

ARTICLE 12.300 AIRFIELD ZONING ORDINANCE\*

Sec. 12.301 Short Title

This article shall be known and may be cited as the "Airfield Zoning Ordinance, Abernathy Airfield, Abernathy, Texas." (1974 Code, Chapter 13, Article 3, Section 13-9)

Sec. 12.302 Definitions

As used in this article, unless the context otherwise requires:

Airfield. Means Abernathy Airfield, Abernathy, Texas.

Flight Hazard. Means any structure or tree or use of land which obstructs the airspace required for the flight of aircraft in landing or taking-off at the airfield or is otherwise hazardous to such landing or taking-off of aircraft.

Non-Conforming Use. Means any structure, tree or use of land which does not conform to a regulation prescribed in this article or an amendment thereto, as of the effective date of such regulations.

Person. Means any individual, firm, co-partnership, corporation, company, association, joint stock association or body politic, and includes any trustee, receiver, assignee, or other similar representative thereof.

Structure. Means any object constructed or installed by man, including, but without limitation, buildings, towers, smokestacks, and overhead transmission lines.

Landing area. Means the area of the airfield used for the landing, take-off, or taxiing of aircraft.

Tree. Means any object of natural growth.

Air Installations Officer. Means the duly appointed and qualified air installations officer for Reese Air Force Base, Texas, and his successor in office, or airfield manager as appointed or otherwise elected by the City of Abernathy, or other operating agency whenever jurisdiction of the Abernathy Airfield is not vested in the Air Force.

(1974 Code, Chapter 13, Article 3, Section 13-10)

Sec. 12.303 Zones

In order to carry out the purposes of the article, all of the land within 50,000 feet radius of the Airfield Reference Point (Latitude 33° 50' 42" North, Longitude 101° 45' 38" West) that lies within the city limits of Abernathy, Texas, is hereby divided into Zones A, B, C, D, E, F, and G, the boundaries of which are shown on Drawing Number RA 570, dated 1 April 1953, showing allowable elevations of obstructions in the vicinity of Abernathy Airfield, Abernathy, Texas, which is attached hereto and hereby made a part hereof. (1974 Code, Chapter 13, Article 3, Section 13-11)

Sec. 12.304 Height Limits

Except as otherwise provided in this article, no structure or tree shall be erected, altered, allowed to grow or maintained in the landing area or in any airfield approach zone, airfield turning zone or airfield transition zone to a height in excess of the applicable elevations (elevation above mean sea level as established by the United States Coast & Geodetic Survey) shown on the attached Map and herein established for such zone. (1974 Code, Chapter 13, Article 3, Section 13-12)

Sec. 12.305 Use Restrictions

Notwithstanding any other provisions of this article, no use may be made of land within the landing area, or in any airfield approach zone, airfield turning zone or airfield transition zone, in such a manner as to create electrical interference with radio communication between the airfield and aircraft, make it difficult for flyers to distinguish between airfield lights and others, result in glare in the eyes of flyers using the airfield, impair visibility in the vicinity of the airfield, or otherwise endanger the landing, taking-off, or maneuvering of aircraft. (1974 Code, Chapter 13, Article 3, Section 13-13)

Sec. 12.306 Non-Conforming Uses

(a) The regulations prescribed in Sections 12.304 and 12.305 of this article shall not be construed to require the removal, lowering, or other change or alteration of any structure or tree not conforming to the regulations as of the effective date hereof, or otherwise interfere with the continuance of any nonconforming use. Nothing herein contained shall require any change in the construction, alteration, or intended use of any structure, the construction or alteration of which was begun prior to the effective date of this article, and is diligently prosecuted and completed within two years thereof.

(b) The lawful use of land existing at the time of the passage of this article, although such use does not conform to the provisions hereof, may be continued; but if such non-conforming use is discontinued, any future use of said premises shall be in conformity with the provision of this article.

(c) If a building occupied by a non-conforming use is destroyed by fire or the elements, it may not be reconstructed or re-built except to conform with the provisions of this article.

(1974 Code, Chapter 13, Article 3, Section 13-14)

Sec. 12.307 Variances

Any person desiring to erect any structure or increase the height of any structure, or permit the growth of any tree or use his property not in accordance with the regulations prescribed in this article, may apply for a variance therefrom. Such variance shall be allowed where a literal application or enforcement of the regulations would result in practical difficulty or unnecessary hardship and the relief granted would not be contrary to the public interest, but do substantial justice and be in accordance with the spirit of this article. (1974 Code, Chapter 13, Article 3, Section 13-15)

Sec. 12.308 Hazard Marking and Lighting

Any variance granted under Section 12.307 may, if such action is deemed advisable to effectuate the purposes of this article and reasonable in the circumstances, be so conditioned as to require the owner of the structure or tree in question at his expense, or permit the Abernathy Airfield, Abernathy, Texas, or Reese Air Force Base, Texas, at its own expense, to install, operate, and maintain thereon such markers and lights as may be necessary to indicate to flyers the presence of a flight hazard. (1974 Code, Chapter 13, Article 3, Section 13-16)

Sec. 12.309 Administrative Agency

The air installations officer is hereby designated the administrative agency charged with the duty of administering and enforcing the regulations herein prescribed. The duties of the air installations officer shall include that of hearing and deciding all applications for variances under Section 12.307, but the air installations officer shall not have or exercise any of the powers or duties herein delegated to the Board of Adjustment. (1974 Code, Chapter 13, Article 3, Section 13-17)

Sec. 12.310 Appeals

(a) Any person aggrieved, or taxpayer affected by any decision of the air installations officer made in his administration of this article, if of the opinion that a decision of the air installations officer is an

improper application of this article, may appeal to the Board of Adjustment for which provision is made in Section 12.311.

(b) All appeals taken under this section must be taken within a reasonable time, as provided by the rules of the board, by filing with the air installations officer and with the board, a notice of appeal specifying the grounds thereof. The air installations officer shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

(c) An appeal shall stay all proceedings in the furtherance of the action appealed from, unless the air installations officer certifies to the board, after the notice of appeal has been filed with it, that by reason of the facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by order of the board on notice to the air installations officer and on due cause shown.

(d) The board shall fix a reasonable time for the hearing of the appeal, give public notice and due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney.

(e) The board may, in conformity with the provisions of this article, reverse or affirm, wholly or partly, or modify, the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the air installations officer.

(f) The board shall make written findings of fact and conclusions of law giving the facts upon which it acted and its legal conclusions from such facts in reversing, or affirming, or modifying any order, requirements, decision or determination which comes before it under the provisions of this article.

(g) The concurring vote of at least four of the members of the board shall be sufficient to reverse any order, requirement, decision, or determination of the air installations officer, or to decide in favor of the applicant on any matter upon which it is required to pass under this article, or to effect any variation in this article.

(1974 Code, Chapter 13, Article 3, Section 13-18)

#### Sec. 12.311 Board of Adjustment

(a) Only citizens of the City of Abernathy, Texas, may be appointed members of the Board of Adjustment here created under this article, and said board is hereby delegated and shall exercise the following powers:

(1) To hear and decide appeals from any order, requirement, decision, or determination made by the air installations officer in the enforcement of this article.

(2) To hear and decide special exceptions to the terms of this article which such board may be required to pass by subsequent ordinance.

(b) The Board of Adjustment shall consist of five members, each to be appointed for a term of two years by the city council of Abernathy, Texas, and to be removable for cause by the city council of Abernathy, Texas, upon written charges and after public hearing.

(c) The board shall adopt rules for its governance and procedure in harmony with the provision of this article. Meetings of the board shall be held at call of the chairman and at such other times as the board may determine. The chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All hearings of the board shall be public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote,

indicating such fact, and shall keep records of its examinations and other official actions, all of which shall immediately be filed in the office of the board and shall be a public record.

(1974 Code, Chapter 13, Article 3, Section 13-19)

Sec. 12.312        Judicial Review

Any person aggrieved, or taxpayer affected, by any decision of the Board of Adjustment may appeal to a court of record as provided in section 11 of chapter 391, page 874, Acts of 1947 (H.B. No. 333), 50th Legislature, State of Texas. (1974 Code, Chapter 13, Article 3, Section 13-20)

Sec. 12.313        Enforcement and Remedies

The proper authorities at Reese Air Force Base, Texas, separately, or in conjunction with the City of Abernathy, Texas, may institute in any Court of competent jurisdiction, an action to prevent, restrain, correct, or abate any violation of this article or any regulations, orders, ordinances, resolutions, or rulings promulgated or made pursuant to this article, and the Court shall adjudge to the plaintiff such relief, by way of injunction, which may be mandatory, or otherwise, as may be proper under all the facts and circumstances of the case, in order to effectuate the purposes of this article and of the regulations adopted and orders, resolutions, and rulings made pursuant thereto. (1974 Code, Chapter 13, Article 3, Section 13-21)

Sec. 12.314        Conflicting Regulations

Where this article imposes a greater or more stringent restriction upon the use of land than is imposed or required by any other ordinance or regulations, the provisions of the article shall govern. (1974 Code, Chapter 13, Article 3, Section 13-22)