

**AN ORDINANCE AMENDING CHAPTER 7 AVIATION OF THE CODE OF ORDINANCES OF THE CITY OF KILLEEN; REPEALING ORDINANCE 87-49 THAT CREATED THE KILLEEN, HARKER HEIGHTS, BELL COUNTY JOINT ZONING BOARD; DESIGNATING AN AIRPORT ZONING COMMISSION; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION AND AN EFFECTIVE DATE.**

**WHEREAS**, the City of Killeen, Texas is a home-rule city acting under its charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Local Government Code; and,

**WHEREAS**, the City of Killeen did on July 28, 1987 enact Ordinance No. 87-49 to create a joint airport zoning board with the City of Harker Heights and Bell County; and

**WHEREAS**, the Texas Legislature has since amended Local Government Code §241.013 to provide that, when a city with a population of more than 45,000 has an airport within its city limits and which airport is used in the interest of the public to the benefit of said city, the city may adopt, administer, and enforce airport hazard area zoning regulations applicable to an airport hazards area relating to the airport and located outside the city and airport compatible land use zoning regulations applicable to a controlled compatible land use area relating to the airport and located outside the political subdivision; and

**WHEREAS**, the City Council finds that the predicates outlined in the previous paragraph do exist; and

**WHEREAS**, the City Council finds that the powers of the joint board over both hazard zoning and land use zoning ought to be exercised by the City of Killeen; and

**WHEREAS**, the City Council wishes to terminate said joint board and assume and designate the powers as permitted under the statute;

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

**SECTION I.** That Ordinance 87-49 creating the Killeen, Harker Heights, Bell County Joint Airport Zoning Board be, and is hereby repealed.

**SECTION II.** That Chapter 7, Article II and Article III, of the City of Killeen Code of Ordinances is hereby amended to read as follows:

**ARTICLE II. – KILLEEN MUNICIPAL AIRPORT**

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Sec. 7-28. – Airport Zoning Commission.

The Planning and Zoning Commission of the City of Killeen is designated as the Airport Zoning Commission and shall recommend the boundaries of the zones to be established and the regulations for these zones. The commission shall make a preliminary report and hold public hearings on the report before submitting a final report on its recommendations to the City Council.

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**ARTICLE III. - KILLEEN MUNICIPAL AIRPORT ZONING ORDINANCE<sup>[2]</sup>**

**Sec. 7-51. - Short title.**

This article shall be known and may be cited as "Killeen Municipal Airport Hazard Zoning Ordinance."

(Ord. No. 88-27, § II(9-5-1), 4-26-88)

**Sec. 7-52. - Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Airport* shall mean ~~the Killeen Municipal Airport~~ Skylark Field.

*Airport elevation* shall mean the established elevation of the highest point on the usable landing area measured in feet from mean sea level.

*Airport hazard* shall mean any structure or object of natural growth or use of land which obstructs the air space required for the flights of aircraft or which obstructs or interferes with the control or tracking and/or data acquisition in the landing, taking off or flight at an airport, or at any installation or facility relating to flight, and tracking and/or data acquisition of the flight craft; hazardous, interfering with or obstructing such landing, taking off or flight of aircraft or

which is hazardous to or interferes with tracking and/or data acquisition pertaining to flight and flight vehicles.

*Airport hazard area* shall mean any area of land or water upon which an airport hazard might be established if not prevented as provided in this article.

*Airport reference point* shall mean the point established as the approximate geographic center of the airport landing area and so designated.

*Approach surface* shall mean 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 set forth in [section 7-54](#). In plan, the perimeter of the approach surface coincides with the perimeter of the approach zone.

*Approach, transitional, horizontal, and conical zones* shall mean those zones set forth in [section 7-53](#).

*Board of adjustment* shall mean a board consisting of five (5) members; ~~three (3) members appointed by the city council, one (1) member appointed by the city council of the city of Harker Heights, Texas and one (1) member appointed by the county commissioner's court.~~

*Conical surface* shall mean a surface extending outward and upward from the periphery of the horizontal surface at a slope of twenty (20) feet outward to one (1) foot upward for a horizontal distance of four thousand (4,000) feet.

*Hazard to air navigation* shall mean an obstruction determined to have a substantial adverse effect on the safe and efficient utilization of the navigable airspace.

*Height* shall mean for the purpose of determining the height limits in all zones set forth in this article and shown on the zoning map and the datum shall be mean sea level elevation unless otherwise specified.

*Horizontal surface* shall mean a horizontal plane one hundred fifty (150) feet above the established airport elevation, the perimeter of which in plan coincides with the perimeter of the horizontal zone.

~~*Joint airport zoning board* shall mean a board consisting of seven (7) members; two (2) members appointed by the city council, two (2) members appointed by the city council of the city of Harker Heights, Texas, and two (2) members appointed by the county commissioner's court. The six (6) appointed members shall elect a seventh member who shall serve as chairman of the board.~~

*Landing area* shall mean the surface area of the airport used for the landing, takeoff or taxiing of aircraft.

*Nonconforming use* shall mean any preexisting structure, object of natural growth, or use of land which is inconsistent with the provisions of this article or an amendment thereto.

*Nonprecision instrument runway* shall mean a runway having an existing instrument approach procedure utilizing air navigation facilities with only horizontal guidance, or area-type navigation equipment, for which a straight-in nonprecision instrument approach procedure has been approved or planned.

*Obstruction* shall mean any structure, growth or other object, including a mobile object, which exceeds a limiting height set forth in [section 7-54](#).

*Person* shall mean an individual, firm, partnership, corporation, company, association, joint stock association or body politic, and includes a trustee, receiver, assignee, administrator, executor, guardian or other representative.

*Precision instrument runway* shall mean 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.

*Primary surface* shall mean a surface longitudinally centered on a runway. When the runway has a specially prepared hard surface, the primary surface extends two hundred (200) feet beyond each end of that runway; but when the runway has no specially prepared hard surface, or planned hard surface, the primary surface ends at each end of that runway. The width of the primary surface of a runway will be that width prescribed in Part 77 of the Federal Aviation Regulations (FAR) for the most precise approach existing or planned for either end of that runway. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline. The width of a primary surface for other than utility runways is one thousand (1,000) feet for a nonprecision instrument runway having a nonprecision instrument approach with visibility minimums as low as three-fourths of a statute mile, and for precision instrument runways.

*Runway* shall mean a defined area on an airport prepared for landing and takeoff of aircraft along its length.

*Structure* shall mean an object, including a mobile object, constructed or installed by man, including, but not limited to, buildings, towers, cranes, smokestacks, earth formations and overhead transmission lines.

*Transitional surfaces* shall mean those surfaces which extend outward at ninety-degree angles to the runway centerline and the runway centerline extended at a slope of seven (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 these portions of the precision approach surfaces, which project through and beyond the limits of the conical surface, extend a distance of five thousand (5,000) feet measured horizontally from the edge of the approach surface and at ninety-degree angles to the extended runway centerline.

(Ord. No. 88-27, § II(9-5-2), 4-20-88)

**Cross reference**— Definitions and rules of construction generally, [§ 1-2](#).

**State Law reference**— General definitions applicable to airport zoning, V.T.C.A., Local Government Code § 241.003.

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**Sec. 7-57. - Permits.**

(a) *Future uses.* Except as specifically provided in (1), (2) and (3) below, no material change shall be made in the use of land, no structure shall be erected or otherwise established, and no object of natural growth shall be planted in any zone hereby created unless a 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 include, but not be limited to, certification as to elevation by a registered professional engineer, architect or registered surveyor, so that the building official can determine whether the resulting use, structure, or tree would conform to the regulations herein prescribed. If such determination is in the affirmative, the permit shall be granted. No permit for a use inconsistent with the provisions of this article shall be granted unless a variance has been approved in accordance with (4) below:

(1) In the area lying within the limits of the horizontal zone and conical zone, no permit shall be required for any object of natural growth or structure less than seventy-five (75) feet of vertical height above the ground, except when, because of terrain, land contour or topographic features, such object of natural growth or structure would extend above the height limits prescribed for such zones. (Advisory note: permits should not be required for improvements to property with an elevation of nine hundred twenty (920) feet mean sea level or less.)

(2) In areas lying within the limits of the approach zones, but at a horizontal distance of not less than four thousand two hundred (4,200) feet from each end of the runway, no permit shall be required for any object of natural growth or structure less than seventy-five (75) feet of vertical height above the ground, except when such tree or structure would extend above the height limit prescribed for such approach zones.

(3) In the areas lying within the limits of the transition zones beyond the perimeter of the horizontal zone, no permit shall be required for any object of natural growth or structure less than seventy-five (75) feet of vertical height above the ground, except when such object of natural growth or structure, because of terrain, land contour, or topographic features, would extend above the height limit prescribed for such transition zones.

Nothing contained in any of the foregoing exceptions shall be construed as permitting or intending to permit any construction, or alteration of any structure, or growth of any tree in excess of any of the height limits established by this article except as set forth in [section 7-54\(5\)](#).

(b) *Existing uses.* No permit shall be granted that would allow the establishment or creation of any airport hazard or permit a nonconforming use, structure, or object of natural growth to be made or become higher, or become a greater hazard to air navigation, than it was on the effective date of the ordinance from which this article is derived or any amendments thereto or than it is when the application for a permit is made. Except as indicated, all applications for such a permit shall be granted.

(c) *Nonconforming uses destroyed.* Whenever the city building official determines that a nonconforming structure or object of natural growth becomes more than eighty (80) percent torn down, physically deteriorated, or decayed, no permit shall be granted that would allow such structure or tree to exceed the applicable height limit or otherwise deviate from the zoning regulations.

(d) *Variances.* Any person desiring to erect or increase the height of any structure, or permit the growth of any object of natural growth, or use his property, in violation of the regulations prescribed in this article, may apply to the board of adjustment for a variance from such regulations in question. The application for variance shall be accompanied by a determination from the federal aviation administration as to the effect of the proposal on the operation of air navigation facilities and the safe, efficient use of navigable airspace. Such variances shall be allowed where it is duly found that a literal application or enforcement of the regulations will result in 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. ~~Additionally, no application for variance to the requirements of this article may be considered by the board of adjustment unless a copy of the application has been furnished to the Killeen, Harker Heights, Bell County Joint Airport Zoning Board for advice as to the aeronautical effects of the variance. If the Killeen, Harker Heights, Bell County Joint Airport Zoning Board does not respond to the application within fifteen (15) days after receipt, the board of adjustment may act on its own to grant or deny such application.~~

(e) *Obstruction marking and lighting.* Any permit or variance granted may, if such action is deemed advisable by the building official or the board of adjustment to effectuate the purpose of this article and be reasonable in the circumstances, be so conditioned as to require the owner of the structure or tree in question to allow the building official to install, operate, and maintain, at the expense of the city, such markings and lights as may be necessary.

(f) *Administrative Approval of Minor Encroachments.*

(1) This section establishes authority for administrative authorization of certain minor encroachments into airport hazard areas.

(2) In order to administratively approve such variance, the building official, or designee, must find that with regard to the encroachment:

a. the Federal Aviation Administration has made a determination of No Hazard to Air Navigation;

b. no change will be required to airport instrument minimums; and

c. there will be no loss of utility of the airport.

(3) The building official's denial of an administrative variance may be appealed to the board of adjustment by filing a written notice of appeal within 10 calendar days of the building official's decision.

(Ord. No. 88-27, § II(9-5-7), 4-26-88)

**State Law reference—** Permits, V.T.C.A., Local Government Code § 241.020.

**Sec. 7-58. - Enforcement.**

It shall be the duty of the building official to administer and enforce the regulations prescribed in this article. Applications for permits shall be made to the building official upon a form published for that purpose. Applications required by this article to be submitted to the building official shall be promptly considered and granted or denied. Applications for variances shall be made to the board of adjustment by first filing such application for variance with the building official who shall forthwith transmit such application to the board of adjustment for determination. Fees, if any, shall be established by ordinance of the city council.

(Ord. No. 88-27, § II(9-5-8), 4-26-88)

**State Law reference**— Administrative agency required, V.T.C.A., Local Government Code § 241.031.

**Sec. 7-59. - Board of adjustment.**

(a) There is hereby created a board of adjustment to have and exercise the following powers:

- (1) To hear and decide appeals from any order, requirement, decision, or determination made by the building official in the enforcement of this article.
- (2) To hear and decide special exceptions to the terms of this article upon which such board of adjustment under such regulations may be required to pass.
- (3) To hear and decide specific variances.

(b) The board of adjustment shall consist of five (5) members who shall be appointed ~~as follows:~~

~~(1) — Three (3) members~~ by the city council of this city.

~~(2) — One (1) member by the city council of the city of Harker Heights, Texas.~~

~~(3) — One (1) member by the county commissioner's court.~~

Each member shall serve for a term of two (2) years and is removable for cause by the appointment authority upon written charges, after a public hearing.

(c) The board of adjustment shall adopt rules for its governance and procedure in harmony with the provisions of this article. Meetings of the board of adjustment shall be held at the call of the chairman and at such times as the board of adjustment 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 of adjustment shall be public. The board of adjustment 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 city secretary and shall be a public record.

(d) The board of adjustment shall make written findings of fact and conclusions of law stating the facts upon which it relied when making its legal conclusions in reversing, affirming or modifying any order, requirement, decision or determination which comes before it under the provisions of this article.

(e) The concurring vote of four (4) members of the board of adjustment shall be necessary to reverse any order, requirement, decision, or determination of the building official 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.

**SECTION III.** That all ordinances or resolutions or parts of ordinances or resolutions in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

**SECTION IV.** That should any section or part of any section, paragraph or clause of this ordinance be declared invalid or unconstitutional for any reason, it shall not invalidate or impair the validity, force or effect of any other section or sections or part of a section or paragraph of this ordinance.

**SECTION V.** That the Code of Ordinances of the City of Killeen, Texas, as amended, shall remain in full force and effect, save and except as amended by this ordinance.

**SECTION VI.** That this ordinance shall be effective after its passage and publication according to law.

**PASSED AND APPROVED** at a regular meeting of the City Council of the City of Killeen, Texas, this 10th day of November, 2015, at which meeting a quorum was present, held in accordance with the provisions of V.T.C.A., Government Code, §551.001 *et seq.*

**APPROVED**

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Scott Cospers, MAYOR

**ATTEST:**

**APPROVED AS TO FORM:**

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Dianna Barker, CITY SECRETARY

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Kathryn H. Davis, CITY ATTORNEY