity.

- (9) 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/her 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.

(10) Subdivision Plat Acknowledgement of Abilene Regional Airport or Dyess AFB Operations. Applicants for plat approval of land subject to regulations within this Section shall be required to sign an acknowledgement statement and include a note on the plat documentation indicating they understand that the land subject of the plat is within an area that may experience potential impacts or effects associated with aircraft operations at Abilene Regional Airport or military operations at Dyess AFB.

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

(k) 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.

(l) Board of Adjustment.

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

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

(2) Decisions made by the Board of Adjustment, appeals, and judicial review related to this Section shall be in accordance with this Code.

(3) Recommendation to the Board.

a. 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.

b. Dyess Air Force Base.

The Dyess AFB 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 AFB. The Planning Director shall promptly forward any application for a variance or special exception, including any relevant material, to the

Dyess AFB Base Civil Engineer for consideration. A representative of the Dyess AFB 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 AFB 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.

(m) Violations and Penalties.

- (1) It shall be unlawful for any person to violate any regulation, order, or ruling promulgated under this Section.
- (2) Each day a violation occurs shall constitute a separate offense. The daily Penalties will be suspended upon application for Special Exception or request for Variance.
- (3) Any person who violates any provision of this Section shall be guilty of a misdemeanor, punishable by a fine as set forth in Chapter 1, Sec. 1-9 of the Code of the City of Abilene.

(n) Civil Remedies.

- (1) The City Attorney may enforce this Section by injunction, declaratory relief, or other action at law or in equity.
- (2) 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 Zone Development 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.
- (3) 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.

(o) Amendments.

- (1) As part of the development of an amendment to this Section, a committee shall be appointed to participate in the development of the amendment language. This committee shall include the County Commissioner whose precinct is within the affected area around Dyess AFB and at least three (3) property owners whose property is located within an area affected by the Section, to include the current Dyess AFB accident potential zones or noise contours, who shall be appointed by said County Commissioner.
- (2) Prior to approval of an amendment to this Section, this committee shall have a minimum of 60 days to review and comment on any proposed amendment.

(p) Exemptions.

The following uses are exempt from the Airport Zoning regulations, unless otherwise regulated through other sections:

- (1) Agricultural Use. This regulation shall not be used to regulate any operational aspect of an existing agricultural use, including the cultivation and harvesting of crops, land management activities (prescribed burning, clearing, spraying and trimming), livestock management, hunting, use and application of water, or ponds/tanks used for watering of livestock or

recreational use. Expansion of existing structures and construction of new structures that are accessory for agricultural uses are subject to these regulations to the extent permitted by state law.

- (2) Existing Structures. This regulation shall not restrict or limit the use of legally established, existing land uses and structures as of the effective date of these regulations.

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10; Ord. No. 12-2010, pt. A (Exh. A), 6-10-10)